



REPUBLIC OF THE PHILIPPINES  
*Sandiganbayan*  
Quezon City

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**CRIM. CASE NO. SB-21-CRM-0102**  
*For: Violation of Sec. 3 (e), RA 3019, as amended*

- versus -

**CRIM. CASE NO. SB-21-CRM-0103**  
*For: Malversation of Public Funds or Property under  
Article 217 of the Revised Penal Code, as amended*

**ANTONIO YRIGON ORTIZ,**  
*Director General, Technology and Livelihood  
Resource Center (former Technology Resource Center)*

**DENNIS LACSON CUNANAN**  
*Deputy General, Technology and Livelihood  
Resource Center (former Technology Resource Center)*

**BELINA AGBAYANI CONCEPCION**  
*Sales and Promotion Supervisor V, Technology and Livelihood  
Resource Center (former Technology Resource Center)*

**MARIVIC VILLALUZ JOVER**  
*Chief Accountant, Technology and Livelihood  
Resource Center (former Technology Resource Center)*

**JOEL L. SORIANO**  
*Private Individual*

*Accused.*

Present:

**DE LA CRUZ, J.,** *Chairperson*  
**ECONG, J.**  
**MALABAGUIO\*, J.**

Promulgated on:

29 OCTOBER 2023

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*\* Sitting as Special Member of the First Division as per Administrative Order No. 173-A-2022, dated August 2, 2022.*

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## **DECISION**

**DE LA CRUZ, J:**

Accused Antonio Y. Ortiz, Dennis L. Cunanan, Belina A. Concepcion, Marivic V. Jover, and Joel L. Soriano stand charged for violation of Section 3(e) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act and for Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code (RPC). The accusatory portion of the Information, dated February 18, 2019, reads:

### **Criminal Case No. SB-21-CRM-0102**

That in 2007 or sometime prior or subsequent thereto, in San Juan City, Philippines, and within the jurisdiction of this Honorable Court, accused, Antonio Y. Ortiz (Ortiz), a high ranking public officer, being the Director General of the Technology and Livelihood Resource Center (TLRC) with Salary Grade 31, and such is accountable for public funds by reason of the duties of his office, Deputy Director General Dennis L. Cunanan (Cunanan), Chief Accountant Marivic V. Jover (Jover), Sales and Promotion Supervisor Belina A. Concepcion (Concepcion), all of the TLRC, while in the performance of their official functions as such and committing the offense in relation to office, taking advantage of their official positions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, conspiring and confederating with one another, together with private individual Joel L. Soriano (Soriano), did then and there willfully, unlawfully, and criminally, cause undue injury to the government and give Soriano and Kalinga sa Kapwa at Kalikasan Foundation, Inc. (KKKFI), a non-governmental organization assigned to implement then Congressman Antonio Chaves Alvarez' (PDAF) Priority Development Assistance Fund (PDAF) assisted livelihood projects, unwarranted benefits, privilege and advantage and caused undue injury to the government in the amount of Four Million Eight Hundred Thousand Pesos (PhP4,800,000.00), through a scheme described as follows:

- a) Ortiz, Cunanan, Jover and Concepcion unilaterally accepted KKKFI, a non-governmental organization operated and controlled by Soriano, as "project partner" in implementing livelihood projects for Rep. Alvarez' constituents in the 1<sup>st</sup> District of Palawan, which was funded by his PDAF allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-00428, despite the absence of a public bidding, in violation of

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- R.A. No. 9184 and its Implementing Rules and Regulations, and by failing to monitor the implementation of the project by KKKFI and to submit liquidation documents, thereby causing undue injury to the government in the total amount of PhP4,800,000.00;
- b) Ortiz then entered into a Memorandum of Agreement with KKKFI on the implementation of Alvarez' purported PDAF-funded projects;
  - c) Concepcion issued a Memorandum dated February 26, 2007, recommending the release to KKKFI of Alvarez' PDAF in the amount of Five Million Pesos (PhP5,000,000.00), less One Hundred Fifty Thousand Pesos (PhP150,000.00) for service fees, and Fifty Thousand Pesos (PhP50,000.00) for cost of materials, leaving the amount of PhP4,800,000.00;
  - d) Ortiz facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Vouchers (DV) No. 012007030435, for the amount of PhP4,800,000.00, along with Jover and Cunanan, caused the issuance of the corresponding Land Bank of the Philippines (LBP) Check No. 0000850372 signed by Ortiz in the aforesaid amount to KKKFI, without accused TLRC Officers having carefully examined and verified the accreditation and qualification of KKKFI and the transaction's supporting documents;
  - e) Soriano, acting for and in behalf of KKKFI, received the above-cited LBP check from TLRC and issued the corresponding receipt;
  - f) By their above acts, the above-named TLRC officials allowed KKKFI through Soriano, to take possession of PDAF-drawn public funds, instead of implementing Alvarez' PDAF-funded projects, which turned out to be non-existent, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.

### **Criminal Case No. SB-21-CRM-0103**

That in 2007 or sometime prior or subsequent thereto, in San Juan City, Philippines, and within the jurisdiction of this Honorable Court, accused then Antonio Y. Ortiz (Ortiz), a high ranking public officer, being the Director General of the Technology and Livelihood Resource Center (TLRC) with Salary Grade 31, and as such is accountable for public funds by reason of the duties of his office, Deputy Director General Dennis L. Cunanan (Cunanan), Chief Accountant Marivic V. Jover (Jover), Sales and Promotion Supervisor Belina A. Concepcion

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(Concepcion), all of the TLRC, while in the performance of their official functions as such and committing the offense in relation to office, taking advantage of their official positions, conspiring and confederating with one another, together with private individual Joel L. Soriano (Soriano), did then and there willfully, unlawfully, and feloniously, allow Soriano and Kalinga sa Kapwa at Kalikasan Foundation, Inc. (KKKFI), a non-governmental organization assigned to implement then Congressman Antonio Chaves Alvarez' (Alvarez) Priority Development Assistance Fund (PDAF) assisted livelihood projects, to take away public funds coming from the said PDAF amounting to Four Million Eight Hundred Pesos (PhP4,800,000.00), through a scheme described as follows:

- a) Ortiz, Cunanan, Jover and Concepcion unilaterally accepted KKKFI, a non-governmental organization operated and controlled by Soriano, as "project partner" in implementing livelihood projects in the 1<sup>st</sup> District of Palawan, which was funded by Alvarez' PDAF allocation covered by SARO No. ROCS-07-00428, despite the absence of a public bidding, in violation of RA 9184 and its Implementing Rules and Regulations (IRR), and by failing to monitor the implementation of the project by KKKFI and to submit liquidation documents, thereby causing undue injury to the government in the total amount of PhP4,800,000.00;
- b) Ortiz then entered into a Memorandum of Agreement with KKKFI on the implementation of Alvarez' purported PDAF funded projects;
- c) Concepcion issued a Memorandum dated 26 February 2007, recommending the release to KKKFI of Alvarez' PDAF in the amount of Five Million Pesos (PhP5,000,000.00), less One Hundred Fifty Thousand Pesos (PhP150,000,000.00) for service fees, and Fifty Thousand Pesos (PhP50,000.00) for cost of materials, leaving the amount of PhP4,800,000.00;
- d) Ortiz facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher (DV) No. 012007030435, for the amount PhP4,800,000.00, along with Jover and Cunanan, caused the issuance of the corresponding Land Bank of the Philippines (LBP) Check No. 0000850372 signed by Ortiz in the aforesaid amount to KKKFI, without accused TLRC Officers having carefully examined and verified the accreditation and qualification KKKFI and the transaction's supporting documents;
- e) Soriano, acting for and in behalf of KKKFI, received the above-cited LBP check from TLRC and issued the corresponding receipt;

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- f) By their above acts, the above named TLRC officials allowed KKKFI through Soriano, to take possession and thus appropriate for their own use or misappropriate PDAF-drawn public funds, instead of implementing Alvarez' PDAF-funded projects, which turned out to be non-existent, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.

## THE ANTECEDENTS

On November 23, 2021, the Office of the Ombudsman (OMB) filed against the accused before the Sandiganbayan two (2) Informations: one, for violation of Section 3(e) of RA 3019, as amended, and the other, for Malversation of Public Funds defined and penalized under Art. 217 of the RPC.

On January 10, 2022, this Court issued a warrant of arrest against accused Ortiz, Cunanan, Concepcion, Jover and Soriano.<sup>1</sup>

Upon arraignment, accused Concepcion,<sup>2</sup> Jover<sup>3</sup> and Cunanan,<sup>4</sup> assisted by their respective counsels, separately pleaded "Not Guilty" to the charges against them. To date, accused Ortiz and Soriano have remained at large and the alias warrant of arrest against them unserved.

During the pre-trial, the parties made the following stipulations:<sup>5</sup>

### *A. Proposed by the Prosecution (admitted by the accused)*

1. Whenever referred to orally or in writing in the course of the proceedings, all the accused admit that they are the same persons as charged in the Informations in these criminal cases.

2. At the time material to the instant cases, the following accused were public officers holding the following positions:

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<sup>1</sup> Order, dated January 10, 2022, Records, Vol. I, p. 224.

<sup>2</sup> Order, dated March 25, 2022, Id., p. 389.

<sup>3</sup> Id.

<sup>4</sup> Order, dated April 11, 2022, Records, Vol. II, pp. 18.

<sup>5</sup> Pre-Trial Order, dated May 10, 2022, Id., pp. 80-98.

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- a. Antonio Yrigon Ortiz – Employee of Technology Livelihood Resource Center/Technology Resource Center (TLRC/TRC), being then its Director General;
  - b. Dennis Lacson Cunanan – Employee of TLRC/TRC, being then its Deputy Director General;
  - c. Belina Agbayani Concepcion – Employee of TLRC/TRC, being then its Sales & Promotion Supervisor V/ Legislative Liaison Officer (LLO)/OIC Division Chief of the Technology and Livelihood Dissemination Services Group (TLIDs); and
  - d. Marivic Villaluz Jover – Employee of TLRC/TRC, being then its Chief Accountant
3. At the time material to these cases, accused Joel L. Soriano, is an employee and/or officer/Project Coordinator of Kalinga sa Kapwa at Kalikasan Foundation, Inc. (KKKFI). – denied by accused Cunanan only
4. Between the periods of June 15, 2010 and September 13, 2012, the Commission on Audit-Special Audit Office (COA-SAO) conducted a government-wide performance audit of the allocation and utilization of Priority Development Assistance Fund (PDAF) of legislators including its releases and utilization by the implementing agencies for calendar years 2007 to 2009.
5. Among the funds covered by the said special audit is the PDAF allocation of former Congressman Antonio Chavez Alvarez, Representative of the First (1<sup>st</sup>) District of Palawan of the 14<sup>th</sup> Congress (2007-2010), which were released to TLRC/TRC.
6. Subsequent to the special audit, COA-SAO Report No. 2012-03 was issued containing the results of the audit of the allocation and utilization of PDAF of legislators, including that of Cong. Alvarez, as well as the implementation of the projects/programs of the covered agencies including TLRC/TRC.

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7. The Department of Budget and Management (DBM) issued Special Allotment Release Order (SARO) No. ROCS-07-00428, dated January 12, 2007, in the amount of Five Million Pesos (₱5,000,000.00), as financial assistance for livelihood program in the 1<sup>st</sup> District of Palawan.

8. The DBM issued Notice of Cash Allocation (NCA) No. 3143162-2 in the amount of Five Million Pesos (₱5,000,000.00) to cover the cash requirements of the TLRC/TRC for livelihood projects in the 1<sup>st</sup> District of Palawan, which was authorized under SARO No. ROCS-07-00428, dated January 12, 2007, and issued upon the initiative of Cong. Alvarez, chargeable against his PDAF for the FY 2007 Budget, RA No. 9336, as re-enacted.

9. The TLRC/TRC received the total amount of Five Million Pesos (₱5,000,000.00) from the PDAF allocation of Cong. Alvarez covered by SARO No. ROCS-07-00428 issued by the DBM.

10. The TLRC/TRC received the Letter, dated February 19, 2007, of Cong. Alvarez endorsing KKKFI to implement the livelihood projects in his Congressional District relative to NCA No. 314316-2 under SARO No. ROCS-07-00428.

11. An undated Memorandum of Agreement (MOA) was executed by and among accused Antonio Y. Ortiz for TLRC/TRC, accused Joel L. Soriano for KKKFI, and Cong. Alvarez for the implementation of the livelihood programs in the 1<sup>st</sup> District of Palawan chargeable against the latter's PDAF in the amount of ₱5,000,000.00 under SARO No. ROCS-07-00428.

12. KKKFI received a check in the total amount of Four Million Eight Hundred Thousand Pesos (₱4,800,000.00) from TLRC/TRC representing the release of financial grants from PDAF of Cong. Alvarez for livelihood projects under SARO No. ROCS-07-00428, while TLRC/TRC retained the amount of Two Hundred Thousand Pesos (₱200,000.00).

