

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE NOS. SB-16-CRIM-
0742 to 0745
*For: Violation of Section 3(e) of R.A.
No. 3019*

CRIM. CASE NOS. SB-16-CRIM-
0747 to 0750
*For: Violation of Section 52(g) of R.A.
No. 8291*

- versus -


CRIM. CASE NOS. SB-16-CRIM-
0751 to 0757
*For: Violation of Section 3(e) of R.A.
No. 3019*

CRIM. CASE NOS. SB-16-CRIM-
0758 to 0764
*For: Violation of Section 52(g) of R.A.
No. 8291*

SERAD ALISACAR BATUA, ET
AL.,

Accused.

Present:
HERRERA, Jr., J., Chairperson
MUSNGI, J., Associate Justice
PAHIMNA, J., Associate Justice

September 19, 2017
Promulgated 

RESOLUTION




MUSNGI, J.:

The Court resolves the following:

- (1) *Motion to Dismiss*¹ filed by accused Serad Alisacar Batua (“Batua”) on 20 April 2017;
- (2) *Opposition (Re: Motion to Dismiss dated April 17, 2017 filed by accused-movant Serad Alisacar Batua)*² filed by the prosecution on 10 May 2017; and

¹ Sandiganbayan Records, Vol. 1, pp. 37-96.

² *Ibid.*, pp. 127-140.

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(3) *Reply to Opposition (Re: Accused's Motion to Dismiss)*³ filed by accused Batua on 19 June 2017.

In its *Resolution*⁴ dated 07 February 2012, the Office of the Ombudsman (“**OMB**”) found probable cause to indict herein accused Batua, Labay P. Masbud (“**Masbud**”), Abdulkarem Noor (“**Noor**”), and Umbay P. Batua-an (“**Batua-an**”) for violations of Sec. 3(e), Republic Act No. 3019 (“**R.A. No. 3019**”) and Section 52(g), Republic Act No. 8291 (“**R.A. No. 8291**”), and dismissed the case against Carnain D. Nuska (“**Nuska**”) for lack of probable cause. The dispositive portion thereof reads, thus:

“WHEREFORE, PREMISES CONSIDERED, this Office finds probable cause to indict respondents BATUA, MASBUD, and NOOR on five (5) counts of violation of Section 52(g) of R.A. 8291 and five (5) counts of violation of Section 3(e) of R.A. 3019; and respondents BATUA, BATUA-AN and NOOR on seven (7) counts of violation of Section 52(g) of R.A. 8291 and seven (7) counts of violation of Section 3(e) of R.A. 3019.”

‘The charge of violation of Section 3(f) of R.A. 3019 and, likewise, the present charges against respondent CARNAIN D. NUSKA, are hereby DISMISSED for lack of probable cause.’

‘SO ORDERED.’⁵

In his *Motion to Dismiss*, accused Batua argues: “The inordinate, inexcusable delay of eight (8) years by the Office of the Ombudsman in determining probable cause and filing the instant criminal *Informations* against the accused has violated his constitutional rights to due process and speedy disposition of cases, thereby warranting the outright dismissal of the instant cases.”⁶ He asserts that the factors in determining whether or not an accused’s right to speedy disposition of cases has been violated, as laid down by the Supreme Court in *Coscolluela v. Sandiganbayan*,⁷ are applicable in the instant case.

First, accused Batua claims that the OMB took a total period of eight (8) years to determine whether or not the accused should be indicted for violations of Sec. 6(b) of R.A. No. 8291 and Sec. 3(e) of R.A. No. 3019. He submits that such period is too long a time to

³ *Ibid.*, pp. 152-173.

⁴ *Ibid.*, pp. 68-76.

⁵ *Ibid.*

⁶ *Ibid.*, p. 37.

⁷ G.R. No. 191411, 05 July 2013.



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terminate a preliminary investigation considering that the *Affidavit-Complaint* consists only of two (2) pages and four (4) annexes.

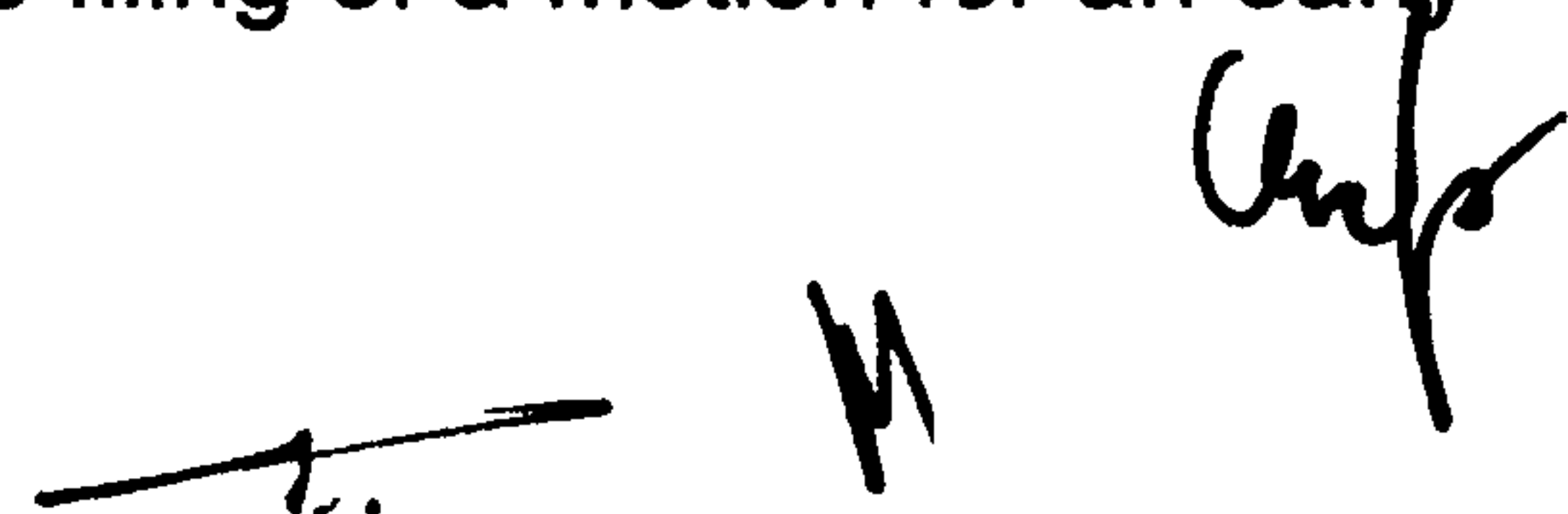
Second, accused Batua posits that the issue involved in the present cases, which is the failure to remit the Government Service Insurance System ("GSIS") premium contributions of the municipal employees of Ditsa-an Ramani, Lanao del Sur, is not complicated.

Third, accused Batua argues that he cannot be faulted if he had not moved for a speedy resolution of his cases at the soonest possible time because he was completely unaware of the filing of the *Affidavit-Complaint* against him. The order of the OMB that would have apprised him of the criminal complaint was allegedly sent to Ditsa-an Ramain, Lanao del Sur. However, said order could not be accounted for by the postmaster of Ditsa-an Ramain.

Finally, accused Batua enumerates several prejudices against him that resulted from the delay. He contends that most of the people in his administration during the time he was the mayor, who could have served as witnesses in his defense, have either died, already retired, or could no longer be located. He adds that the documentary evidence in the possession of the Department of the Interior and Local Government – Autonomous Region for Muslim Mindanao ("DILG-ARMM") were either lost or damaged due to the raid, search, and seizure conducted when martial law was declared in the said area immediately after the Maguindanao Massacre. He also claims that he is now suffering from total kidney failure, advanced stage of Parkinson's disease, and coronary artery disease.

In its *Opposition*, the prosecution asserts that the proceeding in these cases is not attended by vexatious, capricious, and oppressive delay, and that a mere mathematical computation of the time involved is insufficient to determine whether the right to speedy trial has been violated. According to the prosecution, the instant cases involve several accused who filed several responsive pleadings, which must all be taken into account during the course of the investigation.

