



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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**SEVENTH DIVISION**

*MINUTES of the proceedings held on 12 July 2018.*

*Present:*

*Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA----- Chairperson*  
*Justice ZALDY V. TRESPESES----- Member*  
*Justice GEORGINA D. HIDALGO----- Member*

*The following resolution was adopted:*

***Crim. Case No. SB-18-CRM-0340 - People vs. ISIDORO E. REAL, JR., ET AL.***

This resolves the following:

1. Accused Maribel V. Abdulbari, Abundio E. Bernardo, Ma. Perlice Socorro G. Julian, Oscar O. Palawan and Samuel M. Simbajon's "MOTION TO DISMISS" dated June 18, 2018;<sup>1</sup>
2. The prosecution's "COMMENT/OPPOSITION (To the Motion to Dismiss dated June 18, 2018)" dated July 4, 2018.<sup>2</sup>

This resolves the Motion to Dismiss filed by accused-movants Maribel V. Abdulbari, Abundio E. Bernardo, Jr., Ma. Perlice Socorro G. Julian, Oscar O. Parawan and Samuel M. Simbajon, and the prosecution's Comment/Opposition thereto.

**ACCUSED-MOVANTS' MOTION TO DISMISS**

Accused-movants contend that on 03 February 2004, the Department of Budget and Management (DBM) issued to the Department of Agriculture (DA) a Special Allotment Release Order (SARO) No. E-04-00164 in the amount of P728 Million for the implementation of the Farm Inputs and Farm Implements Program of the DA. In March 2004, Senator Panfilo Lacson questioned the project and claimed that several recipients did not even have farmlands.

The Senate conducted an investigation in aid of legislation in 2005. During this time, several complaints involving the project were filed with the

<sup>1</sup> *Rollo*, pp. 402-411.

<sup>2</sup> *Id.* at 573-479.

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Office of the Ombudsman. Thus, in February 2006, the Ombudsman created Task Force Abono- Field Investigation Office to specifically conduct investigation and case build-up on the complaints. Meanwhile, the Commission on Audit (COA) conducted a Special Audit on the ₱728 Million “Fertilizer Fund Scam” and the resulting report was issued on 06 March 2006.

The Task Force Abono- Field Investigation Office prepared the Complaint on 27 November 2012. Thereafter, on 05 March 2013, the Complaint was filed with the Ombudsman. On 12 April 2013, the Ombudsman issued an order directing respondents to file their respective counter-affidavits. On 10 July 2013, accused-movants filed their Joint Counter-affidavit.

On 18 April 2017, the Ombudsman issued a Resolution finding probable cause against respondents, including accused-movants for violation of Sec. 3(e) of Republic Act (RA) No. 3019. Accused-movants received a copy of the Resolution on 18 August 2017.

On 24 August 2017, accused-movants separately filed their motions for reconsideration. On 22 November 2017, the Ombudsman denied accused-movants motions for reconsideration. Consequently, on 27 April 2018, the Information was filed before the Court.

Accused-movants argue that the complaint filed against them was based on the findings and observations contained in the Report on the Special Audit issued on 03 March 2006. This Report was made available to the Ombudsman, more particularly to the Task Force Abono. However, it took seven years from the creation of the Task Force Abono in February 2006 to file the Complaint with the Ombudsman in March 2013 based on the documents that were already available as of 06 March 2006. Other than those indicated in the Special Audit Report, there was no other allegation in the Complaint that would justify the seven-year deferment in the filing of the Complaint.

Moreover, when the Complaint was filed on 05 March 2013, the case went into deep slumber for more than four years. They claim that during those periods, they have not done any dilatory tactic nor filed any request, manifestation or motion that prolonged the process. Considering that the Ombudsman is very much familiar with the case, having dealt with many other similar complaints, the period of more than four years to resolve the Complaint is vexatious, capricious and unreasonable.

Thus, accused-movants pray that the case against them be dismissed for violation of their constitutional right to speedy disposition of their case due to inordinate, oppressive and unreasonable delay committed by the Ombudsman in the preliminary investigation.