13. A Notice of Disallowance No. SAO ND No. TRC-2015-036-PDAF (07-09) was received by accused Ortiz and Cunanan through registered mail on December 8, 2015 and

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December 2, 2015, respectively, and by accused Concepcion and Jover, both through personal service, on November 11, 2015. denied by accused Cunanan only


14. An Affidavit-Complaint subscribed and sworn to on February 2, 2017 was filed by the Field Investigation Office II (FIO II), OMB, represented by the members of Special Team 7 through Gerald R. Varez, Francesca Lou R. Naz, Christopher T. Zapanta, May DL. De Guzman, Remedios R. Abrigo, June Abigail Z. Mariano, Kareen S. Moncada, Moses L. Buzmion, Alvin DJ. Salazar, Jo Ann R. Cudal, and Norman B. Filart, was filed before the OMB on March 1, 2007, and docketed as OMB Case No. C-C-17-0107.

### *B. Proposed by accused Concepcion (admitted by the prosecution)*

1. In 2005-2006, or at the time material to these cases, accused Concepcion was designated as Legislative Liaison Officer, OIC-DC, Sales and Marketing Division of the TLRC Information Dissemination Services.
2. When she was designated as Legislative Liaison Officer on January 10, 2006 vice Priscilla S. Cioco, all existing transactions and documents including the recommendation memo were immediately transferred to her.
3. Accused Concepcion recommended the release of the PDAF of Cong. Alvarez in accordance with the MOA mentioned above for the implementation of the livelihood projects.
4. One of the duties of accused Concepcion is to check the completeness of the documents.
5. Her name or signature does not appear in the subject Disbursement Voucher or check involving the above-entitled cases.

### *C. Proposed by accused Jover (admitted by the prosecution)*

1. She was the Chief Accountant in 2007 of the TLRC.

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2. It was her duty to implement plans/programs and guidelines for the Accounting and Billing Division and ensuring the effective and efficient operation thereof.
3. It was her duty to oversee/monitor all activities relating to accounting of the Center and to ensure work progress by monitoring/controlling personnel activities through performance measurement and evaluation, enforcement of discipline, and personnel counseling.
4. It was her duty to certify Disbursement Vouchers/Contracts as to the availability of funds.
5. It was her duty to ensure/certify the correctness of financial reports for submission to Management and other government agencies.
6. It was her duty to assess the efficiency and effectiveness of existing accounting policies, systems, and procedures, and to recommend necessary improvements thereto.
7. It was her duty to ensure prompt and accurate preparation of accounting reports and disbursements/liquidation vouchers.
8. It was her duty to certify Statement of Accounts and Billing Invoices.
9. It was her duty to ensure that all accounting transactions are in compliance/conformity with COA and TLRC/TRC policies, rules, and regulations.
10. It was her duty to oversee the safekeeping of all books of accounts, ledgers and records.
11. It was her duty to develop/design/conceptualize plans and programs for the division and ensure/monitor implementation of the same.
12. It was her duty to perform other functions that may be assigned to her from time to time.

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13. It was her duty to certify Disbursement Voucher No. 012007030435 that adequate available funds/budgetary allotment in the amount of ₱4,800,000.00 expenditure properly certified, supported by documents marked (x) per checklist on the back thereof with proper account codes, previous cash advance liquidated/accounted for.

14. She certified the Memorandum of TLRC/TRC and KKKFI that funds are available, and affixed her signature therein.

D. All other proposals made by the parties in their respective Pre-Trial Brief are denied.

## EVIDENCE FOR THE PROSECUTION

The prosecution presented five (5) witnesses, namely: Marissa Santos, Lolita Soriano, Gloria Silverio, Jose Afable and Jacqueline Santiago.

**Marissa A. Santos**, the Chief Administrative Officer of the Central Records Division (CRD) of the Department of Budget and Management (DBM).

By way of her Judicial Affidavit,<sup>6</sup> she testified that on March 31, 2015 she was appointed as Chief Administrative Officer of the DBM-CRD. As the Chief Administrative Officer, her main duties and responsibilities are the following: (1) To supervise the day-to-day operation of the CRD; (2) To take official custody of the official DBM records including SAROs, NCAs, ANCAIs and supporting documents such as agency requests and other attachments; (3) To safe keep DBM issuances; (4) To comply with the subpoenas issued by the courts, OMB and other government agencies; and (5) To perform other functions necessary in the discharge of her duties.<sup>7</sup>

She received *subpoenas* from the OMB. The *subpoenas* directed her to submit the authenticated copies of SAROs, ANCAIs of NCA, Indorsement Letters, Request Letter/s and other documents pertinent to the PDAF of then Cong. Alvarez. She was also directed to attend a case conference, and to bring with her the source files of

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<sup>6</sup> Records, Vol. II, pp. 145-158

<sup>7</sup> Id., p. 146

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the documents related to the PDAF Cong. Alvarez.<sup>8</sup> As such, she asked her staff to retrieve the source file of the documents stated in the *subpoenas* and to photocopy them. She then compared the photocopies with the source file and stamped them with "Certified True Copy of Duplicate Original", "Certified True Copy", or "Certified Copy of the Machine Copy on File" and affixed her signature on the stamped certifications.<sup>9</sup> She submitted the authenticated copies of the following documents, which she identified in Court:

1. SARO No. ROCS-07-00428, dated January 12, 2007;<sup>10</sup>
2. Certified True Copy of SARO No. ROCS-07-00428 (Agency Copy);<sup>11</sup>
3. Certified True Copy of the NCA No. 31436-2, dated February 1, 2007;<sup>12</sup>
4. Certified True Copy of ANCAI No. 314316-2, dated February 1, 2007;<sup>13</sup>
5. Certified copy of the machine copy of file of 1<sup>st</sup> Indorsement dated October 4, 2006;<sup>14</sup>
6. Certified copy of the machine copy on file of Priority Development Assistance Fund Additional FY 2006 October 4, 2006;<sup>15</sup> and
7. Certified copy of the machine copy on file of Letter, dated September 8, 2006, from Representative Alvarez addressed to Joey S. Salceda, Chair, Committee on Appropriations.<sup>16</sup>

The DBM-CRD does not have possession of the original of the documents as they were only furnished with the machine copies of the documents that were turned over to them, and that the original documents are with the implementing agency or addressee of the documents.<sup>17</sup>

On cross-examination,<sup>18</sup> she confirmed that the documents attached to her judicial affidavit were turned over by the concerned

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<sup>8</sup> Id.

<sup>9</sup> Id., p. 147

<sup>10</sup> Exhibit D

<sup>11</sup> Exhibit D-1

<sup>12</sup> Exhibit D-2

<sup>13</sup> Exhibit D-3

<sup>14</sup> Exhibit D-4

<sup>15</sup> Exhibit D-5

<sup>16</sup> Exhibit D-6

<sup>17</sup> Id., p. 148-149

<sup>18</sup> TSN dated January 27, 2022

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bureau of the DBM prior to her appointment as Chief Administrative Officer.<sup>19</sup>

**Lolita M. Soriano** is the Supervising Administrative Officer of COA-SAO.

In her Judicial Affidavit,<sup>20</sup> Soriano testified that she has been the Supervising Administrative Officer since March 20, 2015. Her duties and responsibilities include: (a) To prepare monthly reports of attendances, absences, and RATA recipients; (b) To act as records custodian of the COA-SAO; (c) To retrieve documents and reports from the stockroom, reproduce and authenticate the same for submission to the OMB, Sandiganbayan, Regional Trial Courts, and other parties; (d) To assist in the supervision of administrative staff and ensure effective performance of their assigned tasks; and (e) To attend preliminary conferences and court hearings.<sup>21</sup>

She received subpoenas from the OMB. The first subpoena directed her to submit certified true copies of documents pertaining to SARO No. ROCS-07-00428, dated January 12, 2007, including Notice of Disallowance and SAO Report No. 2012-03. Subsequent subpoenas directed her to appear before the Office of the Special Prosecutors for case conference. They were able to retrieve the documents pertaining to SARO No. ROCS-07-00428, including Notice of Disallowance and SAO Report No. 2012-03. They photocopied them and compared them with the source files and placed a stamp as either "Certified True Copy", or "Certified True Copy from Photocopy" on each and every page, based on the source files, and then she affixed her signature on each of the stamp marks."<sup>22</sup>

Soriano identified the following documents:

1. Certified True Copy of COA SAO Report No. 2012-03, consisting of 462 pages;<sup>23</sup> Certified True Copy from Photocopy of Special Allotment Release Order No. ROCS-07-00428 dated January 12, 2007;<sup>24</sup>
2. Certified True Copy of Land Bank Check No. 0000850372, dated March 13, 2007, in the amount of ₱4,800,000.00;<sup>25</sup>

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<sup>19</sup> Id., p. 9

<sup>20</sup> Records, Vol. II, pp. 167-668

<sup>21</sup> Id., p. 168

<sup>22</sup> Id., pp. 168-169

<sup>23</sup> Exhibit B

<sup>24</sup> Exhibit C

<sup>25</sup> Exhibit C-1

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3. Certified True Copy of Duplicate of Land Bank Check No. 0000850372, dated March 13, 2007, in the amount of ₱4,800,000.00;<sup>26</sup>
4. Certified True Copy of KKKFI Official Receipt No. 0053, dated March 13, 2007;<sup>27</sup>
5. Certified True Copy of Memo for Cash Div/FSD, re DV #012007030432 dated March 13, 2007 signed by Maurine E. Dimaranan, OIC-Internal Audit Office;<sup>28</sup>
6. Certified True Copy of Disbursement Voucher No. 012007030435;<sup>29</sup>
7. Certified True Copy of Memorandum for Antonio Y. Ortiz, Director-General from Belina A. Concepcion, OIC-DC, Marketing LLO, subject : Release of PDAF Congressman Antonio C. Alvarez, dated February 26, 2007;<sup>30</sup>
8. Certified True Copy of Memorandum of Agreement between Technology and Livelihood Resource Center (TLRC), represented by its Director-General, Antonio Y. Ortiz and Kalinga sa Kapwa at Kalinga Foundation, Inc. represented by its Project Coordinator, Joel L. Soriano, consisting of four (4) pages;<sup>31</sup>
9. Certified True Copy of Kalinga sa Kapwa at Kalikasan Foundation, Inc. (KKKFI) Work and Financial Plan prepared and signed by Joel L. Soriano, Project Coordinator;<sup>32</sup>
10. Certified True Copy from Photocopy of Disbursement Voucher No. 104-07-02-0059 dated February 12, 2007;<sup>33</sup>
11. Certified True Copy from Photocopy of Official Receipt No. 5295286, dated February 20, 2007;<sup>34</sup>
12. Certified True Copy of Letter from Representative Antonio C. Alvarez addressed to Antonio Y. Ortiz thru Dennis L. Cunanan dated February 19, 2007;<sup>35</sup>
13. Certified True Copy from Photocopy of Advice of NCA Issued No. 314316-2 dated February 1, 2007;<sup>36</sup>

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<sup>26</sup> Exhibit C-2

<sup>27</sup> Exhibit C-3

<sup>28</sup> Exhibit C-4

<sup>29</sup> Exhibit C-5

<sup>30</sup> Exhibit C-6

<sup>31</sup> Exhibit C-7

<sup>32</sup> Exhibit C-8

<sup>33</sup> Exhibit C-9

<sup>34</sup> Exhibit C-10

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<sup>36</sup> Exhibit C-12

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14. Certified True Copy of Project Proposal, Project Title: Upgrading Economic Standards Through Various Livelihood Projects, consisting of two (2) pages;<sup>37</sup>
15. Certified True Copy of Letter dated August 5, 2011 signed by Arcadio B. Cuenco, Jr., Assistant Commissioner addressed to Antonio C. Alvarez, Representative, 1<sup>st</sup> District of Palawan;<sup>38</sup>
16. Certified True Copy of Letter dated May 30, 2012, signed by Susan P. Garcia, Director IV addressed to the Present, Kalinga sa Kapwa at Kalikasan Foundation, Inc.;<sup>39</sup>
17. Certified True Copy of LBC Receipt addressed to The President, Ugong, Kalinga sa Kapwa at Kalikasan Foundation Inc.;<sup>40</sup>
18. Certified True Copy of Notice of Disallowance No. TRC-2015-036-PDAF (07-09), dated October 26, 2015, consisting of four (4) pages;<sup>41</sup>
19. Certified True Copy of Proof of Service of Copies of ND to Persons Liable with signatures appearing on Received by column, of Belina A. Concepcion, Marivic V. Jover and Maurine E. Dimaranan all dated November 12, 2015;<sup>42</sup>
20. Certified True Copy of Proof of Service of Copies of ND to Persons Liable with signature appearing on Received by column, of Rolando G. Andaya Jr. dated December 2, 2015;<sup>43</sup>
21. Certified True Copy from Photocopy of Registry Return Receipt from Director Elsielin C. Masangcay, Special Audits Office, Commission on Audit addressed to Antonio C. Alvarez;<sup>44</sup>
22. Certified True Copy of front and dorsal portion of Registry Return Receipt from Director Elsielin C. Masangcay, Special Audits Office, Commission on Audit addressed to Mario L. Relampagos;<sup>45</sup>
23. Certified True Copy of front and dorsal portion of Registry Return Receipt from Director Elsielin C. Masangcay, Special Audits Office, Commission on Audit addressed to Dennis Cunanan;<sup>46</sup>

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<sup>37</sup> Exhibit C-13

<sup>38</sup> Exhibit C-14

<sup>39</sup> Exhibit C-15

<sup>40</sup> Exhibit C-16

<sup>41</sup> Exhibit C-17

<sup>42</sup> Exhibit C-18

<sup>43</sup> Exhibit C-19

<sup>44</sup> Exhibit C-20

<sup>45</sup> Exhibit C-21

<sup>46</sup> Exhibit C-22

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24. Certified True Copy of front and dorsal portion of Registry Return Receipt from Director Elsielin C. Masangcay, Special Audits Office, Commission on Audit Antonio Y. Ortiz;<sup>47</sup>
25. Certified True Copy of envelope from Director Elsielin C. Masangcay, Special Audits Office, Commission on Audit addressed to Joel L. Soriano, Project Coordinator, Kalinga sa Kapwa at Kalikasan Foundation, Inc. (KKKFI).<sup>48</sup>

### **Gloria De Guzman Silverio, Director IV of COA-SAO.**

In her Judicial Affidavit,<sup>49</sup> she testified that she started working with COA on November 6, 1984 until her retirement on April 1, 2022. In the year 2010, she was assigned as State Auditor IV of SAO. SAO is an office within the COA in charge of conducting special audits of various government projects and programs. As State Auditor IV, she performed all duties and activities assigned to her by her Director. She was usually designated as Over-All Team Leader in various audit assignments. The audit assignments included rate audit, performance audit, subsidy audit and levy audit. On April 6, 2021, she was designated as Director IV of the SAO.

