

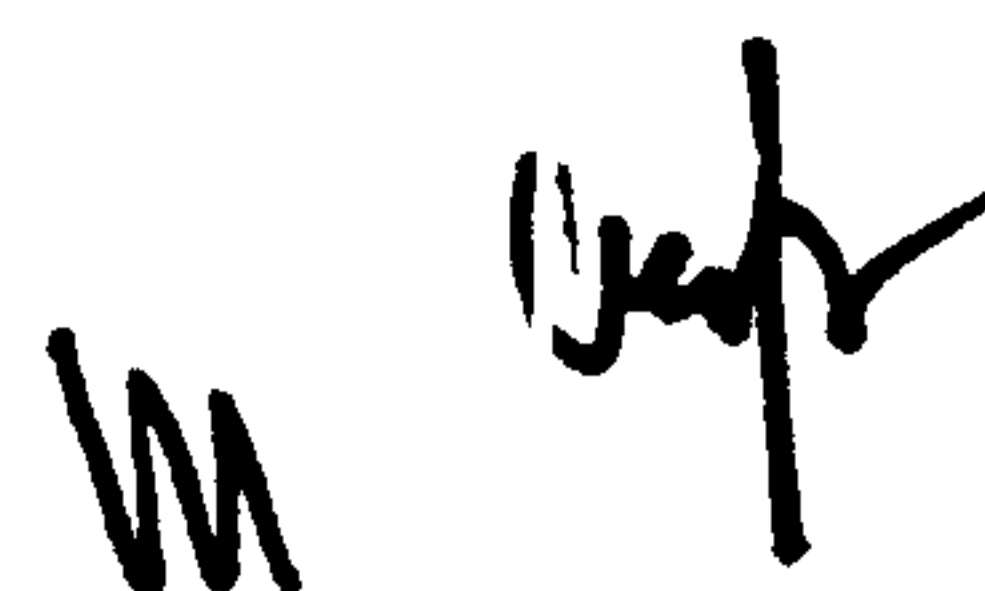
unreasonable and unjustified, constitutive of vexatious, capricious, and oppressive delay.

The accused add that they have been greatly prejudiced by the delay. They claim that (a) they have remained under a cloud of uncertainty during this period; (b) the charge against them allegedly tainted their reputations not just as public officers but also as individuals; (c) the accusations have alienated them from their friends and peers; (d) the anxiety and unrest they had to endure have also taken a toll on their health; and (e) the stigma of the criminal accusations has made it difficult for them to start a new career or pursue a government post. Since the subject transaction occurred in 2010, the accused allege that the passage of time has unduly affected their recollection of details, access to pertinent records, and contact with material witnesses, thus impairing their defenses. Lastly, the accused assert that their financial resources have been depleted as they continue to incur expenses in defending themselves.

In their *Motion to Quash*, on the other hand, accused Banda, Enrique, and Lagumen likewise argue that the fact-finding and preliminary investigations were attended by vexatious, capricious, and oppressive delays tantamount to denial of due process. They claim that the case does not involve voluminous records, complex issues, or intricate documents to excuse the Office of the Ombudsman from resolving the complaint with dispatch. They maintain that a delay of more than six (6) years in the disposition of the case is prejudicial to the accused who could no longer locate the whereabouts of their possible material witnesses and who stand the uncertainty of remembering what transpired in the subject transaction.

In its *Consolidated Opposition*, the prosecution counters that there is no inordinate delay in the conduct of the investigation. First, the prosecution insists that the fact-finding proceeding must not be included in the mathematical computation of the delay since the accused were not prejudiced during this period. Second, the prosecution asserts that a mere mathematical reckoning of the time involved is not sufficient. Not including the period spent for fact-finding investigation, the prosecution maintains that it took the Office of the Ombudsman only two (2) years and four (4) months to conduct its preliminary investigation counted from 12 May 2014 when the preliminary investigation commenced, until 10 October 2016 when the Office of the Ombudsman denied the *Motion for Reconsideration* filed by the accused on the *Resolution* finding probable cause against them.

The prosecution also argues that the accused are already estopped from raising the issue on inordinate delay since they failed to raise the same at the





first instance during the preliminary investigation, neither did they raise the same in their *Motion for Reconsideration*.