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In support of their prayer, accused-movants invoke the Department of Justice (DOJ) National Prosecution Service Manual, particularly Sec. 58 thereof, viz:

SEC. 58. Period to resolve cases under preliminary investigation- The following periods shall be observed in the resolution of cases under preliminary investigation: a) The preliminary investigation of complaints charging a capital offense shall be terminated and resolved within ninety (90) days from the date of assignment to the Investigating Prosecutor. B) The preliminary investigation of all other complaints involving crimes cognizable by the Regional Trial Courts shall be terminated and resolved within sixty (60) days from the date of assignment. c) In cases of complaints involving crimes cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, the preliminary investigation – should the same be warranted by the circumstances – shall be terminated and resolved within sixty (60) days from the date of assignment to the Investigating Prosecutor. In all instances, the total period (from the date of assignment to the time of actual resolution that may be consumed in the conduct of the formal preliminary investigation shall not exceed the periods prescribed herein.

They claim that the period provided in the NPS Manual should be considered as reasonable time for the Ombudsman to resolve cases under preliminary investigation.

Accused-movants assert that speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but includes the fact-finding investigations conducted prior to the preliminary investigation proper.<sup>3</sup>

As to the assertion of right, accused-movants invoke the case of *People v. The Sandiganbayan, Fifth Division, et al.*,<sup>4</sup> and argue that it is the duty of the prosecution to expedite the prosecution of the case, regardless of whether accused did not object to the delay or that the delay was with his acquiescence, provided that it was not due to causes attributable to it.

Finally, they claim that with the exception of accused Julian, accused-movants were already senior citizens at the time of the filing of the Complaint with the Ombudsman. Parawan was 67, Simbajon 73, Bernardo 72, Abdulbari 66 and Julian 58. Simbajon suffered a stroke, while Bernardo is stricken with various diseases associated with old age. Both of them reside in Zamboanga City and could not possibly travel to Manila to attend court hearings. As such,

<sup>3</sup> *Torres v. Sandiganbayan and People*, G.R. Nos. 221562-69, 05 October 2016.

<sup>4</sup> G.R. No. 199151-56, 25 July 2016.

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they were at a disadvantage in terms of adequately defending themselves in a full-blown trial.

### PROSECUTION'S COMMENT/OPPOSITION

In its Opposition, the prosecution contends that the timeline provided by accused-movants is misleading. The computation of time spent for preliminary investigation should reckon from the filing of the Complaint on 05 March 2013. It asserts that before the filing of the Complaint, there is no case yet to speak of as accused-movants were not prejudiced or burdened to defend themselves.

When accused-movants were ordered to respond to the Complaint, they moved for an extension of forty-five days to file counter-affidavit. Other respondents similarly moved for extension, which were all granted to give respondents enough time to respond before resolving the case. The motions for extension dragged the case for months.

The prosecution also argues that the complaint charges three crimes- Malversation and Violations of Sec. 3(e) and (g) of RA No. 3019. Each offense has different elements to be evaluated.

The prosecution also claims that the Ombudsman is an independent constitutional body which has its own set of procedural rules. It is not under the DOJ and not covered by the DOJ's official issuances.

The instant case is just one of the many investigated nationwide by the Task Force Abono. The Fertilizer Fund Scam is not a simple case considering the staggering amount of P728 Million spread all over the country to all congressmen and governors. The number of individuals charged, agencies and entities involved, voluminous documents examined and scrutinized is beyond imagination. Contrary to the misleading insinuation, the Complaint was very different from the Special Audit Report. Although the Complaint is based on the report yet the specifics as to the amount and persons involved, the disbursement vouchers, checks, memorandum of agreements, certifications and other documents are more detailed in the Complaint.

Thus, the time spent in preparing the complaint is reasonable. There is likewise no showing that the preliminary investigation was deliberately delayed or politically motivated but the usual process was observed.

From the filing of the Complaint, this is the first time that accused-movants raised the issue of inordinate delay. Accused-movants also slept on their right since aside from the counter-affidavits and motions for extension, they did not file or send any queries to the Ombudsman, which conducted the

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preliminary investigation to assert their right to speedy disposition of cases against them. Neither did they make some overt acts such as filing of a motion for early resolution. Their silence may therefore be interpreted as a waiver of their right.

As to the prejudice, the prosecution maintains that the respective age of accused-movants cannot be considered as prejudice or injury attributed to the pendency of the case. The case rests mainly on documents and not on frail memory of humans, thus, the defense of accused is not substantially weakened by lack of witness or waning memory. The passage of time alone without a significant deprivation of liberty or impairment of the ability to properly defend oneself, is not absolute evidence of prejudice.