The prosecution faults accused Batua for requesting a second opportunity for preliminary investigation and an extension of time to file Counter-Affidavit, both of which were granted by the OMB. It also points out that accused Batua failed to assert his right to the speedy resolution of his cases during the preliminary investigation. He did not show any sign of asserting his right to speedy disposition of his case or at least made some overt acts like the filing of a motion for an early

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resolution anytime during the preliminary proceedings. His silence, according to the prosecution, amounts to a waiver of such right.

Lastly, the prosecution argues that the alleged predicaments of accused Batua are merely speculative and that it is inconclusive to assume that the intended testimonies of the persons he named in the present *Motion* are indispensable.

In his *Reply*, accused Batua insists that the prosecution's own timeline refutes any difficulty in promptly resolving the preliminary investigation of the instant cases. According to him, the OMB issued the *Subpoena Duces Tecum* to the Branch Manager of GIS-Iligan only on 29 December 2011, or more than three (3) years after the *Affidavit-Complaint* was filed. Accused Batua maintains that by the time he was constrained to move for an extension of time to file *Counter-Affidavit* on 30 July 2015, he had already sustained damage and prejudice, because almost seven (7) years had already elapsed after the *Affidavit-Complaint* was filed against him in October 2008.

Ruling

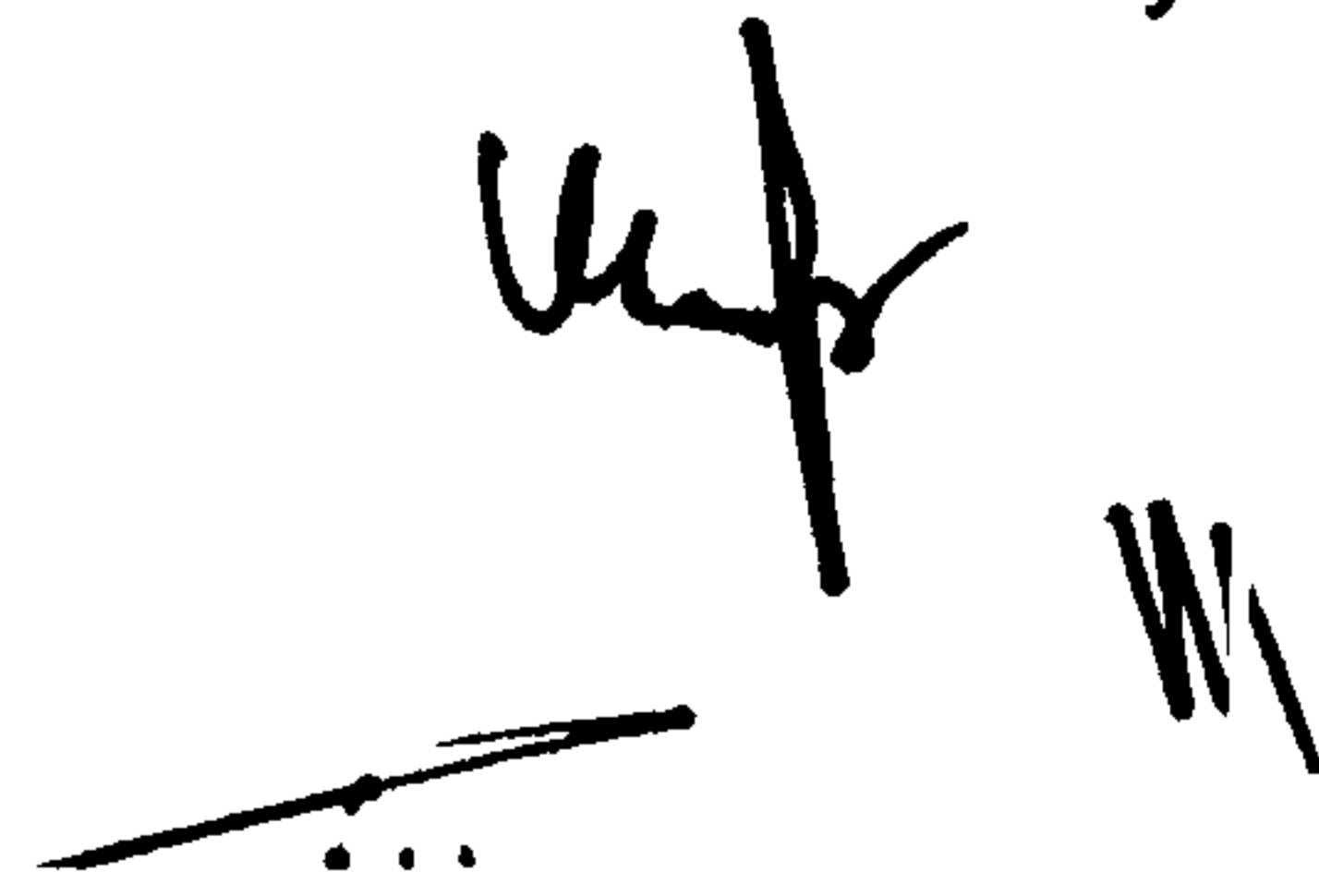
Accused Batua's *Motion to Dismiss* is granted.

The primary issue in the instant *Motion* is whether or not the right of the accused to speedy disposition of cases has been violated. In this regard, the case of *Corpuz vs. Sandiganbayan*⁸ is instructive. Thus:

'The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.'

'While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and

⁸ G.R. No. 162214, 11 November 2004.

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depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.'

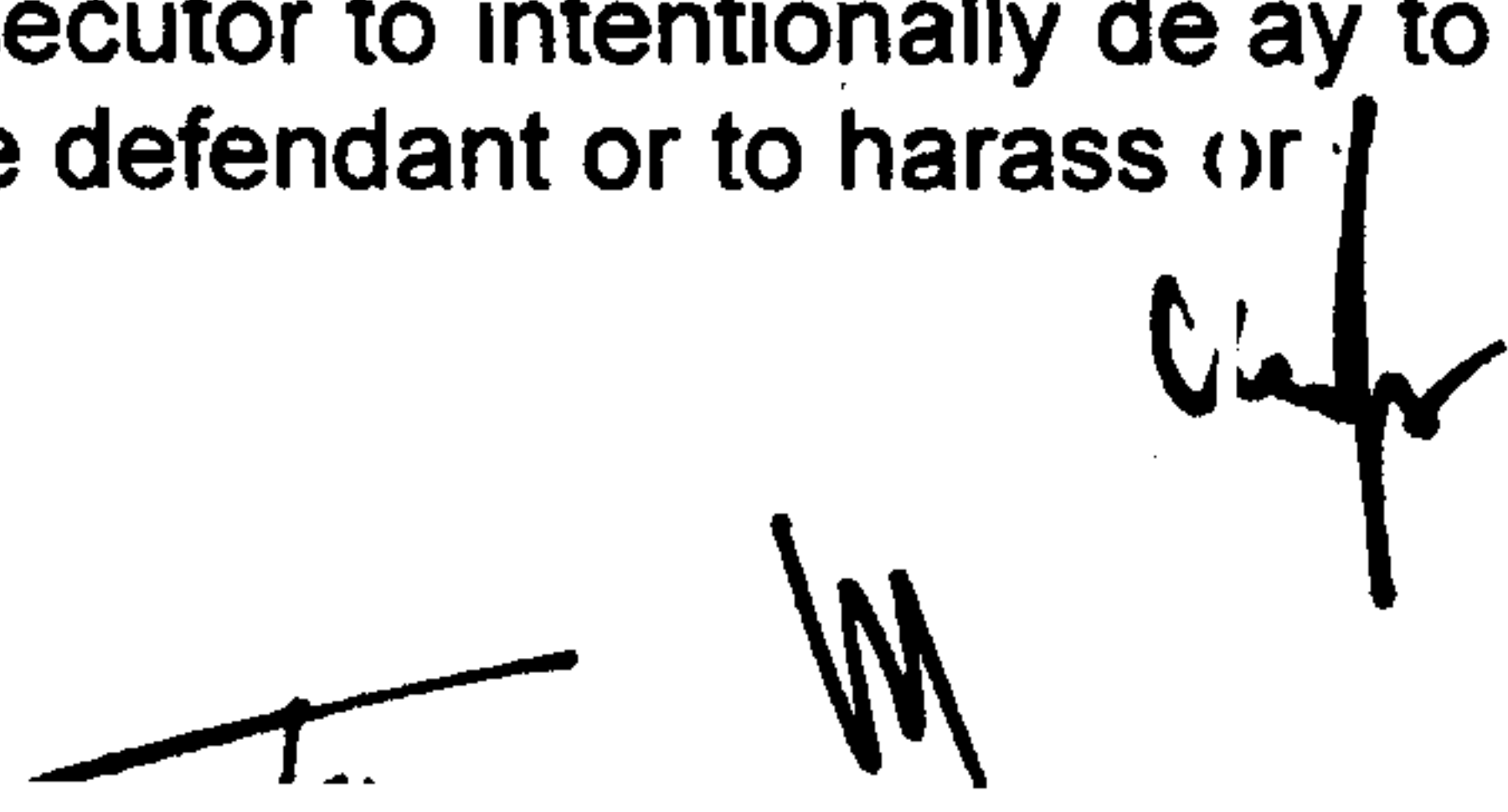
'A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.'