In 2010 there were special audits conducted on the PDAF and Various Infrastructure Projects including Local Projects (VILP) covering calendar year 2007-2009. She explained that COA conducted the special audit because of the emerging issues at the time on the utilization of the PDAF based on audit reports of COA Resident Auditors on unliquidated fund transfers, undocumented disbursements, and non-compliance with existing laws, rules and regulations. They were authorized to conduct the special audit under COA Office Order No. 2010-309, dated May 13, 2010, and by subsequent Office Orders issued in relation to the conduct of the audit.<sup>50</sup> Relative to these, she identified the following documents:

1. Certified True Copy on File of COA Office Order No. 2010-309<sup>51</sup>;
2. Certified True Copy on File of COA Office Order No. 2010-327<sup>52</sup>;
3. Certified True Copy on File of COA Office Order No. 2011-039; and
4. Certified True Copy on File of COA Office Order No. 2011-428.

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<sup>47</sup> Exhibit C-23

<sup>48</sup> Exhibit C-24

<sup>49</sup> Records, Vol. III, pp. 33-554

<sup>50</sup> Records, Vol. III, p. 35

<sup>51</sup> Exhibit C-25, p.1

<sup>52</sup> Exhibit C-25, p.2

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She was the Over-All Team Leader of the abovementioned audit. As the Over-All Team Leader, she prepared the audit plan and work activities on the audit of PDAF for review and approval of the Director. She closely supervised the audit and assisted the team in the implementation of the audit plan and gathering and analysis of data. She reviewed letters, audit highlights and draft reports for further review and approval of the Director. She also reviewed and signed Notices of Disallowance relative to disallowed transactions of implementing agencies to be issued to concerned parties.<sup>53</sup>

The said audit covered the releases of PDAF by the DBM and the utilization and implementation of PDAF-funded projects by the following Implementing Agencies (IAs), among others, during calendar years 2007-2009: (a) Department of Agriculture (DA); (b) Department of Public Works and Highways (DPWH); (c) Department of Social Welfare and Development (DSWD); (d) TLRC/TRC; (e) National Livelihood and Development Corporation (NLDC); (f) National Agribusiness Corporation (NABCOR); (g) ZNAC Rubber Estate Corporation (ZREC); and (h) Selected Local Government Units (LGUs).<sup>54</sup>

The basis for the selection of the implementing agencies was the materiality of amounts released to them using the National Expenditures Program (NEP). The government-wide audit covers the three (3) immediately preceding years reckoned from 2010 which is the time the order for the conduct of audit was issued. The audit lasted from June 2010 to September 2012.<sup>55</sup>

The audit focused on the following areas: (a) Allocation and Transfer of Funds and Monitoring of Releases; (b) Implementation of the livelihood and other projects; (c) Implementation of Infrastructure projects; and (d) Financial Assistance and other charges by the Local Government Units (LGUs). The audit team focused on these areas because the releases were mostly intended for the implementation of livelihood and infrastructure projects or financial assistance to intended beneficiaries. These are also the areas which would address the objectives of the audit. The special audit aimed to determine the propriety of releases of PDAF by the DBM to the implementing agencies; and the efficient utilization of government funds and effective implementation of the projects by

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<sup>53</sup> Records, Vol. III, p. 35-A

<sup>54</sup> Id., pp. 35-A-35-B

<sup>55</sup> Id.

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the IAs, taking into consideration the menu of programs defined in the General Appropriations Act (GAA) and pertinent laws, rules, and regulations.<sup>56</sup>

The methodologies employed by the audit team in the conduct of the special audit consisted of the following: (a) Obtaining all relevant rules and regulations affecting the allocation, releases and utilization of the PDAF which include, among others, General Appropriations Act (GAA) for 2007, 2008 and 2009, National Budget Circular No. 476, RA 9184, GPPB Resolution No. 12-2007, and COA Circulars 96-003, and 2007-001; (b) Gathering the schedule of releases made by the DBM from 2007 to 2009 to the Implementing Agencies covered in the audit and obtaining copies of SAROs relative to these PDAF releases, ANCAIs, Advice of SARO issued, letters relative to the issuance of SAROs and its corresponding NCAs, among others; (c) Obtaining and reviewing disbursement vouchers charged against PDAF releases, together with the supporting documents and assessing whether the funds were used for the purposes intended and disbursed in accordance with existing laws, rules and regulations; (d) Confirming the authenticity of the documents from concerned parties such as beneficiaries, suppliers, legislators, NGOs and regulatory offices to determine the validity of reported transactions; and (e) Conducting ocular inspection of selected projects and equipment, NGOs and suppliers to determine their existence, condition and status.<sup>57</sup>

The relevant laws and rules used by the audit team include: (1) specific provisions in the GAA for 2007, (2) 2008 and 2009; (3) the Government Procurement Act (RA 9184); (4) pertinent provisions of the Government Auditing Code (PD 1445); (5) COA Circulars Nos. 2004-001 and 96-003; (6) DBM National Budget Circular (NBC) No. 476 and (7) GPPB Resolution No. 12-2007, among others.<sup>58</sup>

She explained that the special audit covered the PDAF allocation of some 202 Senators and Congressmen including that of Cong. Alvarez, of the 1<sup>st</sup> District of Palawan.<sup>59</sup>

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<sup>56</sup> *Id.*, pp. 35-B-36

<sup>57</sup> *Id.*, pp. 36-37

<sup>58</sup> *Id.*, p. 36

<sup>59</sup> *Id.*, p. 37

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Relative to this, the audit team gathered the following documents from the TLRC/TRC which include SAROs, ANCAIs, disbursement vouchers (DVs) and their supporting documents.

Silverio identified the following documents:

1. Certified True Copy from Photocopy of SARO No. ROCS-07-00428, dated January 12, 2007;<sup>60</sup>
2. Certified True Copy of Land Bank Check No. 0000850372, dated March 13, 2007, in the amount of ₱4,800,000.00;<sup>61</sup>
3. Certified True Copy of Duplicate of Land Bank Check No. 0000850372, dated March 13, 2007, in the amount of ₱4,800,000.00;<sup>62</sup>
4. Certified True Copy of KKKFI Official Receipt No. 0053, dated March 13, 2007;<sup>63</sup>
5. Certified True Copy of Memo for Cash Div/FSD, re: DV #012007030435, dated March 13, 2007, signed by Maurine E. Dimaranan, OIC-Internal Audit Office;<sup>64</sup>
6. Certified True Copy of DV No. 012007030435;<sup>65</sup>
7. Certified True Copy of Memorandum, dated February 26, 2007<sup>66</sup> for Antonio Y. Ortiz, Director-General from Belina A. Concepcion, OIC-DC, Marketing LLO, subject: Release of PDAF Congressman Antonio C. Alvarez;
8. Certified True Copy of the MOA between TLRC, represented by its Director-General, Antonio Y. Ortiz, and KKKFI, represented by its Project Coordinator, Joel L. Soriano, consisting of four (4) pages;<sup>67</sup>
9. Certified True Copy of KKKFI Work and Financial Plan prepared and signed by Joel L. Soriano, Project Coordinator;<sup>68</sup>
10. Certified True Copy from Photocopy of Bureau of the Treasury DV No. 104-07-02-0059, dated February 12, 2007;<sup>69</sup>

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<sup>60</sup> Exhibit C

<sup>61</sup> Exhibit C-1

<sup>62</sup> Exhibit C-2

<sup>63</sup> Exhibit C-3

<sup>64</sup> Exhibit C-4

<sup>65</sup> Exhibit C-5

<sup>66</sup> Exhibit C-6

<sup>67</sup> Exhibit C-7

<sup>68</sup> Exhibit C-8

<sup>69</sup> Exhibit C-9

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11. Certified True Copy from Photocopy of KKKFI Official Receipt No. 5295286, dated February 20, 2007;<sup>70</sup>
12. Certified True Copy of Letter, dated February 19, 2007, from Representative Antonio C. Alvarez, addressed to Antonio Y. Ortiz, thru Dennis L. Cunanan;<sup>71</sup>
13. Certified True Copy from Photocopy of ANCAI No. 314316-2, dated February 1, 2007;<sup>72</sup> and
14. Certified True Copy of Project Proposal, Project Title: Upgrading Economic Standards Through Various Livelihood Projects, consisting of two (2) pages.<sup>73</sup>

The audit team sent a confirmation letter to Congressman Alvarez,<sup>74</sup> to confirm if the signatures purported to be his on the documents submitted by the NGOs to TLRC/TRC are really his signatures. The audit team likewise sent confirmation letters to KKKFI.<sup>75</sup> Both Alvarez and KKKFI did not respond to the confirmation letters.<sup>76</sup>

Silverio testified that under SARO No. ROCS-07-00428, ₱5,000,000.00 of the PDAF allocation of Cong. Alvarez was released to cover cash requirements for livelihood program of the 1<sup>st</sup> District of Palawan as indicated in the ANCAI.<sup>77</sup> The said amount was released to TLRC/TRC<sup>78</sup> as its implementing agency.<sup>79</sup>

After evaluating all the documents, the audit team made the following observations/ findings, as follows: "the transaction under SARO No. ROCS-07-000428 was not compliant with existing laws and regulations, particularly: (1) the release of the SARO by the DBM to TLRC/TRC despite absence of documents required to be submitted by TLRC/TRC to DBM; (2) the transfer of the amount of ₱4.8 Million by TLRC/TRC to KKKFI despite the absence of appropriation law earmarking an amount to be contracted out to KKKFI; (3) the selection of NGO did not observe the guidelines prescribed under existing laws and regulations; (4) KKKFI did not submit any liquidation document showing how it utilized the funds

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<sup>70</sup> Exhibit C-10

<sup>71</sup> Exhibit C-11

<sup>72</sup> Exhibit C-12

<sup>73</sup> Exhibit C-13

<sup>74</sup> Exhibit C-14

<sup>75</sup> Exhibit C-15 TO C-16

<sup>76</sup> Records, Vol. III, pp. 41-42

<sup>77</sup> Id. p. 42

<sup>78</sup> Exhibit C-9 to C-10

<sup>79</sup> Records, Vol. III, p. 43

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covered by SARO No. ROCS-07-00428; (5) Cong. Alvarez did not respond to the audit team's confirmation letter; and (7) the ₱200,000.00 retained by TLRC/TRC as service fees and costs of livelihood materials cannot be accounted for."<sup>80</sup>

The SARO and NCA were released in the absence of documents required under DBM National Budget Circular No. 476 to be submitted by TLRC/TRC to DBM as implementing agency. In particular, the project profile and endorsement by IA shall serve as basis for the DBM to release the SARO and corresponding NCA. While none of these were submitted, both SARO and NCA were nonetheless released by the DBM.<sup>81</sup>

Also, the transfer of ₱4.8 Million by TLRC/TRC to KKKFI has no legal basis as NGOs were not among those identified in the GAA for the year 2007 as implementing arms of PDAF projects and there was no PDAF earmarked in the GAA for the implementation by NGOs. DBM failed to provide the audit team copies of the endorsements from the concerned implementing agencies, including TLRC/TRC, despite repeated requests."<sup>82</sup> Only ₱4.8 Million out of the ₱5 Million was transferred by TLRC/TRC to KKKFI as TLRC/TRC charged service fee in the amount equivalent to 3% of the ₱5 Million or a total of ₱150,000.00. TLRC/TRC also charged for the cost of livelihood materials in the total amount of ₱50,000.00.<sup>83</sup> The transfer, which was covered by the said MOA with Jed Bundang, Chief of Staff of the Office of Cong. Alvarez, TLRC/TRC Director General Ortiz, and KKKFI Project Coordinator Soriano, as signatories, is considered without legal basis.<sup>84</sup>

The selection of NGO did not observe the guidelines prescribed under COA Circular No. 96-003, for the following reasons: (1) The fund was transferred even before the issuance by the GPPB of the required guidelines, and the provisions under COA Circular No. 96-003 were not at all observed; (2) As prescribed under the said circular, the NGO is required to submit, among others, financial statements for at least three years operation to ensure that it is in a stable financial condition and has proven experience in fund management. As such, KKKFI would not qualify as it was incorporated only on August 4, 2006 or 221 days when the check

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<sup>80</sup> Id., p. 43

<sup>81</sup> Records, Vol. III, p. 44

<sup>82</sup> Id.