#### OUR RULING

We **deny** the motion for lack of merit.

Settled is the rule that the right to a speedy disposition of a case is a relative or flexible concept such that a mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.<sup>5</sup>

In determining whether that right has been violated, the factors that may be considered and balanced are as follows: 1) the length of the delay; 2) the reasons for the delay; 3) the aggrieved party's assertion or failure to assert such right; and 3) the prejudice caused by the delay.<sup>6</sup>

These factors have been considered and weighed in this case.

#### *Length of the delay*

This Court notes that the Office of the Ombudsman has its own Rules of Procedure (Administrative Order No. 7), and thus, the DOJ National Prosecution Service Manual does not apply to the proceedings conducted by the Ombudsman. Though the rules of procedure of the Ombudsman do not specifically prescribe a period within which a criminal complaint may be investigated and decided, Sec. 4, Rule II of AO No. 7, provides that the investigating officer shall follow the procedures laid out in Sec. 3, Rule 112 of the Rules of Court.<sup>7</sup>

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<sup>5</sup> *People v. Sandiganbayan (Fifth Division)*, G.R. Nos. 199151-56, 25 July 2016.

<sup>6</sup> *Id.*

<sup>7</sup> **Section 3. Procedure.** — The preliminary investigation shall be conducted in the following manner:

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However, the 10-day period provided in the Rules of Court for an investigating officer to resolve after the case has been submitted is merely directory.<sup>8</sup> This was explained in *Dansal v. Fernandez, viz:*

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him. But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government

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(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

<sup>8</sup> *Dansal v. Fernandez*, 383 Phil. 897-910 (2000).

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personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.

As stressed upon by the Solicitor General, *the Rules of Procedure of the Ombudsman do not specifically prescribe a period within which a criminal complaint may be investigated and decided.* But the same Rules adopt the Rules of Court on Preliminary Investigation, as modified by the Rules of Procedure of the Ombudsman. Under the Rules of Court, the Investigating Officer has ten (10) days from submission of the case to come out with the resolution.

*But it bears stressing that the period fixed by law is merely "directory," although it cannot be disregarded or ignored completely, with absolute impunity.* x x x (emphasis supplied)

In the instant case, the Task Force Abono filed on 05 March 2013 the Complaint before the Ombudsman implying the need to conduct preliminary investigation. On 12 April 2013, the Ombudsman issued an order directing accused-movants to file their respective Counter-affidavits. On 10 July 2013, accused-movants filed their Consolidated Joint Counter-affidavit.

On 18 April 2017, the Ombudsman issued a Resolution finding probable cause against respondents, including accused-movants for violation of Sec. 3(e) of Republic Act (RA) No. 3019. The said Resolution was approved by Ombudsman Conchita Carpio Morales on 07 June 2017. Accused-movants received a copy of the Resolution on 18 August 2017.

Thereafter, accused-movants separately filed their motions for reconsideration on 24 August 2017. On 22 November 2017, the Ombudsman denied accused-movants' motions for reconsideration. Consequently, on 27 April 2018, the Information was filed before the Court.

The period of seven years, from February 2006, the date of the creation of the Task Force Abono tasked to conduct fact-finding investigation until the filing of the Complaint for preliminary investigation on 05 March 2013 should not have been included in the computation for purposes of alleging that there was inordinate delay. It must be emphasized that during those periods, accused-movants were not yet in jeopardy of being held for trial as there was no case to speak of.

It should be noted that the fact-finding investigation entailed a "no contact policy" such that it was conducted without appearance as yet of the respondents, but merely through issuance of subpoena to various agencies. It is simply a case build-up process to determine whether or not a complaint should proceed to preliminary investigation. Thus, it was beginning 12 April 2013 when accused-movants were given the opportunity to air their side that they became officially aware of the Complaint filed against them.

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Accordingly, for purposes of computing the period to determine whether there was inordinate delay, We only count from the filing of the Complaint by the Task Force Abono on 05 March 2013 until the filing of the Information in Court on 27 April 2018. From the foregoing, the Ombudsman spent only a period of *five years and one month* to complete the preliminary investigation. This period cannot be considered capricious, oppressive and vexatious by reason of the attendant circumstances discussed hereunder.