'In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.'

'Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden.'

'The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.'

'Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or

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prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.”⁹ (Emphasis supplied and citations omitted)

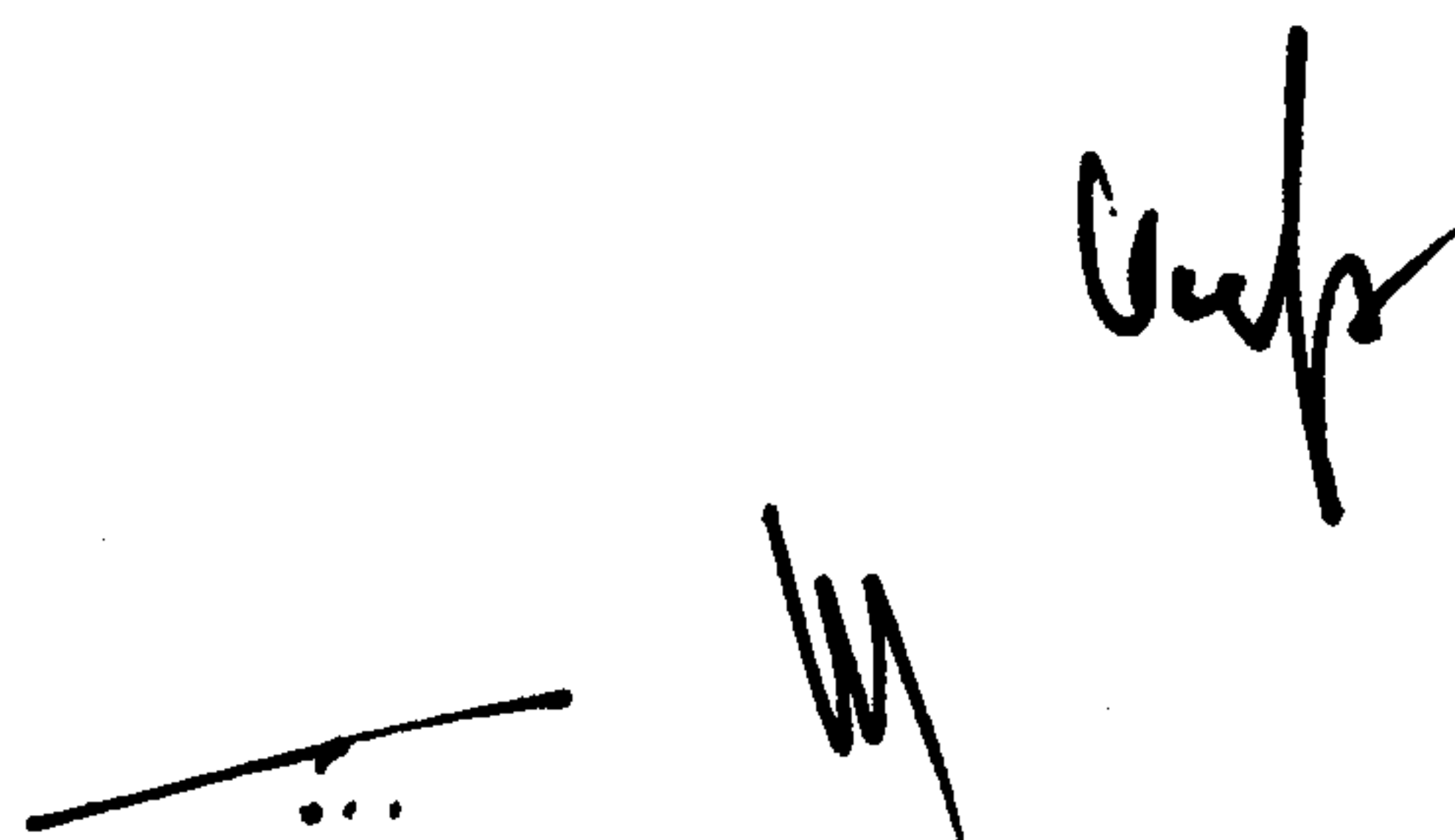
Accused Batua claims that his right to the speedy disposition of his cases has been violated. On the other hand, the prosecution is trying to prove that no violation of such right of the accused has been committed. It believes that assuming *arguendo* that there was a delay, the same is not vexatious, capricious and oppressive.

Applying the above-cited factors of delay to this case, the Court holds that the constitutional right of the accused to a speedy disposition of his cases has been violated.

The parties do not dispute the following dates:

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| 16 October 2008 | Private complainant Swaib Mohammad (“ Mohammad ”) filed the <i>Affidavit-Complaint</i> before the OMB-Mindanao against: Batua, Masbud, Batua-an, Nuska, and Noor; |
| 05 November 2008 | OMB-Mindanao issued an <i>Order</i> requiring Batua, Masbud, Batua-an, Nuska, and Noor to submit their respective <i>Counter-Affidavits</i> and controverting evidence within ten (10) days from receipt thereof; |
| 03 February 2009 | Mohammad sent a <i>Letter</i> dated 27 January 2009 to OMB-Mindanao stating that he has not yet received copies of the <i>Counter-Affidavits</i> of the accused; |
| 20 January 2010 | Batua-an filed his <i>Counter-Affidavit</i> dated 09 January 2010; |
| 11 February 2010 | Nuska filed his <i>Counter-Affidavit</i> dated 03 February 2010; |
| 17 February 2010 | Mohammad filed a <i>Reply</i> to Batua-an’s <i>Counter-Affidavit</i> ; |
| 29 December 2011 | OMB-Mindanao issued a <i>Subpoena Duces Tecum</i> to Exoterio M. Balancar (“ Balancar ”), the Branch Manager of GSIS-Iligan City; |