<sup>83</sup> Id., pp. 44-45

<sup>84</sup> Id, p. 45

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was released to it on March 13, 2007; (3) TLRC/TRC shall accredit the NGO after proper verification and validation of the required documents and statements. However, there were no documents to show that these processes were all undertaken. Rather, an undated MOA was entered into with KKKFI upon the request by the legislator to KKKFI to implement the project in his letter, dated February 19, 2007; (4) The full amount of ₱4.8 Million was, however, released under Check No. 850372, dated March 13, 2007, instead of being released in tranches, *i.e.*, 15% upon approval and signing of MOA, 35% after 50 % project completion, and 50% upon completion of the project; (5) The MOA did not include provisions on “systems and procedures for project implementation, time schedules for the periodic reporting, monitoring, and inspection requirements and list of beneficiaries.”<sup>85</sup>

KKKFI did not submit any liquidation document being requested by the audit team. As such, there were no documents to show that KKKFI implemented the project. The “₱200,000.00 retained by TLRC/TRC as service fees and costs of livelihood materials cannot be accounted for as it was not documented.”<sup>86</sup>

Among the persons found to be liable for the release and utilization of funds, intended for the implementation of the Project under SARO No. ROCS-07-00428 are Ortiz, Cunanan, Concepcion and Jover.

The participation of Ortiz is as follows: (1) he entered into MOA with the NGO, approved the DVs and signed checks releasing the fund to KKKFI under the following circumstances: (a) KKKFI was not identified in the GAA for the year 2007 as among the implementing arms of PDAF funded projects; (b) absence of appropriation law earmarking an amount for the implementation by KKKFI; (c) non-compliance with the required processes under COA Circular No. 96-003; and (d) questionable capability of KKKFI to undertake the project; and (2) he failed to monitor project implementation as manifested in the submission of deficient documents and non-submission by KKKFI of the required liquidation reports.

As to Cunanan, he certified that expenses are necessary and lawful when fund transfer to KKKFI has no basis, the selection of KKKFI was not in accordance with existing laws, rules and

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<sup>85</sup> *Id.*, p. 46

<sup>86</sup> *Id.* p. 47

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regulations, the documents submitted are deficient and the capability of KKKFI to undertake the project is questionable.

As to Concepcion, she recommended the release of funds to KKKFI when transfer of funds to NGO is not proper as NGOs are not among the identified implementing arms of PDAF projects, the selection of NGO was not in accordance with existing laws, rules and regulations, the documents submitted are deficient and the capability of KKKFI to undertake the project is questionable.

As to Jover, she certified the availability of fund and completeness of supporting documents when transfer of fund to KKKFI is not proper as NGOs are not among the identified implementing arms of PDAF projects, the selection of NGO was not in accordance with existing laws, rules and regulations, the documents submitted are deficient and the capability of KKKFI to undertake the project is questionable.<sup>87</sup>

Lastly, as to Soriano, he failed to implement the project and to liquidate the ₱4.8 Million fund transferred to KKKFI and he was the payee of the questionable transaction.<sup>88</sup>

The audit team's observation and findings which she discussed were consolidated in SAO Report No. 2012-03.<sup>89</sup> The audit team's observations with respect to Cong. Alvarez' PDAF allocation are found on SAO Report 2012-03 "pages 7, 14-17, 19-20, 21-24, 39-41, 45-46, 144, 267, and 278 to 280."<sup>90</sup>

The audit team likewise issued a Notice of Disallowance pursuant to COA Circular No. 2009-006, dated September 15, 2009.<sup>91</sup> Relative to Cong. Alvarez's PDAF allocation subject of these cases, there was only one Notice of Disallowance.<sup>92</sup>

On cross examination, Silverio testified that the audit started in 2010 and ended in September 2012.<sup>93</sup> She confirmed that in the audit report of COA Auditor Jerry Calayan, which covers the 2007 transactions of TLRC/TRC, there are procedural findings regarding its violation or non-compliance with existing laws, rules and

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<sup>87</sup> Id., p. 48

<sup>88</sup> Id., p. 49

<sup>89</sup> Exhibit B

<sup>90</sup> Id., p. 50

<sup>91</sup> Id., p. 51

<sup>92</sup> Exhibit C-17

<sup>93</sup> Id., p. 14

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regulations and undocumented disbursements and the unliquidated fund transfer. However, no notice of disallowance was issued then.<sup>94</sup>

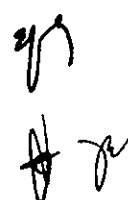
She explained that the issuance of the SARO would entail the earmarking of the funds. Thereafter, the legislator will choose the implementing agency.<sup>95</sup> She confirmed that the DBM did not furnish them with the copy of the indorsements.<sup>96</sup> She also confirmed that Cunanan is not an officer of KKKFI,<sup>97</sup> and that the report did not show that it was him who received the funds. As a matter of procedure, the funds should be received by the collecting officer of the TLRC/TRC.<sup>98</sup> She testified that Cunanan was held liable as he certified that expenses are necessary and lawful, and that the fund transfer has no basis in that the selection of NGO was not in accordance with existing laws, rules and regulations.<sup>99</sup> She also confirmed that Cunanan was not involved in the selection of NGO and that it was the sponsoring legislators who selected the NGO.<sup>100</sup>

When asked by the Court<sup>101</sup> on how many legislators' PDAF were investigated together with Cong. Alvarez, Silverio answered that they were able to audit 202 legislators and their PDAF allocations.<sup>102</sup> She confirmed that all the 202 PDAF allocations that were investigated or audited, they had the same finding. Silverio testified that no liquidation report was made for the PDAF allocation of Cong. Alvarez and the same remained to be an unliquidated fund transfer. Moreover, there was no proof that the amount was being used for the implementation of PDAF project.<sup>103</sup> But the DVs and the official receipt of the NGO were proof that the money was transferred from TLRC/TRC to the KKKFI for implementation.<sup>104</sup>

**Jose C. Afable**, Division Chief of the Data Warehousing and Systems Operations Division of the Bureau of Internal Revenue.

In his Judicial Affidavit,<sup>105</sup> he testified that since 2019 up to present he is the Division Chief of the Data Warehousing and

<sup>94</sup> Id., p. 18  
<sup>95</sup> Id., p. 20  
<sup>96</sup> Id., p. 21  
<sup>97</sup> Id., p. 25  
<sup>98</sup> Id., p. 26  
<sup>99</sup> Id.  
<sup>100</sup> Id., p. 27  
<sup>101</sup> Id., p. 31  
<sup>102</sup> Id.  
<sup>103</sup> Id., p. 32  
<sup>104</sup> Id., p. 33  
<sup>105</sup> Records, Vol. III, pp. 563-567



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Systems Operations Division under the Information Systems Operations Service of the BIR, headed by Assistant Commissioner Ma. Rosario Charo G. Enriquez-Curiba.

As the Chief of the Data Warehousing and Systems Operations Division of the BIR, his duties and responsibilities include the supervision of the administration of the systems and data bases of the BIR, which contain registration, returns and payment data of taxpayers, among others. He further testified that their office received several subpoenas. The first subpoena was addressed to BIR Commissioner Dulay with attention to Assistant Commissioner Curiba and it was endorsed to him. Subsequent subpoenas were addressed to the Division Chief of the Data Warehousing and Systems Operations Division for appearance for a case conference.<sup>106</sup> The first subpoena directed their office to verify the validity of the TIN and ATP No. of KKKFI appearing on the Official Receipt attached thereto. Upon indorsement of the first subpoena, he in turn indorsed the same to their Third Party Information Section, and analyst/computer operator who extracted the data being required by the subpoena. The analyst/computer operator then generated a report on the verification which was then submitted to the section chief who summarized the findings and drafted the reply letter to the subpoena. The draft letter was then submitted to him for review. He personally checked the findings stated in the reply letter before he submitted it to Assistant Commissioner Rosario Charo Curiba for signature. He found that TIN 000-226-419-543 of KKKFI is invalid as it was not issued by the BIR and that the Authority to Print (ATP) Official Receipt No. 54-149-193 is not found in their database.<sup>107</sup> He then identified a copy of KKKFI Official Receipt No. 0053.<sup>108</sup> Since the TIN of KKKFI is invalid, it cannot validly apply for an ATP. Thus, the official receipt, on its face, appears to be irregular. After Assistant Commissioner Curiba signed the reply letter,<sup>109</sup> it was returned to his office for releasing.<sup>110</sup>

On cross-examination,<sup>111</sup> Afable confirmed that he has no personal knowledge about KKKFI and PDAF.

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<sup>106</sup> Id., p. 564

<sup>107</sup> Id., p. 565

<sup>108</sup> Exhibit C-3

<sup>109</sup> Exhibit G

<sup>110</sup> Records, Vol. III, p. 566

<sup>111</sup> TSN dated August 22, 2022, p. 12

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On August 31, 2022, the prosecution filed its *List of Documentary Exhibits for the Prosecution*.<sup>112</sup> The Court considered the filing of the List of Documentary Exhibits for the Prosecution, dated August 31, 2022, as the filing of the formal offer, given that the settings for the oral offer thereof were cancelled. The Court then, over the objections of the accused, ruled to admit Exhibits A, A-12 to A-40, A-49 to A-52, A-54 to -60, A-62 to A-64, B, B-1 to B-10, C, C-1 to C-5 (also Exhibits 12- Cunanan and 12-A-Cunanan), C-6 to C-25, D, D-1 to D-6, E, E-1 to E-14, and G, but not for the purposes they were offered.<sup>113</sup>

Accused Cunanan filed a Motion for Leave to file Demurrer to Evidence, dated September 26, 2022, with attached Demurrer to Evidence.<sup>114</sup> In a Resolution, dated November 2, 2022, the Court resolved to deny the motion for lack of merit.<sup>115</sup>

### EVIDENCE FOR THE DEFENSE

The defense presented accused Dennis Cunanan, Belina Concepcion and Marivic Jover as its witnesses.

**Accused Dennis L. Cunanan**, Deputy Director General of TLRC/TRC from December 2004 to December 2009.

In his Judicial Affidavit,<sup>116</sup> accused Cunanan testified that he was the Deputy Director General of TLRC/TRC from December 2004 to December 2009. Thereafter, he was appointed as Director General replacing accused Ortiz in December 2009. He served as the Director General from January 2010 until his resignation in March 2014.

As Deputy Director General, his primary duty was to head the Change Management Team (CMT) which was then tasked to rationalize the operations of TLRC/TRC.<sup>117</sup> He was a co-signatory in the DVs for the financial transactions undertaken by the TLRC/TRC as part of his duty as the Chief Operating Officer. When required, he would also make reports to the Board of Trustees of

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<sup>112</sup> Records, Vol. IV, pp. 9-698

<sup>113</sup> Id., Vol. V, p. 78

<sup>114</sup> Id., pp. 14-73

<sup>115</sup> Id., pp. 114-117

<sup>116</sup> Records, Vol. V, pp. 190-234

<sup>117</sup> Id., pp. 192-193

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TLRC/TRC about office's transactions and make recommendations about the office's policies.<sup>118</sup>

TLRC/TRC has been receiving PDAF allocations since 2005 until 2009 as it was included in the GAA as one of the implementing agencies (IA) for PDAF-funded projects. From the onset, all PDAF transactions were under the direct supervision of the office of Director General Ortiz.<sup>119</sup> Ortiz did not give him any authority to handle PDAF-related matters. Previously his signing authority was the same level as that of the Director General. However, in Office Circular No. 00GE0098 his signing authority was limited to checks above ₱100,000.00 up to ₱1,000,000.00 only. Office Circular No. 000P0099 reiterated the previously stated limitation of his signing authority.

In relation to the PDAF transactions of the center, he signed some DVs. Before signing a disbursement voucher, he made sure that the attachments are complete in accordance with the checklist as required by the memos and office circulars. The said attachments include appropriate SAROs, endorsement letters from the legislator, MOA and the project proposals.<sup>120</sup>

PDAF is treated as a special fund and as such it goes to the special trust fund of TLRC/TRC and it cannot be accessed unless triggered by the source of fund who is the legislator. Upon endorsement by the legislator as to how the fund should be used and allocated, the LLO will then forward the endorsement to the Office of the Director General. Upon review of all the documents and attachments, the next step is the fund disbursement and endorsement with notice to proceed advice. After the approval of the notice to proceed by the Director General, the disbursement voucher will then be prepared and routed for signature. He got to sign the DVs before the final signature of the Director General for check preparation and after all initials and signatures are in place.<sup>121</sup>

He has no participation in choosing, accrediting, or endorsing NGOs. Cunanan claimed that his only participation is in checking the completeness of the documents attached to the DVs.