*Reason for the delay*

The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried.<sup>9</sup>

It must be emphasized that the instant case is part of a much bigger controversy known as the ₱728 Million “Fertilizer Fund Scam” which involve high-ranking officials in the local government units, Department of Agriculture and Non-Governmental Organizations (NGOs). Resolution of the Ombudsman shows that fertilizers were purchased without public bidding in the amount of ₱5 Million. Each bottle was bought for the price of ₱800.00 when the price prevailing at the time was only ₱160.00. The purchase of the fertilizers was in line with the *Ginintuang Masaganang Ani* (GMA) program of the DA.

Records also show that there were 15 respondents initially investigated. In addition, respondents were charged in the Complaint for three offenses- Malversation and Violations of Sec. 3(e) and (g) of RA No. 3019.

Given the complexity of the transaction, its connection to other fertilizer scam cases, the persons involved, the amount involved, the voluminous documents examined, logic dictates that considerable amount of time was necessitated for the completion of the preliminary investigation.

Also, accused-movants failed to refute the prosecution’s claim that they have filed motions for extension of time to file counter-affidavits, thus adding number of days to the computation of period.

The concept of speedy disposition of cases is flexible and so, a mere mathematical reckoning of the time involved is insufficient.<sup>10</sup> Therefore, courts must carefully weigh the circumstances attending each case. As

<sup>9</sup> *Remulla v. Sandiganbayan (Second Division)*, G.R. No. 218040, 17 April 2017.

<sup>10</sup> *Almeda v. Office of the Ombudsman (Mindanao)*, G.R. No. 204267, 25 July 2016.

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elucidated in *People of the Philippines, v. Honorable Sandiganbayan (Fourth Division), et al.*:<sup>11</sup>

*It is relevant to note that while procedural periods to act upon complaints and motions are set by rules, these may not be absolute. The law and jurisprudence allow certain exceptions thereto, as this Court and the law recognizes the fact that judicial, as well as investigatory, proceedings do not exist in a vacuum and must contend with the realities of life.* It bears stressing that in spite of the prescribed periods, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial, or speedy disposition of cases for that matter, is a relative term and must necessarily be a flexible concept. (emphasis supplied)

Considering the reasons and the circumstances surrounding the instant case, the alleged delay does not appear to be vexatious or oppressive on the part of accused-movants.

#### *Assertion of right*

Accused-movants' argument that it is not the duty of an accused to follow up the prosecution of his case is bereft of merit.

In *People v. Sandiganbayan*,<sup>12</sup> it was held that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided it was not due to causes attributable to him. However, it does not give accused-movants the liberty to sleep on their rights and belatedly invoke the same in Court.

In *Perez v. People*,<sup>13</sup> the Supreme Court declared that accused's failure to seasonably assert his right to speedy disposition of his case is deemed a waiver of such right. Thus:

More important than the absence of serious prejudice, petitioner himself did not want a speedy disposition of his case. Petitioner was duly represented by counsel de parte in all stages of the proceedings before the Sandiganbayan. From the moment his case was deemed submitted for decision up to the time he was found guilty by the Sandiganbayan, however, petitioner has not filed a single motion or manifestation which could be construed even remotely as an indication that he wanted his case to be dispatched without delay.

Petitioner has clearly slept on his right. The matter could have taken a different dimension if during all those twelve years, petitioner had shown signs of asserting his right to a speedy disposition of his case or at least made

<sup>11</sup> G.R. Nos. 232197-98, 16 April 2018.

<sup>12</sup> Id.

<sup>13</sup> 568 Phil. 491-526 (2008).

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some overt acts, like filing a motion for early resolution, to show that he was not waiving that right.

*Currit tempus contra decides et sui juris contempores*: Time runs against the slothful and those who neglect their rights. ***Ang panahon ay hindi panig sa mga tamad at pabaya sa kanilang karapatan. Vigilantis sed non dormientibus jura in re subveniunt.*** The law aids the vigilant and not those who slumber in their rights. ***Ang Batas ay tumutulong sa mga mapagbantay at hindi sa mga humihimbing sa kanilang karapatan.***

Similarly, in *Barcelona v. Lim*,<sup>14</sup> the Supreme Court held that the right to a speedy trial, as well as other rights conferred by the Constitution, may be waived except when otherwise expressly provided by law. As such, one's right to the speedy disposition of his case must be asserted.