RULING

Based on the records of the case, the following pertinent dates are uncontroverted:

Date	Incident
12 April 2011	<i>Complaint</i> was filed by Guillermo L. Sylianteng
16 July 2013	<i>Joint Order</i> was issued terminating the cases in view of the decision of the FIO of the Office of the Ombudsman to take over the cases as nominal complainant
24 April 2014	<i>Complaint</i> was filed by the FIO
12 May 2014	<i>Order</i> was issued by the Office of the Ombudsman directing the accused to file their Counter-Affidavits
06 June 2014	<i>Joint Counter-Affidavit</i> was filed by the accused
27 June 2016	<i>Decision</i> rendered by the Office of the Ombudsman finding probable cause against the accused
22 July 2016	<i>Decision</i> was approved by the Hon. Ombudsman Conchita Carpio Morales
26 September 2016	<i>Motion for Reconsideration</i> was filed by the accused
10 October 2016	<i>Resolution</i> was issued denying the <i>Motion for Reconsideration</i>
14 July 2017	<i>Information</i> was filed before the Sandiganbayan

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In the case of *Corpuz vs. Sandiganbayan*,⁴ the Supreme Court discussed the right of the accused to speedy disposition of cases and the correlative obligation of the Court to protect such right as follows:

“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 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.’

⁴ G.R. No. 162214, 11 November 2004.

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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.'

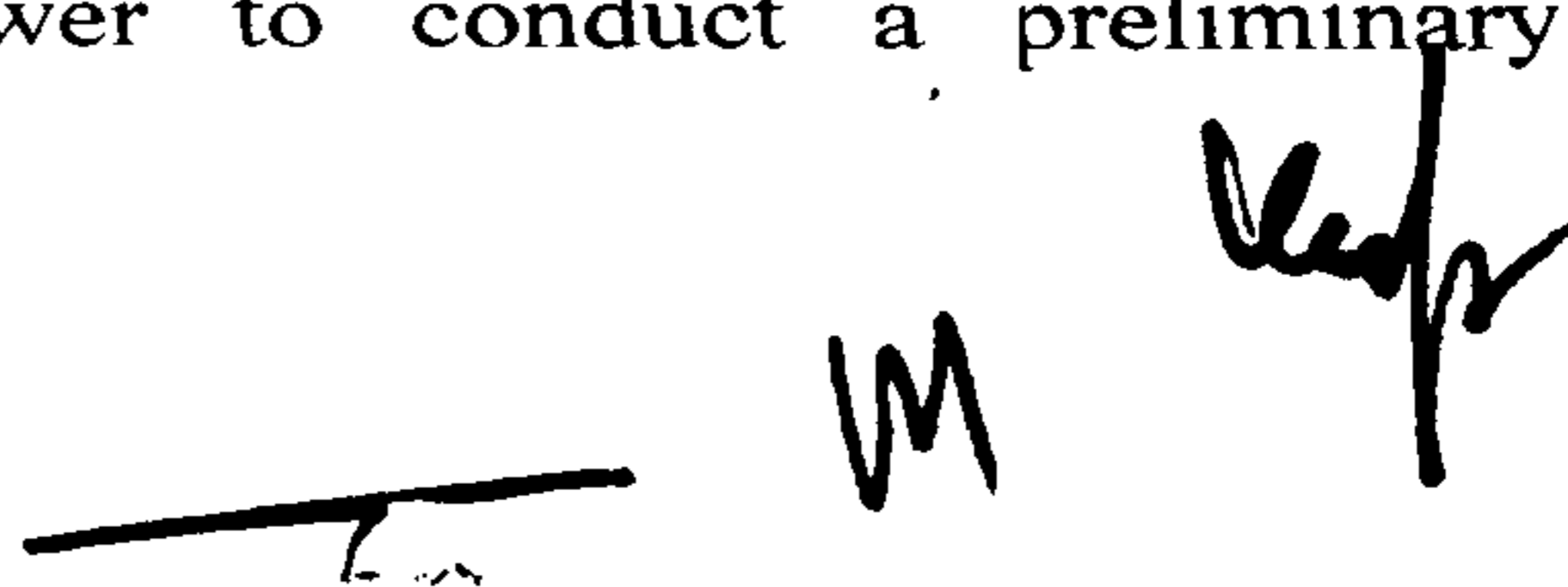
'Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should 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 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.'" (Emphasis supplied and citations omitted)

Hence, in determining whether the defendant has been denied of his/her right to a speedy disposition of a case, the following factors should be taken into account: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant.