<sup>118</sup> Id., p.193  
<sup>119</sup> Id.  
<sup>120</sup> Id., p. 149  
<sup>121</sup> Id., pp. 197-198

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TLRC/TRC got its funding from corporate operations and activities. The management fund is used to fund the operations of the center.<sup>122</sup> He is the one who requested for the operational funds or the funds to be spent by TLRC/TRC for its operations. As such, he signed the Box A of the DV which says "Expenses/Cash Advance necessary, lawful and incurred under my direct supervision." For PDAF, his signature was only required by the COA because of his position and that he is actually not requesting for the disbursement because the TLRC/TRC will not use the funds to be released. The certification in Box A is not applicable for PDAF as it is not an expense of the TLRC/TRC.<sup>123</sup>

As to the release and control of PDAF funds, he had no participation in the release and control of PDAF. But there were times that he was the alternate signatory to the checks when the regular signatory was absent. He identified TLRC/TRC DV No. 012007030435.<sup>124</sup>

There were differences between the disbursement voucher for PDAF and that one used by TLRC/TRC for its operational expenses. The first difference is that the DV for PDAF transactions have the stamp above Box A while the same is not present for DVs for operational expenses. The stamp "Verified as to the Completeness of the Documents Attached" means that the documents needed for the release of the PDAF transactions are complete. He then identified the signature of Maurine Dimaranan<sup>125</sup> below the marking "Verified as to the Completeness of the Documents Attached." Dimaranan was TLRC/TRC's Internal Auditor and as such he trusted her that the attachments are complete and regular before she signed.<sup>126</sup>

Initially the management fee collected by TLRC/TRC per transaction was 1%, but sometime in early 2007, Ortiz suggested to increase it to 3%. In his Memorandum, dated February 9, 2007,<sup>127</sup> addressed to accused Ortiz, he emphasized his reservations that the increase in management fee should apply to all NGOs and not just a selected few. He also suggested that the TLRC/TRC come up with clear Policy Guidelines pertaining to all PDAF transactions before implementing the increase in management fee.<sup>128</sup>

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<sup>122</sup> TSN dated January 23, 2023, p.29

<sup>123</sup> Records, Vol. V, pp. 199

<sup>124</sup> Exhibit A-62 and C-5, Exhibit 12

<sup>125</sup> Exhibit 12-A

<sup>126</sup> Records, Vol. V, pp. 200-201

<sup>127</sup> Exhibit 11 to 11-A

<sup>128</sup> Records, Vol. V, pp. 201-202

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There is an auditor from COA assigned to TLRC/TRC. The auditor would issue their observations and issue audit findings, conduct mandatory exit conferences and if warranted, issue notice of disallowance. In relation to PDAF transactions, there was never any warning to stop the processing of PDAF. The auditor never issued adverse observations or disallowances.<sup>129</sup> As such, he believed that the whole process was regular and in accordance with COA rules. For this reason, he verified that the documents attached are indeed there and he signed the DVs.<sup>130</sup>

On cross examination,<sup>131</sup> Cunanan testified that in 1995 he was elected as Councilor of Magalang, Pampanga.<sup>132</sup> Thereafter, in 2000, he was appointed as Executive Director of the National Youth Commission.<sup>133</sup> He was also appointed as Executive Assistant of the House Speaker De Venecia.<sup>134</sup> In 2004, he was appointed as Presidential Assistant for Youth Affairs and as Executive Director of the Commission on Higher Education. On the same year, he was appointed as Deputy Director General of TLRC/TRC.<sup>135</sup>

As the Deputy Director General, he was also the Chief Operating Officer (COO) of TLRC/TRC. As such, he managed the day-to-day operations and transactions of TLRC/TRC. He initiated and developed corporate objectives and policies of TLRC/TRC based on their mandate. He also exercised other functions assigned to him by the Director General. As COO, he served as signatory to DVs including the DVs for the release of PDAF.<sup>136</sup>

Cunanan denied coordinating with legislators to implement their PDAF through TLRC/TRC. Some legislators would usually call him for things that they want to clarify with the Director General.<sup>137</sup> He confirmed writing the Memorandum, dated February 9, 2007.<sup>138</sup>

When confronted with a document entitled Cash Operations Report of the Bureau of Treasury,<sup>139</sup> Cunanan testified that he is not

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<sup>129</sup> *Id.*, p. 203

<sup>130</sup> *Id.*, p. 204

<sup>131</sup> TSN dated January 23, 2023, pp. 1-86

<sup>132</sup> *Id.*, p. 34

<sup>133</sup> *Id.*, p. 35

<sup>134</sup> *Id.*, p. 36

<sup>135</sup> *Id.*, p. 37

<sup>136</sup> *Id.*, pp. 38-39

<sup>137</sup> *Id.*, p. 41

<sup>138</sup> Exhibit 11- Cunanan

<sup>139</sup> Exhibit I - Rebuttal

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familiar with the said document.<sup>140</sup> As an alternative signatory to checks, he also signed checks exceeding ₱1,000,000.00, if the Director General is not present and he is assigned as the OIC.<sup>141</sup> He admitted that he is the signatory for Box A of the DVs as provided under Office Circular No. 00GE0098.<sup>142</sup>

When confronted with Office Circular No. 00FN0059,<sup>143</sup> he denied that it was the office circular in effect for the processing of DVs. There was another circular in effect during his time.<sup>144</sup> It is the Legislative Liaison Officer, Belina Concepcion, who forwards the endorsement to the Office of the Director General. Thereafter, upon review of all the documents needed to process the DV, the Director General will approve the notice to proceed and the DV will be prepared and routed for signature.<sup>145</sup>

He made sure that documents attached to the DV are complete before signing Box A of the DV.<sup>146</sup> He confirmed that if there is one document lacking or not attached to the DV, he will not sign it. He signed DV No. 012007030435.<sup>147</sup> He explained that if he will not sign the DVs, the center can bypass him and the Director General can sign it.<sup>148</sup> He did not check the contents of the MOA,<sup>149</sup> and that it is the COA auditor who checks the contents of the MOA and if it passed through the COA auditor then its considered as legal.<sup>150</sup> He also confirmed that he did not check if the MOA contained provisions on systems and procedures for project implementation. He explained that during that time it was still pre-audit that was being observed.<sup>151</sup>

Cunanan said that when they signed the project proposal, it has the work financial plan as it is a requirement of COA.<sup>152</sup> He also confirmed that he did not check if KKKFI had legal personality of has officers as there are other offices who undertakes the checking of the same.<sup>153</sup>

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<sup>140</sup> TSN dated January 23, 2023, p. 47

<sup>141</sup> Id., p. 51

<sup>142</sup> Id., p. 52

<sup>143</sup> Exhibit J- Rebuttal

<sup>144</sup> Id, p. 54

<sup>145</sup> Id., p. 56

<sup>146</sup> Id., p. 57

<sup>147</sup> Exhibit C-5 and Exhibit 12

<sup>148</sup> TSN dated January 23, 2023, p. 59

<sup>149</sup> Id., p. 64

<sup>150</sup> Id., p. 62

<sup>151</sup> Id., p. 65

<sup>152</sup> Id., p. 66

<sup>153</sup> Id., p. 68

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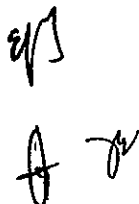
When, confronted with a copy of Office Circular No. 00GE0061,<sup>154</sup> Cunanan confirmed that the said circular defined the functions of the Internal Audit Office. As an Internal Auditor, Maurine Dimaranan reports directly to the Director General. Dimaranan also audits and reviews cash advances, except payrolls, before they are approved by the signatory of the DV. Cunanan said that the stamp of Dimaranan was already there before he signed the DV.<sup>155</sup>

Cunanan was also confronted with the Annual Audit Report for the year ending December 31, 2007.<sup>156</sup> The matters pertaining to PDAF are under the purview of the Director General to undertake and explain to the Board. He also claimed that he did not get any notice of disallowance.<sup>157</sup> Moreover, while there were observations in the report, they were not told to stop as there was no notice of disallowance issued.<sup>158</sup>

On re-direct examination,<sup>159</sup> Cunanan testified that before TLRC/TRC was not part of the GAA. As such, the source of income of TLRC/TRC is self-generated. As a GOCC, TLRC/TRC is self-liquidating and income generating.<sup>160</sup> TLRC/TRC gets its fund from their regular technology operations and from management fees among other subsidies that are being coursed through it.<sup>161</sup> Cunanan explained that the COA have a resident auditor in TLRC/TRC and all transactions immediately go to them. As the year end, an exit conference is being held. When he assumed office as Director General of TLRC/TRC, he did not receive any direction to stop the processing of PDAF.

On re-cross examination,<sup>162</sup> Cunanan testified that TLRC/TRC receives government subsidy in the form of the PDAF.<sup>163</sup> TLRC/TRC had other operational revenues aside from the management fee that they receive from the PDAF.<sup>164</sup> According to him, there are several offices involved in making sure that the documents attached to the DVs are complete such as the Legislative Liaison Office, Legal

<sup>154</sup> Exhibit K  
<sup>155</sup> Id., p. 71  
<sup>156</sup> Exhibit L – Rebuttal, with submarkings at pages 27-30 as Exhibits L-1 to L-4  
<sup>157</sup> TSN dated January 23, 2023, pp. 78-79  
<sup>158</sup> Id., p. 80  
<sup>159</sup> TSN dated February 6, 2023  
<sup>160</sup> Id., p. 9  
<sup>161</sup> Id.  
<sup>162</sup> Id., p. 13  
<sup>163</sup> TSN dated February 6, 2023, p. 16  
<sup>164</sup> Id., p. 28

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Office, Budget Office and Accounting Office.<sup>165</sup> He stressed that he did not receive any NOD for these transactions.<sup>166</sup> During the exit conference, the COA reminded them to make sure that the usage of funds are properly monitored and documented. Moreover, COA also reminded them to make sure that the money should stay in the trust fund.<sup>167</sup> Prior to the trust fund, all funds go to the general fund which caused the commingling of funds.

**Belina A. Concepcion**, Legislative Liaison Officer and Sales and Promotion Supervisor V of the TLRC/TRC.

In her judicial affidavit,<sup>168</sup> Concepcion testified that the duty to prepare the MOA is with the Office of the Director General as it is the Director General who is authorized to sign and enter into a MOA. She claimed that the drafting, preparation and reviewing of MOAs are not part of her functions. It is also the Office of the Director General who prepares the DV signed and approved by the following officers: the Chief or the OIC of the Budget Division, the Chief or OIC of the Accounting Division, the Director General and the Deputy Director General. She testified that the duty to prepare the checks is a function of the Cash Division and signed by the authorized signatories.

She denied conspiring in the examination and verification of accreditation and qualification of KKKFI. The negotiation for the implementation of the projects as well as the rates of service fees, cost of livelihood materials are conducted at the Office of the Director General.<sup>169</sup> When documents for PDAF projects are forwarded from the Office of the Director General to her office, the NGOs are already selected/provided. It is her understanding that it is the Office of the Director General which has the duty to examine the accreditations and qualifications of NGOs.<sup>170</sup>

She was the Officer-in-Charge of the Sales and Marketing Division/Technology and Livelihood Information Dissemination Service Group, and concurrent LLO. She was employed with TLRC/TRC from 1989 to 2015. She identified copies of her Job

<sup>165</sup> Id., p. 32

<sup>166</sup> Id., p. 34

<sup>167</sup> Id., p. 35

<sup>168</sup> Records, Vol. V, pp. 295-316

<sup>169</sup> Id.

<sup>170</sup> Id., pp. 298-299

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Description,<sup>171</sup> Appointment as Sale & Promotion Supervisor,<sup>172</sup> Memorandum, dated January 10, 2006,<sup>173</sup> and Memorandum Order No. 07.<sup>174</sup>

As LLO, she checked documents forwarded from the Office of Director General if the supporting documents stated in the checklist of PDAF projects are complete. If so complete, she prepares a recommendation memorandum for the release of the PDAF to implement these projects, and for the initial processing of the documents for the PDAF transactions.

After March 2007, Concepcion was appointed as Sales and Promotion Supervisor V. In such capacity, she prepares marketing plans, promote, market and sell TLRC/TRC products and services. Sometime in the third week of March 2007, and prior to the implementation of the subject livelihood projects and its monitoring, she received a Memorandum, dated March 7, 2007,<sup>175</sup> issued by Ortiz, discharging her of her concurrent post as LLO and she was replaced by Ma. Rosalinda Lacsamana.

She denied having any participation in the implementation of PDAF funded livelihood projects. She did not prepare or reviewed MOAs as it was another office that prepares and reviews MOAs to be signed by Ortiz. Furthermore, she claimed that she did not sign nor affix her initials in the subject MOA nor was she involved in its drafting and preparation.<sup>176</sup>

In relation to the Memorandum recommending the release of PDAF funds, she made the said "recommendation because the documents submitted were in accordance with the MOA among the TLRC/TRC, the Legislator and the NGO, and also because all the documents stated in the checklist for PDAF funded livelihood projects are complete and in proper order.<sup>177</sup> Before she issued her recommendation she checked whether all the documents stated in the checklist were submitted and she found all the documents are complete and in proper order and in accordance with existing office circulars such as Office Circular Nos. 000P009 and 000P100.<sup>178</sup> Her

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<sup>171</sup> Exhibit 1 (Concepcion)

<sup>172</sup> Exhibit 2 (Concepcion)

<sup>173</sup> Exhibit 3 (Concepcion)

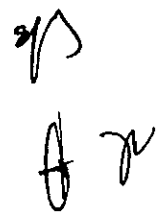
<sup>174</sup> Exhibit 4 (Concepcion)

<sup>175</sup> Exhibit 5 (Concepcion)

<sup>176</sup> Id., pp. 300-301

<sup>177</sup> Id., p. 301

<sup>178</sup> Id.