In the instant case, accused-movants were aware of the Complaint filed against them. Despite knowledge of the pendency thereof, they did not assert their right to speedy disposition of their case. If accused-movants truly believe that their right has been violated, they should have at least made some overt acts to protect their right, such as the filing of a motion for an early resolution of their case in the Ombudsman.

For failure to assert their right to speedy disposition of case at the earliest opportunity, accused-movants are deemed to have acquiesced and waived their objection thereto. Thus, accused-movants cannot plausibly seek the protection of the law to benefit from the adverse effects of their failure to assert their right at the first instance.<sup>15</sup>

#### *Prejudice caused by the delay*

The Court agrees with the prosecution that old age and the alleged illnesses of accused-movants are prejudice not attributable to the pendency of their case.

In *Jacob v. Sandiganbayan*,<sup>16</sup> the Supreme Court held that prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: 1) to prevent oppressive pre-trial incarceration; 2) to minimize anxiety and concerns of the accused to trial; and 3) to limit the possibility that his defense will be impaired. None of these are attendant in the instant case.

In here, accused-movants failed to establish that they were incarcerated or suspended during the preliminary investigation. Also, anxiety, stress and

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<sup>14</sup> 734 Phil. 766-803 (2014).

<sup>15</sup> *People v. Mendoza y dela Cruz*, 595 Phil. 1197-1213 (2008).

<sup>16</sup> 649 Phil. 374-395 (2010) citing *Corpuz v. Sandiganbayan*, G.R. No. 162214, 11 November 2004.

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some injury to reputation naturally accompany a criminal charge. With respect to claim of impairment of defense because of delay, it is settled that vague assertions of faded memory will not suffice.<sup>17</sup> The passage of time alone, without a significant deprivation of liberty or impairment of the ability to properly defend oneself, is not absolute evidence of prejudice. Accused-movants' claim of prejudice is, therefore, without basis.

Although the Constitution guarantees the right to speedy disposition of cases, it is a flexible concept.<sup>18</sup> The length of delay is not the only factor in determining whether the right to speedy disposition of the case has been violated. Due regard must also be given to the facts and circumstances surrounding the case.<sup>19</sup> The right to speedy disposition of cases is violated only when the proceedings are attended by vexatious, capricious and oppressive delays.<sup>20</sup>

Absent any showing that the period spent in the preliminary investigation was characterized by delay that was vexatious, capricious or oppressive, the assertion by accused-movants of the alleged violation of their right to speedy disposition of the case must necessarily fail.

**WHEREFORE**, in view of the foregoing, the Motion to Dismiss filed by accused-movants Maribel V. Abdulbari, Abundio E. Bernardo, Jr., Ma. Perlice Socorro G. Julian, Oscar O. Parawan and Samuel M. Simbajon is **DENIED** for lack of merit.

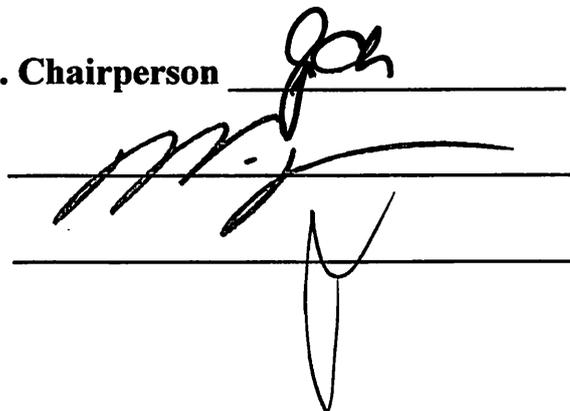
Let the arraignment and pre-trial of accused-movants proceed on **August 28, 2018 at 8:30 in the morning at the Fourth Division Courtroom.**

**SO ORDERED.**

**GOMEZ-ESTOESTA, J. Chairperson** \_\_\_\_\_

**TRESPESES, J.** \_\_\_\_\_

**HIDALGO, J.** \_\_\_\_\_



<sup>17</sup> *Spouses Uy v. Adriano*, 536 Phil. 475-510 (2006).

<sup>18</sup> *Corpus v. Sandiganbayan*, 484 Phil. 899-927 (2004).

<sup>19</sup> *Id.*

<sup>20</sup> *Ombudsman v. Jurado*, 583 Phil. 132-157 (2008).