Applying the aforesaid factors of delay to this case, the Court holds that the right of the accused to a speedy disposition of criminal case have been violated.

First, records show that it took the Office of the Ombudsman **2 years and 3 months** to conduct its fact-finding investigation counted from the filing of the *Complaint* by Guillermo L. Sylianteng on 12 April 2011 until the issuance of the *Joint Order* terminating the cases in view of the decision of the FIO of the Office of the Ombudsman to take over the cases as nominal complainant on 16 July 2013. With regard to the preliminary investigation, the Office of the Ombudsman took **2 years and 6 months** counted from the filing of the *Complaint* by the FIO on 24 April 2014 until the issuance of the *Resolution* on 10 October 2016 denying the *Motion for Reconsideration* filed by the accused and finding probable cause against them. Accordingly, an *Information* was then filed before the Sandiganbayan on 14 July 2017. Overall, the period spent from the fact-finding investigation to the filing of the *Information* before the Court is **6 years and 3 months**.

Indeed, the duty of the Office of the Ombudsman to conduct a fact-finding inquiry is distinct from its power to conduct a preliminary

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investigation. However, the issue on whether the fact-finding investigation should be included in the computation of the attendant delay had already been settled by the Supreme Court in a number of cases.

In the recent case of *Commo. Lamberto R. Torres (Ret.) v. Sandiganbayan, et al.*,⁵ the Supreme Court ruled that the fact-finding investigation is included in the determination of the duration of delay, to wit:

“We find it necessary to emphasize 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. We explained in *Dar sal v. Fernandez, Sr.*:

‘Initially embodied in Section 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three provisions mandating speedier dispensation of justice. **It guarantees the right of all persons to "a speedy disposition of their case"; includes within its contemplation the periods before, during and after trial,** and affords broader protection than Section 14(2), which guarantees just the right to a speedy trial. It is more embracing than the protection under Article VII, Section 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases.’

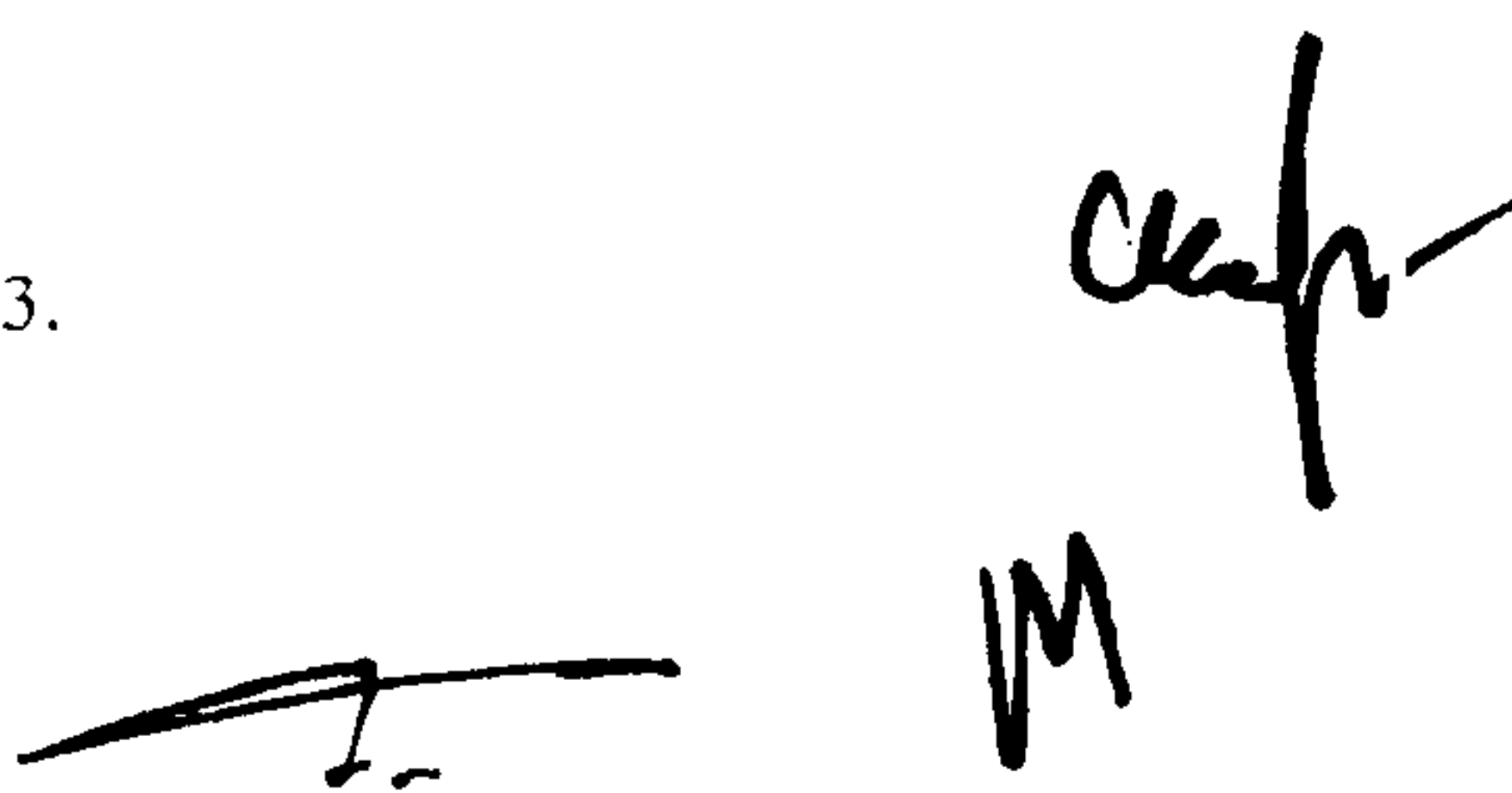
‘Considering that the subject transactions were allegedly committed in 1991 and 1992, and the fact-finding and preliminary investigations were ordered to be conducted by Tanodbayan Marcelo in 2004, the length of time which lapsed before the Ombudsman was able to resolve the case and actually file the Informations against petitioner was undeniably long-drawn-out.’ (Citations omitted; Emphasis supplied)