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recommendation is subject to the review of the Legal Department and approved by the Office of the Director General.<sup>179</sup> She identified Memorandum Circular No. 000P0099, dated September 3, 2007,<sup>180</sup> and Memorandum Circular No. 000P100.<sup>181</sup>

The documents passed the audit of the COA resident auditor. During the period in question, the resident auditor did not issue any adverse audit observation regarding the implementation of the livelihood projects of all PDAF projects.<sup>182</sup>

On cross examination, Concepcion testified that she was employed at TLRC/TRC from December 1989 until October 31, 2015 when TLRC/TRC was abolished.<sup>183</sup> She was designated as the LLO by Ortiz on January 10, 2006.<sup>184</sup> She confirmed that under Memorandum Order No. 7, the Legislative Liaison Office was reactivated and/or organized to be directly under the Office of the Director General and that she reports directly to the Director General. She, however, denied that part of her functions as LLO is to establish close working relationships with Congressional offices.<sup>185</sup> She was not able to comply with the Memorandum Order No.7 because of the lack of personnel and budget of TLRC/TRC.<sup>186</sup> She did not coordinate, monitor and liaise facilitation of partnership programs or projects with Congressional Districts. She checked the documents forwarded to the Office of the Director General and performed functions as instructed by Ortiz.<sup>187</sup> If the documents are complete, she would then issue a recommendation Memorandum for the release of the PDAF.<sup>188</sup> She confirmed that when she prepared and signed the Memorandum, dated February 26,2007, she signed in her capacity as the LLO and OIC Division Chief of the Sales and Marketing Division. She made sure that all of the required documents are present before she signed the release memorandum.<sup>189</sup> She knew when she recommended the release of the PDAF to KKKFI that it was in existence for only six (6) months.<sup>190</sup> It is not part of her function as LLO to check if KKKFI has the

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<sup>179</sup> *Id.*

<sup>180</sup> Exhibit 6 (Concepcion)

<sup>181</sup> Exhibit 7 (Concepcion)

<sup>182</sup> *Id.*, p. 302

<sup>183</sup> TSN dated February 20,2023, pp. 13-14

<sup>184</sup> *Id.*, p. 16

<sup>185</sup> *Id.*, p. 19

<sup>186</sup> *Id.*, p. 20

<sup>187</sup> *Id.*, p. 22

<sup>188</sup> *Id.*, p. 23

<sup>189</sup> *Id.*, pp. 24-27

<sup>190</sup> *Id.*, p. 37

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capability to implement the project.<sup>191</sup> She cannot remember if she has read or checked the different provisions of the MOA. Office Circulars No. 000P0099 and 000P0100 were issued after she was replaced as the LLO in March 2007.<sup>192</sup>

On redirect examination, Concepcion claimed that she was not able to establish close connection and strong linkages with the Congressional offices as all transactions were within the Office of the Director General.<sup>193</sup> Memorandum Order 7 pertains to projects that TLRC/TRC should implement. In these cases, TLRC/TRC only became a conduit and did not in itself implement the PDAF projects. During her term, there was no reactivation of the LLO and that the Office Circulars were not yet in effect.<sup>194</sup>

On re-cross examination, she said that she was performing basic functions and not all of the functions stated in the Office Circulars.<sup>195</sup>

**Marivic V. Jover**, Chief Accountant/Division Chief IV of the Accounting and Billing Division of TLRC/TRC.

By way of judicial affidavit,<sup>196</sup> Jover testified that she was the Division Chief IV of the Accounting and Billing Division of TLRC/TRC<sup>197</sup> from March 29, 2009 until October 31, 2015. As Division Chief, her duties and functions include monitoring accounting functions of the Center, certifying DVs as to availability of funds, preparation of financial reports for submission to the management of TLRC/TRC and other duties.<sup>198</sup> Jover also ensures that all accounting transactions are in compliance with the COA accounting guidelines. Her functions do not include procurement, operation, audit and cash/check preparations and release.<sup>199</sup>

In relation to the implementation of PDAF projects, her duty relates only to the financial matters of the PDAF and not its implementation. The accounting division complies with the process as provided in Office Circular No. 00FN0059.<sup>200</sup> The accounting

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<sup>191</sup> Id., p. 38

<sup>192</sup> Id., p. 44

<sup>193</sup> Id., pp. 58-59

<sup>194</sup> Id., p. 60

<sup>195</sup> Id., pp. 65-66

<sup>196</sup> Records, Vol. V, pp. 349-372

<sup>197</sup> Exhibit 1- Jover

<sup>198</sup> Records, Vol. V, p. 351

<sup>199</sup> Id.

<sup>200</sup> Id., pp. 351-352

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division becomes involved in the process after the signatory to Box A of the DV had already certified the lawfulness of the intended project.<sup>201</sup> The accounting division then will accomplish the accounting entries box, assign and stamp number to the DVs and check if the required supporting documents are complete. Thereafter, Jover will make a certification in Box B of the DV when the required supporting documents are complete. In the said certification, Jover certifies the (1) availability of funds; (2) that the expenditure is properly certified; (3) that the expenditure is supported by documents; (4) that account codes are proper; and (5) that previous cash advance if any, has been liquidated or accounted for.<sup>202</sup> Jover identified DV No. 012007030435, subject of these cases.<sup>203</sup>

The basis for certifying the availability of funds are the TLRC/TRC official receipt which evidenced the receipt of funds from the Bureau of Treasury, SARO or the NCA as these documents prove the availability of funds. The certification that the expenditure is properly certified and supported by documents means that the PDAF transactions were endorsed by the requesting unit, who was the one who certified that the expenses are necessary, lawful and incurred under his direct supervision. Jover checks if the DV is supported by the endorsement letter of the concerned legislator and the Memorandum of Agreement.<sup>204</sup> She also checks the supporting documents attached to the DVs, such as the SARO, NCA, TLRC/TRC Official Receipt, signature on Box A of the requesting unit, endorsement letter of the legislator and MOA.<sup>205</sup>

When the subject DV in this case was forwarded to her office, she saw to it that the authorized officer certified that the expenses incurred was necessary, lawful and incurred under his/her direct supervision. She also observed that the required supporting documents are all in order. The certification that the account codes are proper meant that PDAF transactions were recorded under Trust Liabilities CDF/PDAF, with account code of 8-84-923. Thus, if the expenditure was properly recorded under the said account code, she will certify that the account codes are proper. Provided that the transaction was already certified by the signatory of box A and was

<sup>201</sup> Id., p. 352  
<sup>202</sup> Id.  
<sup>203</sup> Exhibit 2-Jover  
<sup>204</sup> Exhibit 3-Jover  
<sup>205</sup> Records, Vol. V, pp. 352-353

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supported by documents, she had no choice but to affix her signature as per Office Circular No. OOFN0059.<sup>206</sup>

As Division Chief IV of the Accounting and Billing Division of TLRC/TRC, the duties of her office were limited only to the financial aspects of the project. As such, the questions on funding legality and regularity are limited only on her expertise as an accountant, that is that the funds were sourced legally from the Bureau of Treasury through a SARO or the NCA.<sup>207</sup> She based her certification in Box B of the subject DVs on the supporting documents as prescribed by the office circulars. If the documents were complete, she will affix her signature and forward the DV and its attachments to the Internal Audit Office for auditing.<sup>208</sup> Her functions as the Chief Accountant became ministerial in nature as she only checks whether the documents submitted were complete.

On cross-examination,<sup>209</sup> Jover admitted that she did not verify if KKKFI was chosen through public bidding or if there was a Bids and Awards Committee created for the purpose of accrediting KKKFI. No public bidding was conducted on this transaction. It was the requesting unit signatory of Box A, accused Cunanan, who accredited the KKKFI.<sup>210</sup> She did not check if the MOA contained provisions on the following : (1) visitorial audit by the officials and personnel of the COA; (2) Equity requirement of 20% by the NGO of the total contract cost, and (3) schedule of periodic inspection or evaluation.<sup>211</sup>

Concepcion is the LLO who issued the release memorandum and has the duty to check the corporate profile of KKKFI.<sup>212</sup> The amount of ₱ 4,800,000.00 was transferred to KKKFI in one instance and not in three tranches.<sup>213</sup> The COA auditor assigned to TLRC/TRC did not issue any disallowance in this particular transaction.<sup>214</sup>

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<sup>206</sup> Exhibit 4-Jover

<sup>207</sup> Records, Vol. V, p. 354

<sup>208</sup> Id., p. 355

<sup>209</sup> TSN dated March 6, 2023

<sup>210</sup> Id., pp. 14-15

<sup>211</sup> Id., pp. 15-16

<sup>212</sup> Id., p. 19

<sup>213</sup> Id., p. 20

<sup>214</sup> Id., p. 25

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Accused Cunanan,<sup>215</sup> Concepcion<sup>216</sup> and Jover<sup>217</sup> formally offered their respective documentary evidence to which the prosecution orally raised its objections. The Court ruled to “admit Exhibits 1 to 1-C-Cunanan and 12- to 12-A-Cunanan; and deny admission of the rest of accused Cunanan’s exhibits. The Court also ruled to admit all exhibits offered by accused Concepcion and accused Jover.”<sup>218</sup>

By way of rebuttal evidence, the prosecution presented Jacqueline Santiago from the Bureau of Treasury

**Jacquiline Santiago**, Chief Treasury Operations Officer I and Officer-in-Charge of the Fiscal Planning and Assessment Division of the Bureau of Treasury.

By way of judicial affidavit,<sup>219</sup> Santiago testified that she has been the OIC of the Fiscal Planning and Assessment Division of the Bureau of Treasury since 2013.

As the OIC, her main duties and functions include the assessment of the fiscal position of the national government, preparation of Cash Operations Report, including reports on revenues, expenditures, financing, and national government subsidies. The report on the national government subsidies include releases to national government agencies (NGAs), government own and controlled corporations (GOCCs), and local government units (LGUs).

The basis of the report for the release of national government subsidies to GOCCs came from the Journal Entry Vouchers based on budgetary documents from the DBM based on the GAA, and consolidated reports on subsidy to GOCCs from the Miscellaneous Accounts, Accounting Division, and Report of Advice to Debit Account Issued from the Asset Management Service, Cash Custodial Division. The reports were then submitted to the Director, for review and approval, then to the Deputy Treasurer for Research Service for recommending approval and then to the Treasurer for approval. After its approval, the reports are then transmitted to the DBM, DOF and NEDA for vetting, clearance and approval for

<sup>215</sup> Records, Vol. V, pp. 418-426  
<sup>216</sup> Id., pp. 410-426  
<sup>217</sup> Id.  
<sup>218</sup> Order, dated March 20, 2023, Records, Vol. V, p. 430  
<sup>219</sup> Records, Vol. VI, pp. 420-423

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release. After the approval of the said agencies, they secure approval from the Treasurer for posting and release of reports. The Statistics Data Analysis Division, Research Service, will then post the reports in the website, while the Operations Planning Division will release the reports to the press in the form of a press release, which is also posted in the website.<sup>220</sup>

Santiago testified that she received a subpoena directing her to submit a certified true copy of the Cash Operations Report on the National Government Subsidy to GOCCs and to appear for a witness conference. Santiago then submitted and identified to the Court a Certified True Copy of the Cash Operations Report on the National Government Subsidy to GOCCs.<sup>221</sup>

THE FACTS

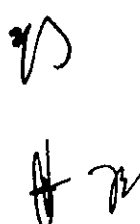
Based on the evidence adopted and presented, and the stipulations between the prosecution and the accused, the Court finds the facts below.

At the time material to the cases, all the accused were public officers employed with the TLRC/TRC. Accused Ortiz was the Director General, accused Cunanan was the Deputy Director General, accused Concepcion was the Sales and Promotion Supervisor V, and accused Jover was the Chief Accountant. Accused Soriano was the Project Coordinator of KKKFI.

The DBM issued SARO No. ROCS-07-00428,<sup>222</sup> dated January 12, 2007, in the amount of ₱5,000,000.00 as financial assistance for the livelihood program in the 1<sup>st</sup> District of Palawan.

On February 1, 2007, the DBM issued Notice of NCA No. 3143162-2<sup>223</sup> in the amount of ₱5,000,000.00 to cover the cash requirements of TLRC/TRC for livelihood projects in the 1<sup>st</sup> District of Palawan as authorized under SARO No. ROCS-07-00428, dated January 12, 2007, issued upon the initiative of Cong. Alvarez, chargeable against his PDAF.

<sup>220</sup> Id.  
<sup>221</sup> Exhibit I  
<sup>222</sup> Exhibit A-49  
<sup>223</sup> Exhibit A-51



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On February 1, 2007, the DBM issued the ANCAI<sup>224</sup> to the Bureau of Treasury (BTr) pertaining to the issuance of NCA No. 314316-2,<sup>225</sup> notifying Landbank, Intramuros branch, that the amount of ₱10,000,000.00 be credited to MDS Sub-Account No. 2001-90167-3. As such, TLRC/TRC received the total amount of ₱5,000,000.00 from the PDAF allocation of Cong. Alvarez, covered by SARO No. ROCS-07-00428, as evidenced by OR No. 5295286,<sup>226</sup> dated February 20, 2007.

Cong. Alvarez then sent a letter, dated February 19, 2007,<sup>227</sup> to TLRC/TRC, endorsing KKKFI to implement the livelihood projects in his Congressional District relative to NCA No. 314316-2 under SARO No. ROCS-07-00428.