⁹ *Ibid.*



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03 January 2012	Balancar filed his <i>Compliance</i> before the OMB-Mindanao;
07 February 2012	Graft Investigation and Prosecution Officer I Noel Q. Gelito (" GIPO I Gelito ") of OMB-Mindanao issued a <i>Resolution</i> finding probable cause to indict Batua, Masbud, Noor, and Batua-an for violations of Sec. 3(e) of R.A. No. 3019 and Section 52(g) of R.A. No. 8291 and dismissed the case against Nuska for lack of probable cause;
24 February 2012	OMB-Mindanao transmitted the proposed <i>Resolution</i> dated 07 February 2012 together with the entire records of the case to the OMEI-Quezon City;
25 July 2014	Ombudsman Conchita Carpio-Morales (" Ombudsman Carpio-Morales ") approved the <i>Resolution</i> dated 07 February 2012 of OMB-Mindanao;
22 October 2014	Batua-an filed a <i>Motion for Reconsideration</i> ;
14 November 2014	Batua filed a <i>Motion for Reconsideration</i> ;
21 November 2014	Mohammad filed his <i>Comment to the Motion for Reconsideration</i> of Batua-an;
05 January 2015	Mohammad filed his <i>Comment to the Motion for Reconsideration</i> of Batua;
13 January 2015	Masbud filed his <i>Motion for Reconsideration</i> ;
26 January 2015	Mohammad filed his <i>Comment to the Motion for Reconsideration</i> of Masbud;
23 February 2015	Graft Investigation and Prosecution Officer I Jasmin Ann B. Gapatan (" GIPO I Gapatan ") issued a <i>Memorandum</i> recommending the conduct of preliminary investigation as regards Batua due to the latter's allegation of denial of due process, as the records do not show that he was properly served the <i>Affidavit-Complaint</i> and <i>Order to File Counter-Affidavit</i> ;
25 February 2015	Ombudsman Carpio-Morales approved the <i>Memorandum</i> of GIPO I Gapatan dated 23 February 2015;
13 April 2015	Mohammad filed a <i>Manifestation</i> praying for an early resolution of the preliminary investigation;

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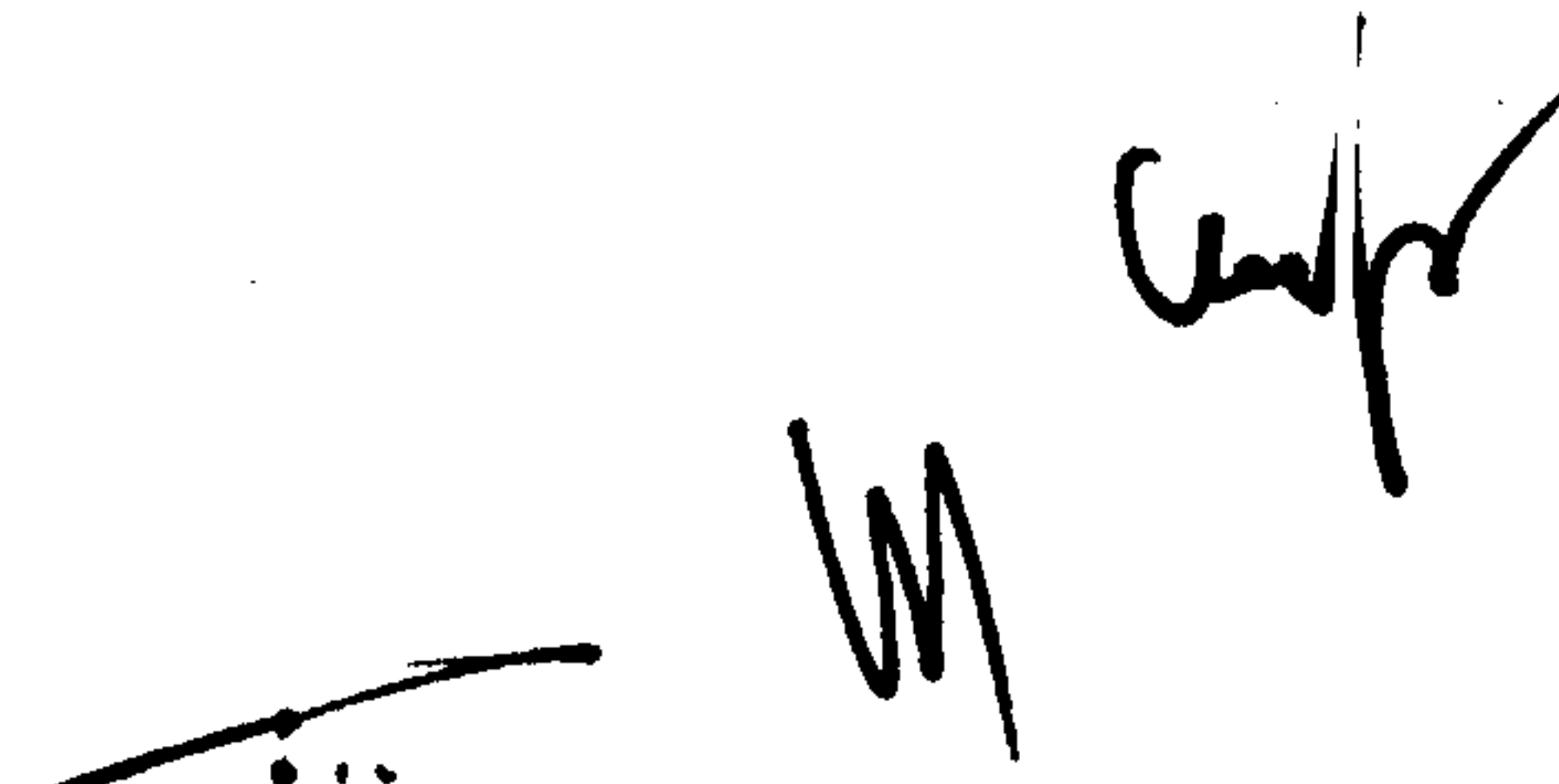
15 June 2015	OMB-Mindanao noted Mohammad's <i>Manifestation</i> ;
06 July 2015	OMB-Mindanao issued an <i>Order</i> dated 06 July 2015 directing Batua to submit his <i>Counter-Affidavit</i> and controverting evidence;
30 July 2015	Batua filed his <i>Motion for 30 Days More Time to File Counter-Affidavit</i> dated 28 July 2015;
25 August 2015	OMB-Mindanao issued an <i>Order</i> granting Batua an additional period of fifteen (15) days to file his <i>Counter-Affidavit</i> ;
26 August 2015	Batua filed his <i>Counter-Affidavit</i> ;
21 September 2015	Mohammad filed his <i>Comment to the Counter-Affidavit</i> of Batua;
23 November 2015	OMB-Mindanao issued an <i>Order</i> denying Masbud's <i>Motion for Reconsideration</i> ;
01 December 2015	Ombudsman Carpio-Morales approved OMB-Mindanao's <i>Order</i> dated 23 November 2015;
29 January 2016	OMB issued an <i>Order</i> affirming the <i>Resolution</i> dated 07 February 2012, which found probable cause against Batua, Masbud, Noor, and Batua-an for violations of Sec. 3(e) of R.A. No. 3019 and Section 52(g) of R.A. No. 8291 and dismissed the case against Nuska for lack of probable cause; and recommending the filing of the <i>Informations</i> against the accused;
03 February 2016	Ombudsman Carpio-Morales approved the <i>Order</i> dated 29 January 2016;
04 October 2016	OMB filed the <i>Informations</i> with the Sandiganbayan.

A judicious examination of the records of this case proves that the prosecution has been remiss in its duty to prosecute the case with reasonable dispatch.

Length of the Delay

The *Affidavit-Complaint*¹⁰ against the accused was filed on 16 October 2008 by private complainant Mohammad. The *Resolution*

¹⁰ Sandiganbayan Records, Vol. 1, pp. 49-50.



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charging the accused and dismissing the case against Nуска was approved on 03 February 2016 by Ombudsman Carpio-Morales. The *Informations* were subsequently filed on 04 October 2016. Hence, the prosecution took more than seven (7) years and three (3) months from the time it received the *Affidavit-Complaint* to the filing of the *Informations* with the Sandiganbayan. After a careful perusal of the circumstances of the present case, it becomes clear that the preliminary investigation conducted by the OMB was attended by vexatious, capricious and oppressive delays.