Moreover, in *People vs. Sandiganbayan, Hernando Perez, et al.*,⁶ the Supreme Court also resolved that:

“The guarantee of speedy disposition under Section 16, Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.”

⁵ G.R. Nos. 221562-69, 05 October 2016.

⁶ G.R. Nos. 188165 and 189063, December 11, 2013.

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Second, without considering the period of fact-finding investigation, the prosecution maintains that it took only 2 years and 4 months to conduct its preliminary investigation without offering any other explanation for the delay. This case involves the procurement of services for the repair of the elevator in the National Printing Office, which was awarded to Eastland Printing, Inc., allegedly resulting in the grant of unwarranted benefits, advantage, and preference. The case does not contain complex issues or include voluminous records to warrant a delay in the investigation and resolution of the *Complaint*.

Again, in the case of *Commo. Lamberto R. Torres (Ret.) v. Sandiganbayan, et al.*,⁷ the Supreme Court pronounced that:

“Any delay in the investigation and prosecution of cases must be duly justified. The State must prove that the delay in the prosecution was reasonable, or that the delay was not attributable to it.”

Third, the Court finds that the assertion of the accused of their right to speedy disposition of cases is timely. While the Motion to Quash was filed after arraignment, hence filed out of time, the Court will nevertheless treat the same as a Motion to Dismiss. A Motion to Dismiss on grounds resulting in lack of jurisdiction over the subject matter can always be raised any time, since jurisdictional issues cannot be waived.⁸

Furthermore, in the case of *Coscolluela vs. Sandiganbayan*,⁹ the Supreme Court, citing *Barker v. Wingo*,¹⁰ ruled that the respondents in a preliminary investigation are not required to follow up on the prosecution of their case, thus:

“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.” (citation omitted)

The accused’s assertion of their constitutional right to speedy disposition of cases is not the only factor to consider in determining inordinate delay. A balancing test of applying societal interests and the rights of the

⁷ G.R. Nos. 221562-69, 05 October 2016.

⁸ Boston Equity Resources, Inc. vs. Court of Appeals, G.R. No. 173946, 19 June 2013.

⁹ G.R. No. 191411, July 15, 2013.

¹⁰ 407 U.S. 514 (1972).