Consequently, TLRC/TRC through accused Ortiz, Cong. Alvarez through his Chief of Staff Jeb Bundang, and KKKFI through accused Soriano, entered into and signed an undated MOA.<sup>228</sup> Accused Jover also signed at the bottom of the said MOA under the entry "Certified Fund Available" with a date beside her signature.

The MOA states the Scope, Responsibilities and Obligations of the Parties (KKKFI and TLRC/TRC), as well as the Project Duration, as follows:

A. The TLRC shall:

- Transfer the amount of **Five Million Pesos**, Philippine currency from the Representative's allocation from PDAF to the **NGO** in accordance with the following schedule per COA Circular #96-003 dated 27 February 1996.

One Hundred Percent (100%) of the program cost of the amount of *Five Million Pesos* (P5,000,000.00) shall be transferred and made available to the NGO upon approval and signing of the MOA, less three percent (3%) service fee due to the TLRC equivalent to *One Hundred Fifty Thousand Pesos* (P150,000.00) and one percent (1%) or equivalent to *Fifty Thousand Pesos* (P50,000.00) for the cost of video and printed materials or a net due of *Four Million Eight Hundred Thousand Pesos* (P4,800,000.00);

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<sup>224</sup> Exhibit A-50

<sup>225</sup> Exhibit A-51

<sup>226</sup> Exhibit A-59

<sup>227</sup> Exhibit A-52

<sup>228</sup> Exhibit A-60

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- Provide necessary technical assistance to the **NGO** to ensure that the basic program standards/objectives are met;
- To monitor the status of the program as well as the utilization of the fund and to regularly make coordination and consultation with the **Office of Representative** and the **NGO** regarding the implementation of the project;
- Demand the refund of all unused funds or savings after the project completion;

### B. The **NGO** shall:

- Prepare and submit a work and financial plan as a requirement to transfer of funds;
- Take full responsibility in the proper disposition/disbursement of funds for the implementation of its projects, in accordance with COA rules and regulations;
- Maintain a separate bank account for the fund released by the **TLRC**;
- The Official of the organization shall be solidarily liable with the **NGO** for damages to the **TLRC** in the event that the **NGO** failed to comply with its obligations under this Agreement for misappropriation of project fund, or for failure to liquidate the same. In all cases, the **NGO** shall be held responsible for reimbursement of unutilized project fund under this Agreement;
- Refund to the **TLRC** any unused funds or savings generated after the project is completed.
- Regularly coordinate with **TLRC** regarding the implementation of the project.
- Refund to the **TLRC** any unused funds or savings generated after the project is completed.
- Regularly coordinate with **TLRC** regarding the implementation of the project.

**Duration of Project** – The project will be implemented for one year period from January 12, 2007 to January 12, 2008.<sup>229</sup>

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<sup>229</sup> Exhibit A-60

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The Project Proposal,<sup>230</sup> was entitled “Upgrading Economic Standards Through Various Livelihood Projects,” with Cong. Alvarez as the Project Proponent; KKKFI as the project implementor; and the TLRC/TRC as the project partner.

The Work and Financial Plan,<sup>231</sup> signed by accused Soriano of KKKFI, showed the following details:

Table 1. Work and Financial Plan

PROGRAMS	OBJECTIVES	TARGET/ACTIVITIES	TARGET DATE	BUDGET
1. Business Clinics/ Market Development	To extend technical and business advisory assistance for entrepreneurship and marketing	Actual conduct of business clinics market development packaging	1 <sup>st</sup> Quarter of 2007	P4,8000,000.00
2. Instructional Materials – Livelihood Technology Kits (Volume I-V)	To prepare beneficiaries on the procedures in the application of the technology kits.	Distribution to the beneficiaries as identified by the NGO & the Office of Cong. Alvarez	1 <sup>st</sup> Quarter of 2007	
3. Livelihood Materials (TLRC)	To provide beneficiaries with the materials on livelihood for income generation.	Distribution of materials to qualified beneficiaries	1 <sup>st</sup> Quarter of 2007	50,000.00
4. Management Fee (TLRC)				150,000.00
TOTAL				P5,000,000.00

TLRC/TRC released the full amount of ₱4,800,000.00 to KKKFI as evidenced by DV No. 012007030435,<sup>232</sup> signed by accused Ortiz, Cunanan and Jover. The TLRC/TRC retained 3% of ₱5,000,000.00, or ₱150,000.00, for TLRC/TRC’s Service Fee, and 1% or ₱50,000.00 for Cost of Livelihood Materials. The following individuals signed the DV:

Signatories	Designation	Remarks
Dennis L. Cunanan	TLRC Deputy Director General	Certified that expense/cash advance necessary, lawful and

<sup>230</sup> Exhibit C-13

<sup>231</sup> Exhibit C-8

<sup>232</sup> Exhibit A-62

Handwritten signature and initials.

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		incurred under his direct supervision
Allen T. Baysa	TLRC Officer-in-Charge, Budget Division	Certified that expense was within budget
Marivic V. Jover	TLRC Officer-in-Charge, Accounting Division	Certified adequate available funds/budgetary allotment in the amount of P4,800,000.00, expenditure properly certified; supported by documents marked (x) per checklist on back hereof; account codes proper; previous cash advance liquidated/accounted for.
Antonio Y. Ortiz	TLRC Director-General	Approved the release of the P4,800,000.00/signed Check No. 0000850372
Joel Soriano		Under the entry "Received From" and over the entry "Kalinga Sa Kapwa at Kalikasan Foundation Inc. Printed Name & Signature of Claimant Representative

TLRC/TRC issued Landbank Check No. 0000850372<sup>233</sup> to KKKFI in the total amount of ₱4,800,000.00, representing the release of financial grants from the PDAF of Cong. Alvarez for livelihood projects. Thereafter, KKKFI issued Official Receipt No. 0053,<sup>234</sup> dated March 13, 2007.

Between the period June 15, 2010 and September 13, 2012, the COA-SAO conducted a government-wide performance audit of the allocation and utilization of the PDAF of legislators including its releases and utilization by the implementing agencies for the years 2007 to 2009. Among the funds covered by the said special audit is the PDAF allocation of Cong. Alvarez of the 1<sup>st</sup> District of Palawan.

As a result of the special audit, COA-SAO Report No. 2012-03 was issued containing the results of the audit allocation and utilization of PDAF of legislators, including that of Cong. Alvarez, as well as the implementation of projects/programs of covered agencies, including TLRC/TRC.

<sup>233</sup> Exhibit A-63

<sup>234</sup> Exhibit A-64

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On October 26, 2015, COA-SAO issued a Notice of Disallowance (NOD) No. TRC-2015-036-PDAF (07-09).<sup>235</sup> Based on the NOD, the audit covers the release by the DBM, thru the Bureau of Treasury, to TLRC/TRC of SARO No. ROCS-07-00428, dated January 12, 2007, in the amount of ₱5,000,000.00, out of the PDAF of former Cong. Alvarez, and the subsequent transfer by TLRC/TRC of ₱4,800,000.00 to KKKFI. In the NOD, the COA discussed the results of the audit of the subject transaction as follows:

- SARO and the NCA were released by the DBM to TLRC in the absence of documents required under DBM NBC No. 476 to be submitted by TLRC to DBM as implementing agency (IA). As provided therein, the project profile and endorsement by IA shall serve as the basis for the DBM to release SARO and corresponding NCA. While none of these requirements were submitted by TLRC to the DBM, SARO and NCA were nonetheless released by the DBM. The project profile duly endorsed by the IAs is critical for the successful implementation of PDAF funded projects as the implementation of the projects would be over and above the programmed activities of IA.
- Of the amount received by TLRC without its endorsement, ₱4.80 Million was merely transferred to KKKFI, a non governmental organization (NGO), when NGOs were not among those identified in the GAA for the year 2007 as implementing arms of PDAF projects and there was no PDAF earmarked in the GAA for the implementation by NGOs. The transfer, which was covered by a Memorandum of Agreement (MOA) with TLRC Director General Antonio Y. Ortiz and KKKFI Project Coordinator Joel L. Soriano, and concurred by Mr. Jeb Bundang, Chief of Staff of Congressman Antonio C. Alvarez, as signatories, is therefore considered without legal basis.
- The selection of NGO, for those allowed under the law, is subject to the guidelines to be issued by the Government Policy Procurement Board (GPPB) as required in the President's Veto Message for FY 2007 GAA, and those prescribed under COA Circular No. 96-003. The fund was, however, transferred even before the issuance by the GPPB of the required guidelines while the provisions under COA Circular No. 96-003 were not at all observed as discussed below:
  - As prescribed under Item 3.3.2 thereof, the NGO shall be required to submit among others, financial statements for at least three years operation to ensure that it has a stable financing condition and has proven experience in fund management. Under this criterion alone, KKKFI would not

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<sup>235</sup> Exhibit C-17

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qualify as it was incorporated only on August 4, 2006 or 221 days when the check (was) released to KKKFI on March 13, 2007;

- Under Item 4.1 of COA Circular No. 96-003, TLRC shall accredit the NGO after proper verification and validation of required documents and statements. There were no documents to show that these processes were at all undertaken. Rather, an undated MOA was entered into with KKKFI upon the request by the legislator to KKKFI to implement the project in his letter dated February 19, 2007;
- The schedule of releases of funds to NGOs prescribed under COA Circular No. 96-003 to be in three tranches for projects costing more than ₱300,000 was totally ignored. As prescribed therein, 15 percent shall be released upon approval and signing of the MOA, 35 percent after 50 percent project completion, and 50 percent upon completion of the project, subject to the favorable evaluation/inspection by the GO of the results of the previous release. The full amount of ₱4.80 Million was, however, released under Check No. 850372 dated March 13, 2007 and remained unliquidated as of audit date; and
- The MOA did not include provisions on the following, among others:
  - System and procedures for project implementation such as, but not limited to, the procurement of goods and services by the NGO;
  - Time schedules for periodic reporting, monitoring and inspection requirements; and
  - List of beneficiaries.
- KKKFI did not confirm its transaction and did not submit additional documents being requested by the Audit Team. Moreover, its capability as well as of its officers and employees to implement the project was not established by TRC as this NGO was incorporated only on August 4, 2006, or in existence for only about six months when the fund was released to the NGO. The Project Coordinator, Mr. Joel L. Soriano, is also connected to other NGOs, Kasangga sa Magandang Bukas Foundation, Inc, as Incorporator/Board of Director, and Buhay Mo Mahal Ko Foundation, Inc. as Board of Trustee/Treasurer
- Worse, there were no documents to show that KKKFI implemented the project as there were no liquidation documents submitted. The funds transferred remained unliquidated as of audit date.

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- As indicated in the Project Proposal, the fund was intended to procure livelihood instructional materials for distribution to qualified families in the 1<sup>st</sup> District of Palawan. The specifications and quantities of the instructional materials to be procured, livelihood projects to be implemented and period of implementation, and targeted beneficiaries were not indicated in the project proposal.
- Former Congressman Alvarez did not respond to the Audit Team's request for him to confirm the authenticity of his signatures in the documents subject of this ND.
- The utilization of ₱0.200 Million retained by TLRC as service fee for technical assistance and learning materials cannot also be accounted for as it was not documented.<sup>236</sup>

On March 1, 2017, the Field Investigation Office (FIO) filed a Complaint<sup>237</sup> with the OMB, for violation of Section 3(e) of RA 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and for Malversation of Public Funds, defined and penalized under Article 217 of the Revised Penal Code, in connection with the illegal utilization of the PDAF allocation of Cong. Alvarez, against Cong. Alvarez, Antonio Y. Ortiz, Dennis Lacson Cunanan, Belina A. Concepcion, Marivic V. Jover and Joel L. Soriano.

Under date March 2, 2018, the OMB issued a Resolution,<sup>238</sup> finding probable cause against Cong. Alvarez, accused Ortiz, Cunanan, Concepcion, Jover and Soriano for (1) Malversation of Public Funds, under Article 217 of the Revised Penal Code, and (2) for violation of Sec. 3(e) of RA 3019.

In its Order, dated June 25, 2018,<sup>239</sup> the OMB denied the separate motions for reconsideration filed by accused Jover, Cunanan and Concepcion. However, in its Order, dated February 18, 2019,<sup>240</sup> the OMB granted Cong. Alvarez's motion for reconsideration, and dismissed the complaint as to him.

As stated in the antecedents, on November 23, 2021, the Informations for violation of Section 3(e) of RA 3019, as amended,

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<sup>236</sup> Id.

<sup>237</sup> Records, Vol. 1, p. 50

<sup>238</sup> Id., p. 12

<sup>239</sup> Id., p. 33

<sup>240</sup> Id., p. 40

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and for Malversation of Public Funds under the RPC were filed with this Court against the above-named accused.

Upon being arraigned, accused Cunanan, Concepcion and Jover pleaded not guilty to the charges against them. Pre-trial was set and conducted. Thereafter, trial ensued.

Hence, this Decision.

## **DISCUSSION**

The prosecution charges the abovenamed accused of violation of Section 3(e) of RA 3019 and Malversation of Public Funds defined and penalized under Article 217 of the RPC. The following discussion shall be limited to the participation of accused Cunanan, Concepcion and Jover only. Should the names of accused Ortiz and Soriano, who are still at large, be inevitably mentioned, it is only to lend completeness to the narration of events and will not ascertain their culpabilities, if any.