As discussed by the Supreme Court in *Coscolluela vs. Sandiganbayan*,¹¹ it is the duty of the Ombudsman to act with reasonable dispatch on the cases entrusted to it, otherwise, the passage of time in the conduct of the investigation may be prejudicial to the accused, thus:

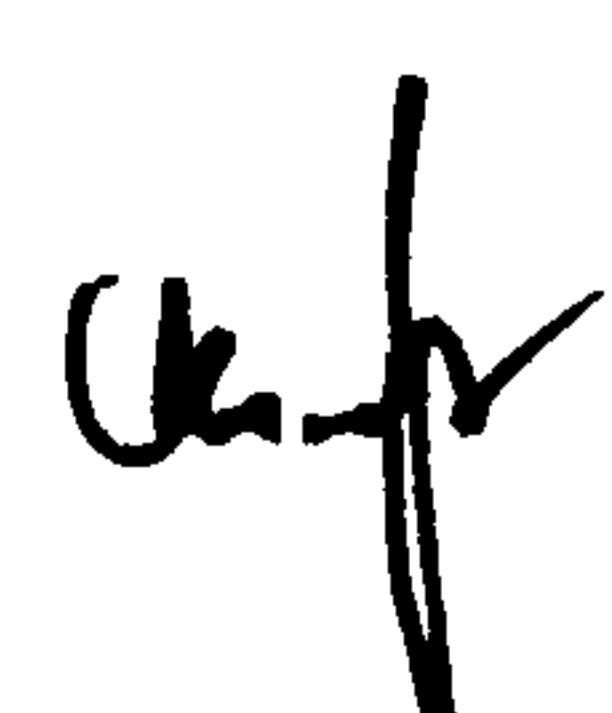
“Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the ‘protector of the people’ and as such, required to ‘act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.’ This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation.’

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‘Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its “salutary objective” is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.’¹² (Emphasis supplied)

¹¹ G.R. No. 191411, 15 July 2013.

¹² *Ibid.*



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The prosecution accurately stated that a mere mathematical computation of the time involved is insufficient to determine whether the right to speedy disposition of cases has been violated. The Court, however, did not arrive at its conclusion based on a mere mathematical computation of the time involved.

The *Affidavit-Complaint* consists only of two (2) pages and four (4) annexes. It is unjustifiable for the prosecution to spend more than seven (7) years and three (3) months to terminate a preliminary investigation based on a relatively short *Affidavit-Complaint* with only four (4) annexes.

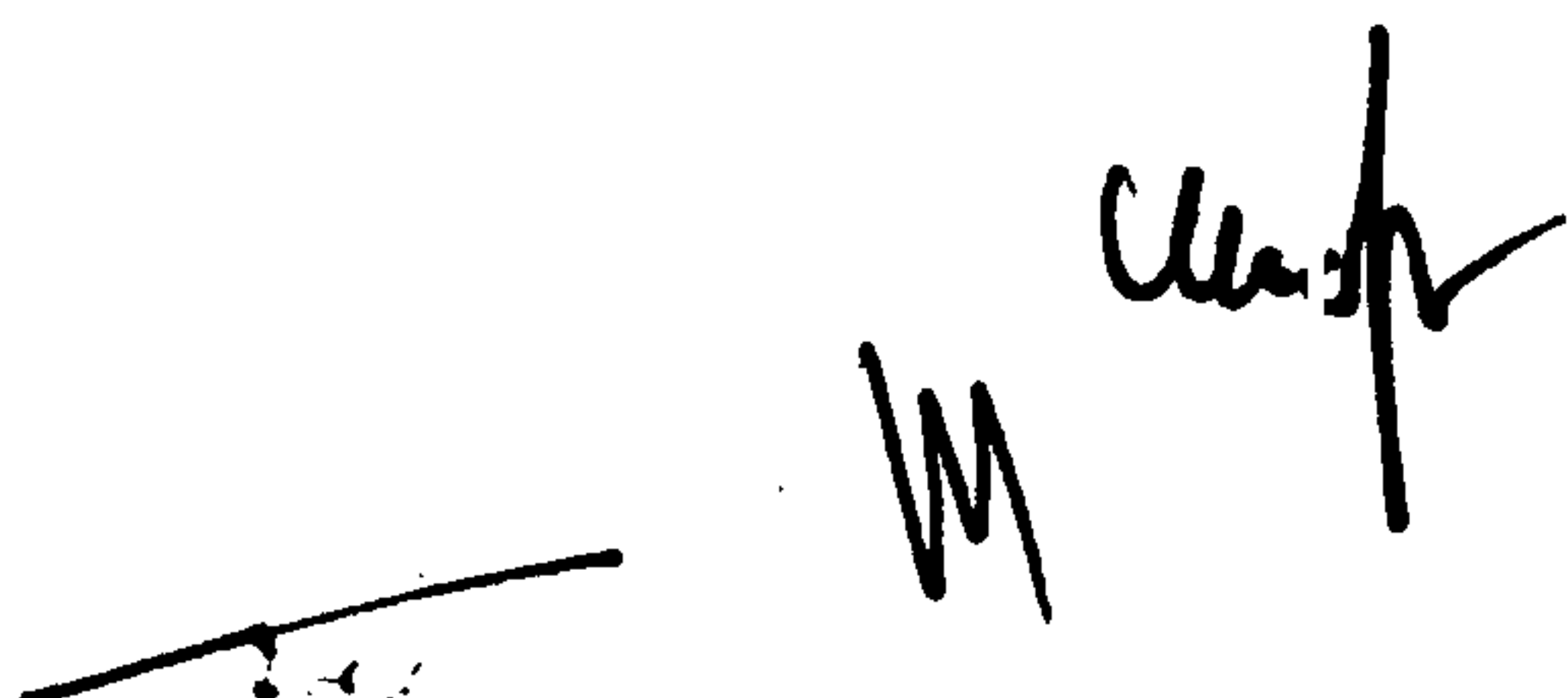
The incidents before the OMB did not involve complicated legal and factual issues necessitating such rigorous and exhaustive scrutiny as would justify a delay of more than seven (7) years and three (3) months in terminating the preliminary investigation. The only issue involved was whether or not the accused failed to remit the GSIS contributions of the municipal employees of Ditsa-an Ramin, Lanao del Sur. With the powers granted to it by law, the OMB could have easily determined the answer to such factual issue.

The *Affidavit-Complaint* charges only five (5) respondents. Considering that the said complaint arose out of a single set of facts, the prosecution may not argue that there are numerous respondents to justify a delay of more than seven (7) years and three (3) months.

The delay was further aggravated by the prosecution when it sent to a wrong address its *Order* informing accused Batua of the filing of the *Affidavit-Complaint* against him and directing him to file his *Counter-Affidavit* thereto. The *Order* of the OMB dated 29 January 2016 states, thus:

“A verification was made with the Davao Central Post Office (DCPO) in a letter dated 25 March 2015, requesting a certification indicating respondent Batua’s receipt of the Order dated 4 November 2008 as indicated in the Registry Return Receipt No. 05595. The matter was apparently endorsed by the DCPO to the Postmaster of Ditsa-an Ramin Post Office, Lanao del Sur. This Office received a letter dated 25 June 2015 of DCPO Postmaster VII Bernardo Pagaduan, together with the letter dated 16 June 2015 of Ditsa-an Ramin Post Office Postmaster I Mo’fida M. Daud, with the information that the Order with RRR No. 05595 was not endorsed to him (Daud) as he assumed office only on 11 January 2013.”¹³

¹³ Sandiganbayan Records, Vol. I, p. 92.

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Accused Batua was notified of the *Affidavit-Complaint* against him only in October 2014, or six (6) years from the time it was filed. In his *Affidavit-Complaint*, private complainant Mohammad indicated accused Batua's address to be at "Bo. Capitolio, Pasig City."¹⁴ The OMB was grossly negligent in using such overly broad address of accused Batua in sending its summons, notices, orders, and legal processes to the latter. Without a doubt, any delay arising from the mistake in address should not be attributed to the accused.