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accused necessarily compels the Court to approach speedy disposition cases on an *ad hoc* basis.¹¹

Fourth, the long period of delay attendant in this case has already caused prejudice to the accused. The passage of time in the conduct of the investigations have weakened their defenses. Possible witnesses may not be able to recall accurately the specific events of the past. There is also an increase in the risk of losing important pieces of evidence.

Generally, a pending and prolonged investigation against the accused causes anxiety, hostility, additional expenses, and restriction on their person and well-being.

As held in *Coscolluela*,¹² it is the duty of the Ombudsman to act with reasonable dispatch on the cases entrusted to it, 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.”

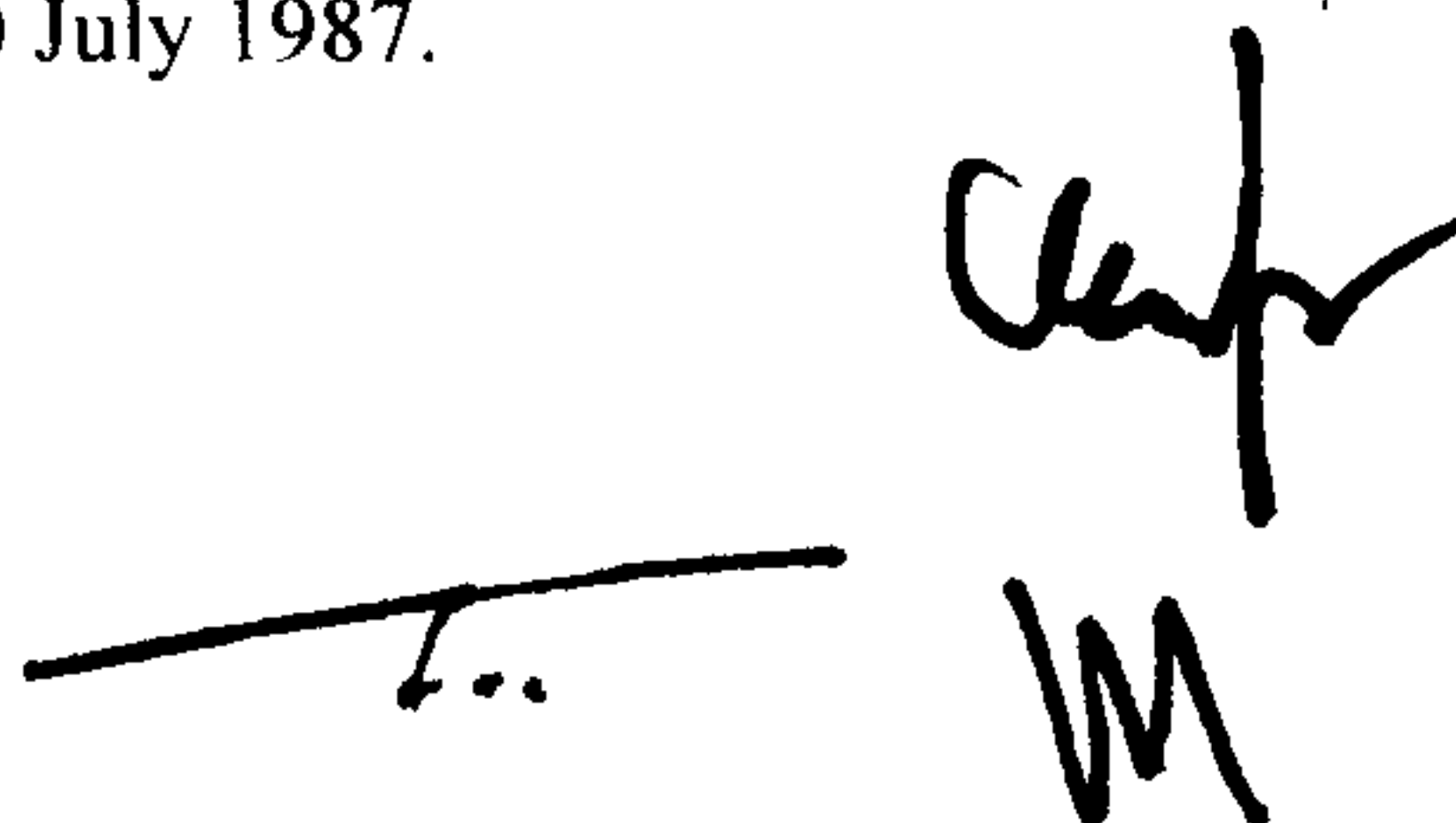
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‘Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution 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.”