Prior to the filing of the *Affidavit-Complaint*, the Board of Trustees of the GSIS issued a *Decision* dated 18 April 2006 in GSIS (Case No. 004-05 ("**GSIS Decision**")),¹⁵ the dispositive portion thereof states, thus:

"WHEREFORE, in the light of the foregoing, this Board hereby orders the respondents – Municipality of Ditsaan-Ramain through the incumbent Municipal Mayor, Lacsasa M. Adiong and OIC-Municipal Treasurer Atty. Suwaib Mohammad to remit immediately to GSIS the premium contributions and the arrearages totaling the amount of THREE MILLION SIX HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY-EIGHT & FIFTY-NINE CENTAVOS (P3,640,988.59), failure and/or refusal shall be a ground for the Government Service Insurance System to file appropriate civil, criminal and administrative cases against the responsible officials as hereby recommended.'

'SO ORDERED."¹⁶

The *Affidavit-Complaint* involves the alleged non-remittance by the accused of the GSIS premiums of the municipal employees of Ditsaan-Ramain, Lanao del Sur for the periods March to July 2001 and January to August 2002. Such issue and periods were also the subject of the *GSIS Decision*, to wit:

FINDINGS:

A. Factual

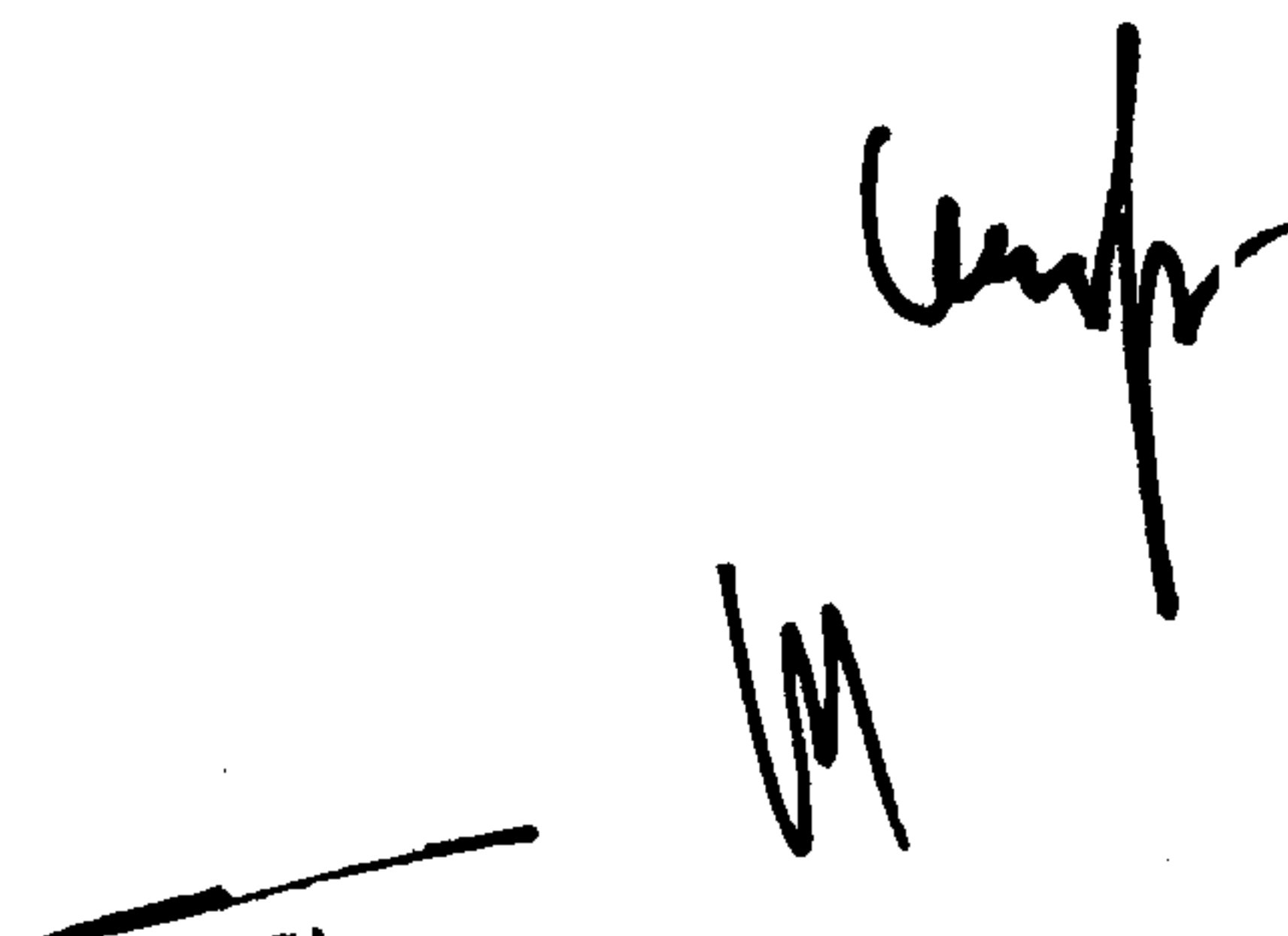
A close scrutiny of the circumstances obtaining in the case discloses the following undisputed facts:

Premium Arrearages incurred by the Municipality

¹⁴ *Ibid.*, p. 49.

¹⁵ *Ibid.*, pp. 54-67.

¹⁶ *Ibid.*, pp. 66-67.



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For year 2001, covering the months of **January to June**, the Municipality again incurred arrearages in the amount of **THREE HUNDRED FORTY-FOUR THOUSAND TWO HUNDRED NINETY-FIVE & FORTY-SEVEN CENTAVOS (P344,295.47)** as shown in Annex "4" and Annex "E," and for **July to December of 2001**, the amount of **ONE HUNDRED EIGHTY-TWO THOUSAND FORTY-ONE & SEVENTY-SIX CENTAVOS (P182,041.76)** as arrearages was additionally incurred by the Municipality (Annex "1-1").

For year 2002, the Municipality's arrearages increased to **ONE-MILLION EIGHTY-THREE THOUSAND SIX HUNDRED SEVENTY-SEVEN & FIFTY-SIX CENTAVOS (P1,083,677.56)**.

Incumbency of Officials

The Local Chief Executive of respondent Municipality from **July 2001 to June 2004** was former **Mayor Serud Batua**. Taking over his reign from July 2004 onward and until the present is Mayor Lacsasa M. Adiong as the incumbent. (emphasis supplied).¹⁷

The *GSIS Decision*, which was attached to the *Affidavit-Complaint*, involved a set of facts and issues similar to that of the latter. The findings and evidence involved in the *GSIS Decision* could have helped the prosecution if the latter took advantage of it. Hence, the existence of the *GSIS Decision* is another reason why the prosecution should not have taken a period of more than seven (7) years and three (3) months to terminate the preliminary investigation.

Furthermore, the Supreme Court emphasized in the case of *Torres v. Sandiganbayan*¹⁸ "that the speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, **but also all stages to which the accused is subjected, even including fact-finding investigations conducted prior to the preliminary investigation proper.**"¹⁹ According to the prosecution, the *Petition* in GSIS Case No. 004-05 was filed in September 2004. Hence, the accused were subjected to fact-finding and preliminary investigations within a combined period of more than twelve (12) years.

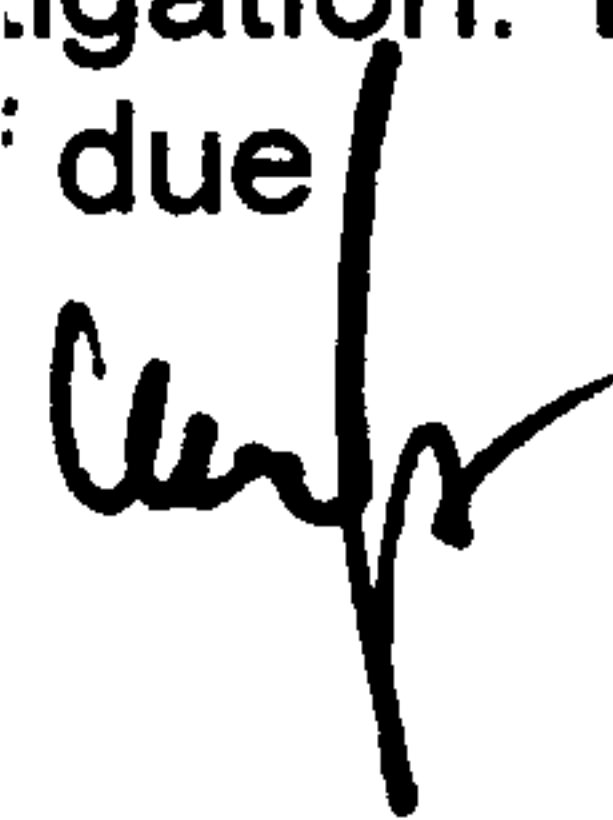
Reasons for the Delay

The prosecution asserts that all the respondents in this case were given the opportunity to file their responsive pleadings, which must be taken into account during the course of the investigation. It adds that accused Batua was at fault for invoking a denial of due

¹⁷ *Ibid.*, pp. 61-62.

¹⁸ G.R. Nos. 221562-69, 05 Oct. 2016.

¹⁹ *Ibid.* (citation omitted) (emphasis supplied).



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process and moving for extension of time to file his *Counter-Affidavit*, to which the OMB acted favorably. The prosecution maintains that these contributory factors affected the time spent in the resolution of the case by the OMB at the preliminary investigation stage.

The circumstances cited by the prosecution are not enough to warrant the inordinate delay in the disposition of its proceedings. Accused Batua prayed for the conduct of a preliminary investigation as to him precisely because of the prosecution's gross negligence in using a wrong address of the former. In any case, the factual and legal issues involved in the present proceeding is not complicated enough to justify the inordinate delay on the part of the prosecution."²⁰

A period of more than twelve (12) years to conclude the fact-finding and preliminary investigations is excessive. Even the period of more than seven (7) years and three (3) months from the filing of the *Affidavit-Complaint* to the termination of the preliminary investigation is enough to convince the Court that the proceeding was attended by inordinate delay.

Accused's Assertion of His Right

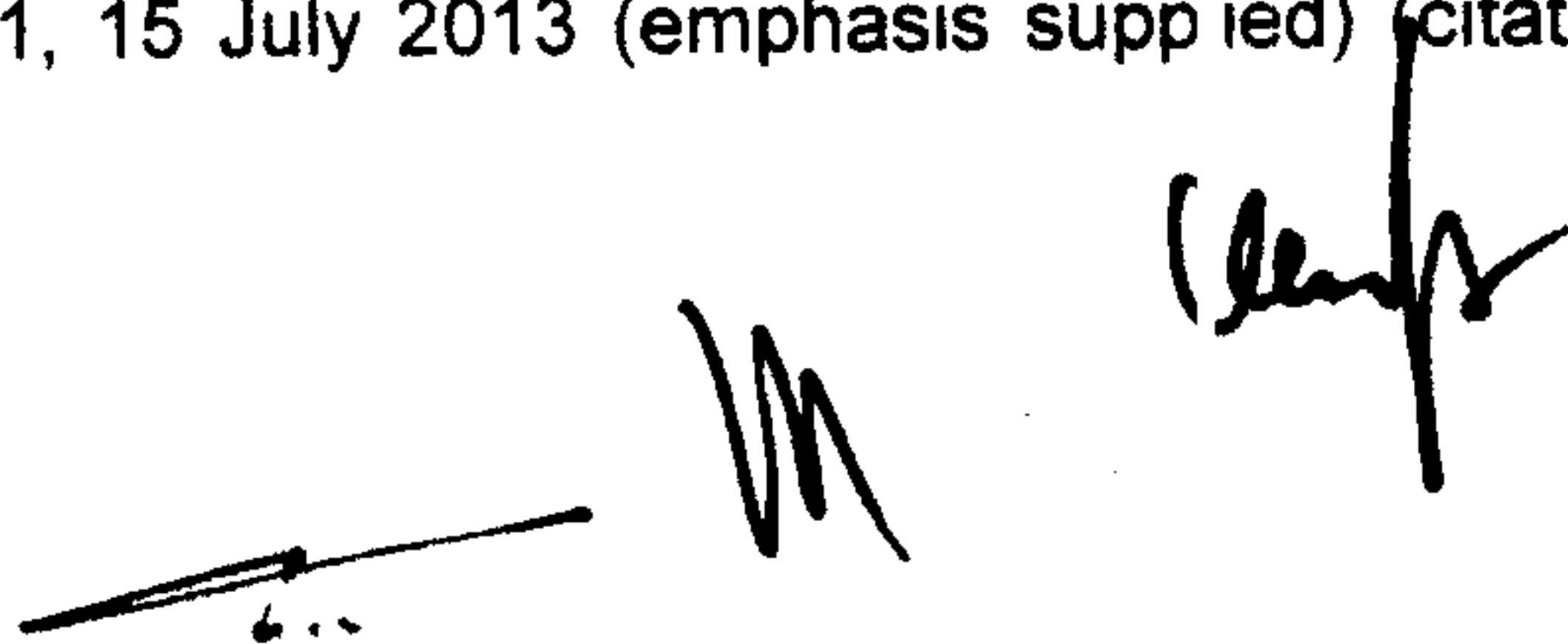
The prosecution blames the accused for failing to assert his right to speedy disposition of the case during the preliminary investigation. However, accused Batua did not have a reasonable opportunity to do so because he learned of the filing of the *Affidavit-Complaint* against him only in October 2014. Moreover, the Supreme Court already ruled that it is not the duty of the accused to follow up on the prosecution of their case, to *wit*:

"Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:"

'A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.'²¹ (Emphasis supplied)

²⁰ Sandiganbayan Records, Vol. I, p. 3.

²¹ *Coscolluela v. Sandiganbayan*, G.R. No. 191411, 15 July 2013 (emphasis supplied) (citation omitted).



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Prejudice to the Accused

Accused Batua argues that the inordinate delay in the present case has caused the following prejudices against him: (1) death, retirement or relocation of persons who could have testified in his favor; (2) destruction of potential documentary evidence at the DILG-ARMM after the raid relating to the Maguindanao Massacre; (3) and his illnesses that developed during the period of the delay.

The prosecution asserts that the foregoing prejudices are merely speculative. However, the law does not require the accused to prove such prejudices beyond reasonable doubt. In *Corpuz v. Sandiganbayan*,²² the Supreme Court explained the concept of prejudice to the accused as follows:


“Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; **and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.** There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.”²³

To reiterate, the most serious interest of the accused which is protected by the right to speedy disposition of cases is the limitation on the possibility of impairing the accused’s defense. An inordinate delay in the disposition of a case against the accused causes anxiety, hostility, additional expenses, and restriction on his person and well-being. The passage of time in the conduct of the investigations weakens the defense of the accused. In this case, inordinate delay has already caused tactical disadvantage in the preparation of accused’s defense. Hence, it was erroneous for the prosecution to state that the prejudices against the accused are merely speculative.

Applying the factors in determining whether an accused has been denied his constitutional right to a speedy trial, or a speedy disposition of his case, the Court finds the accused to have been

²² G.R. No. 162214, 11 Nov. 2004.