Based on the foregoing, it is evident that the constitutional rights of the accused to speedy disposition of cases has been violated due to the delay in

¹¹ *Corpus v. Sandiganbayan*, G.R. No. L-37007, 20 July 1987.

¹² *Supra* note 9.

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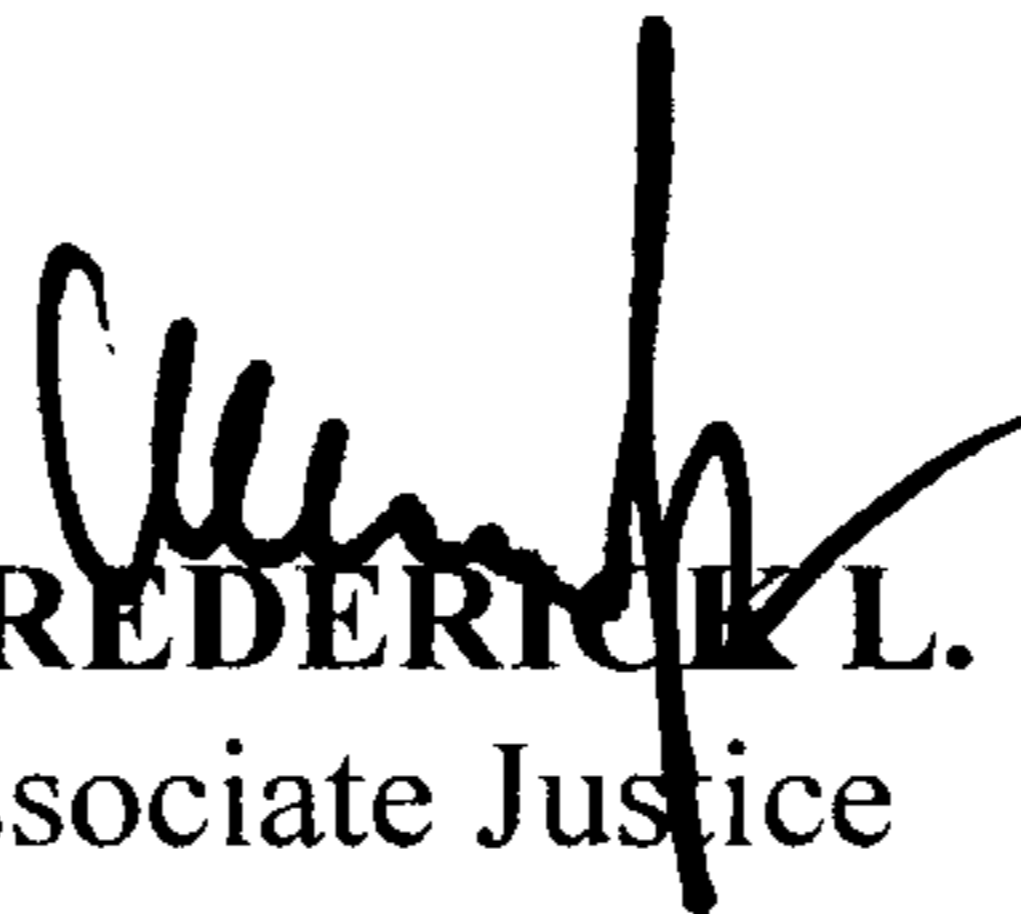
the investigations conducted by the Office of the Ombudsman. The Court finds that the total period of **6 years and 3 months** in the conduct of fact-finding investigation and preliminary investigation is unjustified.

WHEREFORE, in light of the foregoing, the Court **GRANTS** the (1) *Motion to Dismiss* filed by accused Emmanuel C. Andaya, Josefina S. Samson, and Antonio V. Sillona, and the (2) *Motion to Quash* filed by accused Sylvia C. Banda, Maria Gracia D. Enrique, and Bernadette T. Lagumen, on the ground of violation of the constitutional right of the accused to speedy disposition of cases. Accordingly, CRIMINAL CASE NO. SB-17-CRM-1418 is hereby **DISMISSED**.