²³ *Ibid.*

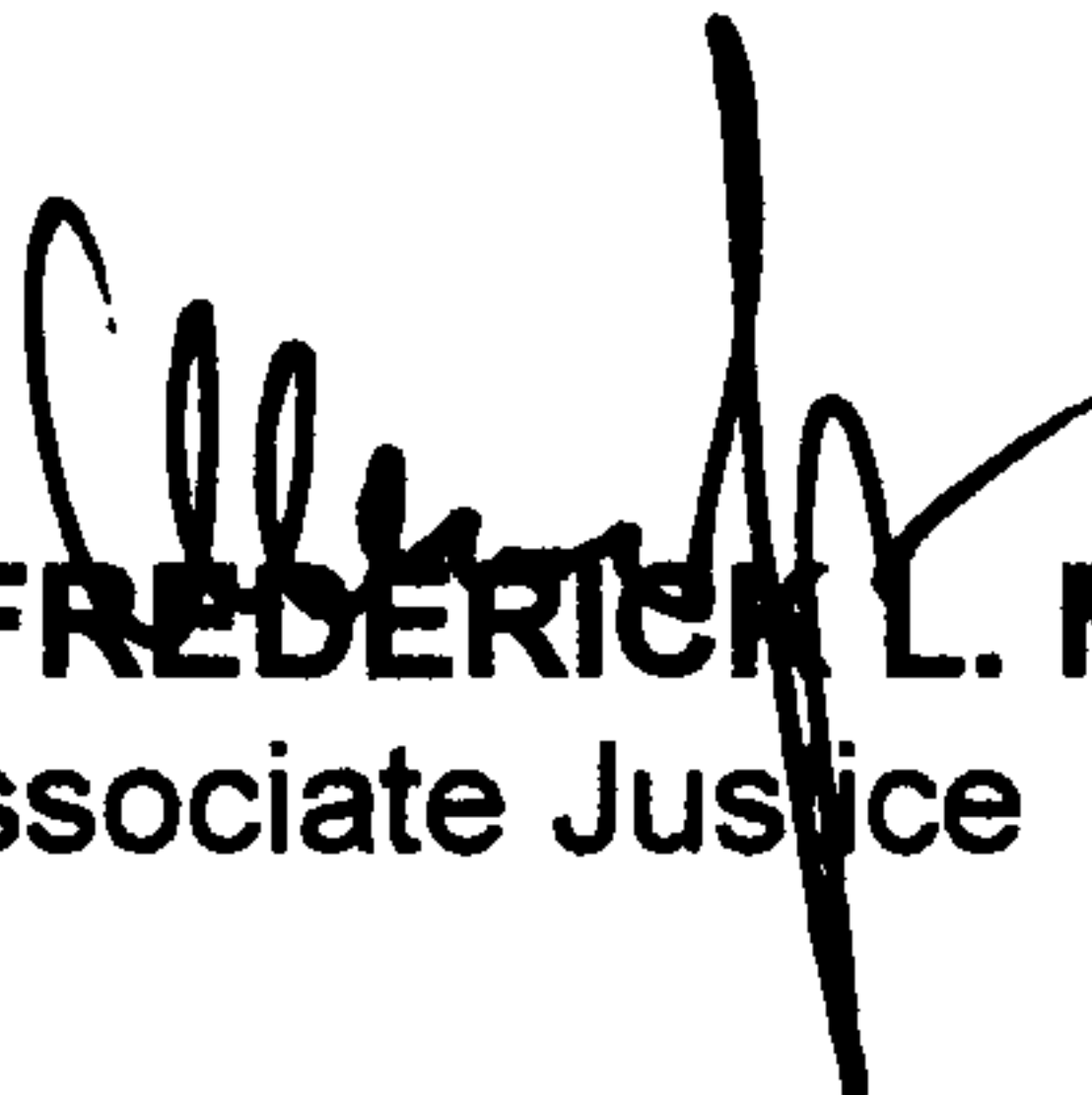
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unduly and excessively prejudiced by the inordinate delay in the instant proceedings.

WHEREFORE, in light of the foregoing, the *Motion to Dismiss* filed by accused Serad Alisacar Batua on 20 April 2017 is hereby **GRANTED**. Accordingly, the present cases against accused Batua are **DISMISSED** on the ground of violation of his constitutional right to speedy disposition of cases.

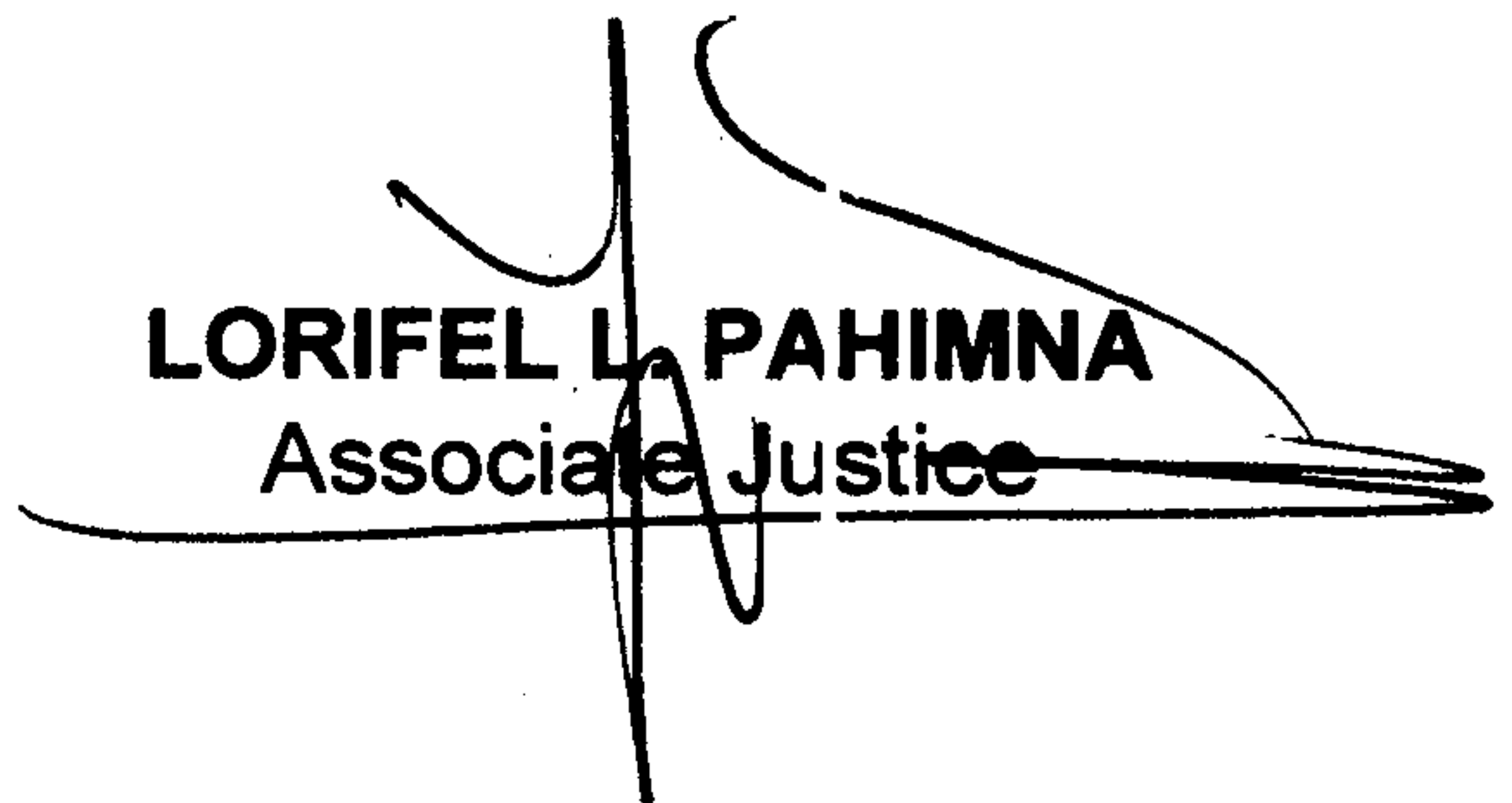
SO ORDERED.



MICHAEL FREDERICK L. MUSNGI
Associate Justice



OSCAR C. HERRERA, JR.
Associate Justice
Chairperson



LORIFEL L. PAHIMNA
Associate Justice