The hold departure order issued by the Court against the accused is hereby **LIFTED** and **SET ASIDE**, and the cash bonds that they have posted are ordered **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.

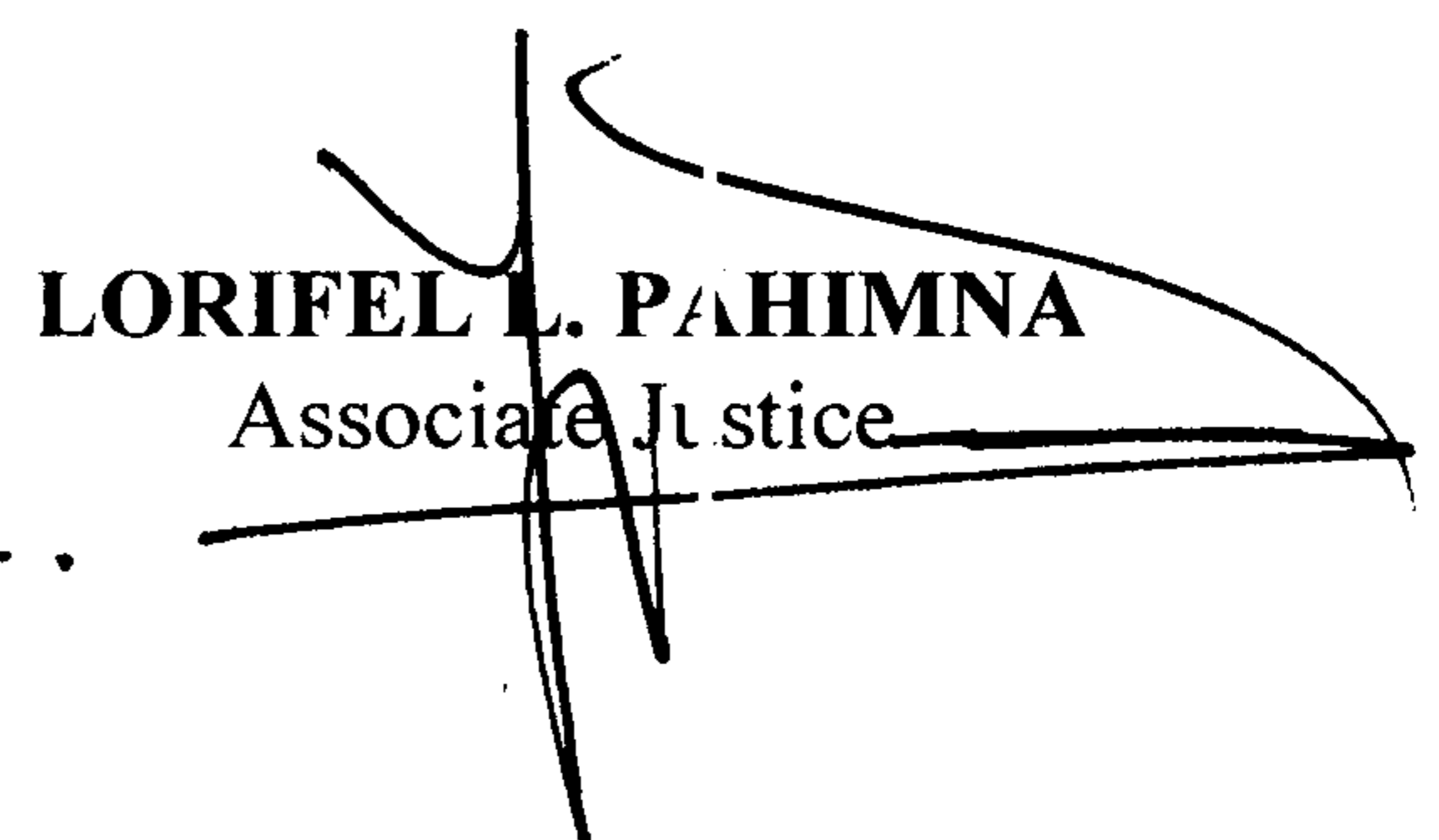
Quezon City, Philippines.



MICHAEL FREDERICK L. MUSNGI
Associate Justice



OSCAR C. HERRERA, JR.
Associate Justice
Chairperson



LORIFEL L. PAHIMNA
Associate Justice