### **CRIMINAL CASE NO. SB-21-CRM-0102**

Section 3(e) of RA 3019 provides:

**Section 3. *Corrupt practices of public officers.*** In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

To constitute a violation of Section 3(e) of RA 3019, the following essential elements must be proved:

1. That the accused must be a public officer discharging administrative, judicial, or official functions;

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2. That he/she acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and

3. That his/her action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his/her functions.<sup>241</sup>

The Information alleges that accused Ortiz, Cunanan, Concepcion, and Jover, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, conspiring and confederating with one another, together with accused Soriano, did then and there willfully, unlawfully and criminally, cause undue injury to the government, and give Soriano and KKKFI unwarranted benefits, privilege and advantage in selecting KKKFI without the required public bidding and/or conducting proper accreditation to qualify KKKFI, in the amount of Four Million Eight Hundred Thousand Pesos (P4,800,000.00).

The first element is present. As stipulated by the parties, the accused are all public officers at all times material and relevant to the present case. Accused Ortiz, Cunanan, Concepcion and Jover were all discharging administrative and/or official functions when P4,800,000.00 of Cong. Alvarez's PDAF allocation was released to KKKFI for the supposed implementation of his livelihood projects.

The second element, *i.e.*, that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence, is also present. In *Fuentes v. People*,<sup>242</sup> citing *Coloma v. Sandiganbayan*,<sup>243</sup> the Supreme Court explained the second element of Section 3(e) of RA 3019 as follows:

As to the second element, it is worthy to stress that the law provides three modes of commission of the crime, namely, through "manifest partiality," "evident bad faith," and/or "gross negligence." In *Coloma, Jr. v. Sandiganbayan*, the Court defined the foregoing terms as follows:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some

<sup>241</sup> *Consigna v. People of the Philippines*, G.R. No. 175750-51, April 2, 2014

<sup>242</sup> G.R. 186421, April 17, 2017

<sup>243</sup> 744 Phil 214 (2014)

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moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

In other words, there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "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 or self-interest or ill will or for ulterior purposes.

There is manifest partiality, evident bad faith or at the very least gross inexcusable negligence on the part of accused Cunanan, Concepcion and Jover when in wanton disregard of established rules, policies and regulations of the DBM, COA and GPPB, they allowed the anomalous disbursement to KKKFI of the amount of ₱4,800,000.00. They likewise omitted that care in safeguarding government funds which even inattentive and thoughtful persons never fail to take on their own property. Such negligence was characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.

It bears to stress that the 2007 GAA does not include NGOs as implementing arms of the PDAF projects. It is the TLRC/TRC that is identified in the 2007 GAA as one of the agencies authorized to implement PDAF projects. Moreover, at the time material to these cases, there was no appropriation law earmarking an amount to be specifically contracted out to NGOs like the KKKFI.<sup>244</sup>

As a general rule, all procurements must be done through competitive public bidding, except as provided under alternative modes of procurement.<sup>245</sup> Procurement of the services of an NGO that will implement a PDAF project is not one of the alternative

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<sup>244</sup> Exhibit B

<sup>245</sup> Section 10, RA 9184

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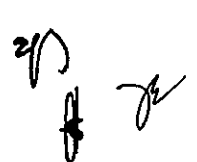
modes of procurement. Accused Ortiz, Cunanan, Concepcion and Jover should have followed and complied with the said law where other NGOs could have participated in accordance with the provision of RA 9184, and its implementing regulation. It is undisputed in this case that no such competitive public bidding was conducted and the accused unilaterally selected KKKFI as project partner for the implementation of the livelihood projects.

The participation of NGOs in public procurements is governed by COA Circular No. 96-003. The said circular provides for the accounting and auditing guidelines on the release of fund assistance to NGOs. Under this Circular, NGOs are required to undergo strict accreditation procedures before it may be allowed to participate in the implementation of government projects. The relevant provisions of COA Circular No. 96-003 for the extension of fund assistance to NGOs states that:

### **3.0 GENERAL GUIDELINES**

The following are the general guidelines in the extension of the fund assistance to the NGO/PO:

- 3.1 The project shall be included in the WFP and budget of the GO. If the fund assistance will be charged to savings or trust receipts received for the purpose, such utilization shall be approved by proper authorities.
- 3.2 The NGO/PO shall be accredited by the GO. In the case of non-regularly-funded GOs which generate their funds out of donations and shares from other GOs like the Presidential Management Staff with respect to the President's Social Fund, the implementing GOs shall set the minimum requirements/criteria for the selection of the NGO/PO project partners as stipulated in each program guideline.
- 3.3 The following shall be the requirements for the NGO/PO accreditation:
  - 3.3.1 Certificate of registration with the Securities and Exchange Commission (SEC), and/or with either the Cooperatives Development Authority (CDA) or the Department of Labor and Employment (DOLE), as the case may be, depending on the nature of the service required or to be rendered. This is to ensure that the NGO/PO has a legal personality, has officers who are responsible and



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accountable for its operations, and is based in the community where the project shall be implemented.

3.3.2 Financial statements for at least three (3) years operation to ensure that:

- it has a stable financial condition so that the fund assistance shall not be its sole source of funds; and
- it has proven experience in fund management so that the grant shall be managed efficiently and economically.

3.3.3 For NGO/PO which has been in operation for less than 3 years, proof that it had previously implemented similar projects and a certificate from LGU concerned attesting to the credibility and capability of the officers and staff of the NGO/PO shall be submitted in lieu of financial statements.

3.3.4 List of projects it has previously undertaken to show its experience and expertise in implementing the project to be funded.

3.4 The GO and the NGO/PO shall enter into a Memorandum of Agreement (MOA) or similar document, incorporating the following requirements:

3.4.1 Project statement including identification of beneficiaries;

3.4.2 Standards for project implementation by the NGO/PO and acceptance by the GO to include completion date;

3.4. Systems and procedures for project implementation such as but not limited to, the procurement of goods and services by the NGO/PO and the schedule of release of the fund assistance by the GO. In the development of the system and procedures, the GO and the NGO/PO shall be guided by generally accepted management principles for economical, efficient and effective operations;

3.4.4 Project cost estimates and time schedules; and

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### 3.4.5 Reporting, monitoring and inspection requirements.

- 3.5 In the course of implementation, and as the need demands, amendment(s) of the MOA shall be made for any change(s) in the provisions.
- 3.6 During the effectivity of the MOA, the NGO/PO shall not use the funds for money market placement, time deposit and other forms of investments not related to the project.
- 3.7 For infrastructure projects, the NGO/PO shall post a performance security in the form of a surety bond callable on demand, issued by the Government Service Insurance System (GSIS) or any insurance company duly accredited by the Office of the Insurance Commission equivalent to 30% of the total fund assistance. If the project is not completed within 90 days after the prescribed completion date, the bond shall be forfeited.
- 3.8 The fund assistance shall be released as follows:
- 3.8.1 If the project is for implementation within a period of three (3) months, the assistance shall be released as follows:
- 3.8.1.1 For projects of P300,000 or less, assistance may be released in full.
- 3.8.1.2 For projects of more than P300,000, release may be made in three tranches:
- **15% upon approval and signing of the MOA;**
  - **35% after 50% project completion;**
  - **50% upon completion of the project, subject to the favorable evaluation/inspection by the GO of the results of the previous release(s). (Boldface supplied)**
- 3.8.2 If the project is to be implemented for more than 3 months, the first release shall cover two (2) months operation but not to exceed 30% of the total assistance, subject to the release of the remaining balance upon submission of accomplishment reports evidenced by pictures of

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the accomplishments and/or report of inspection by the GO and certifications of receipt by beneficiaries/payrolls/invoices, etc.

- 3.9 The NGO/PO shall keep and maintain financial and accounting records for the funds in accordance with generally accepted accounting principles. They shall be subject to the visitorial audit and examination of the GO and the Commission on Audit (COA).
- 3.10 Within 60 days after completion of a project, the NGO/PO shall submit financial statements, certificate of project completion and acceptance of project by the beneficiaries or funding agencies. For projects amounting to P100,000.00 and more, the statements shall be certified to by an independent Certified Public Accountant or verified by the internal auditor of the funding agency.
- 3.11 The NGO/PO shall return any amount not utilized to the funding GO or shall request authority to use the savings for activities allied to the project, e.g., purchase of additional medicines for medical services, books for manpower development, desks and chairs for schoolbuildings, etc.

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A judicious examination of the evidence presented by the parties, will show that the foregoing requirements under COA Circular No. 96-003 were not complied with when TLRC/TRC selected KKKFI to implement the subject PDAF projects.

First, COA Circular No. 96-003 requires the submission of the following for the accreditation of the NGO: (1) Certificate of Registration with the SEC; (2) Financial Statements for at least three years to ensure that the NGO has a stable financial condition and proven existence; (3) for NGO operating for less than three years, proof that it had previously implemented similar projects and certificate from LGU attesting to the credibility and capability of the officers of the NGO; and (4) list of projects it has previously undertaken.<sup>246</sup>

However, the records show that KKKFI submitted to TLRC/TRC only the Certificate of Registration with the SEC,<sup>247</sup>

<sup>246</sup> Item 3.3 to 3.3.4 of COA Circular 96-003

<sup>247</sup> Exhibit A-54

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Cover Sheet,<sup>248</sup> Articles of Incorporation,<sup>249</sup> Treasurer's Affidavit,<sup>250</sup> and the General Information Sheet.<sup>251</sup> It is noteworthy that the Certificate of Incorporation of KKKFI<sup>252</sup> showed that it was incorporated only on August 4, 2006 or less than a year before the execution of the MOA. There was also no showing that KKKFI submitted financial statements or list of projects that it had previously implemented.

Likewise, KKKFI should not have been considered as a project partner as the COA Circular requires that the NGO project partner should be based in the community where the project will be implemented.<sup>253</sup> Based on the Articles of Incorporation of KKKFI,<sup>254</sup> its principal office is located at 136 Chateau Verde, Valley Verde I,<sup>255</sup> Pasig City. Thus, KKKFI should not have been selected as project partner of Cong. Alvarez's livelihood projects which were to be implemented in the 1<sup>st</sup> District of Palawan.

Another requirement that was not complied with is the manner of releasing the funds to KKKFI. Under Section 3.8.1.2 of COA Circular No. 96-003, the releases of funds to NGOs should be in three tranches for projects costing more than ₱300,000.00: 15% of the amount, upon approval and signing of the MOA; 35% after 50% completion; and 50% upon completion of the project, subject to the favorable evaluation/inspection by the government office of the results of the previous release(s).

In the subject transaction, however, accused Ortiz, Cunanan, Concepcion and Jover released the full amount of ₱4,800,000.00 to KKKPI just upon the signing of the MOA, and without awaiting even for the partial implementation of the project. Indeed, there is no showing that KKKPI implemented the said project, and until the present, the said amount had remained unliquidated.

Next, in violation of Section 3.4.1 of the said COA Circular, the MOA executed between accused Ortiz and accused Soriano also did not include any provision on the following: (a) Systems and

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<sup>248</sup> Exhibit A-55

<sup>249</sup> Exhibit A-56

<sup>250</sup> Exhibit A-57

<sup>251</sup> Exhibit A-58

<sup>252</sup> Exhibit A-54

<sup>253</sup> Item 3.3.1 of COA Circular No. 96-003

<sup>254</sup> Exhibit A-56

<sup>255</sup> The Third Article of the Articles of Incorporation of KKKFI (Exhibit E-2) states that its principal office is at Valley Verde I, Pasig City, while the MOA (Exhibit A-60) shows that KKKFI's principal office is at Valle Verde, Pasig City.

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procedures for project implementation, such as, but not limited to, the procurement of goods and services by the NGO; (b) Time schedules for the periodic reporting, monitoring, and inspection requirements; and (c) List of beneficiaries.<sup>256</sup>

The authority of KKKFI to do business and implement the subject project also appeared to be questionable as, upon verification with the BIR, the Tax Identification Number (TIN) and Authority to Print (ATP) of KKKFI is invalid and cannot be found in the BIR's database.<sup>257</sup>

Under COA Circular No. 96-003, the government office or in this case, the TLRC/TRC, should accredit the NGO after proper verification and validation of required documents and statements.<sup>258</sup> Accused Ortiz, Cunanan, Concepcion and Jover flagrantly and miserably failed to discharge this duty, and allowed the anomalous transfer of funds to KKKFI.

Accused Concepcion is the Legislative Liaison Officer (LLO) of TLRC/TRC. Her participation in the transaction was in drafting and signing the Memorandum, dated February 26, 2007,<sup>259</sup> together with accused Ortiz, which recommended the release of Cong. Alvarez's PDAF to KKKFI in the amount of ₱4,800,000.00, subject to TLRC/TRC's retention of service fees and costs of livelihood materials.

As the LLO, her duties are clearly defined by Memorandum Order No. 7, issued by accused Ortiz on June 22, 2005. As expressly provided therein, Concepcion being the LLO had the following functions:

- To establish close working relationship and strong linkages with the Congressional Offices (COs);
- To take charge and/or monitor the Priority Development Assistance Funds (PDAFs) released to TLRC and facilitate the execution of Agreements relative to the utilization of the said funds in accordance with Special Allotment Release Order (SARO);

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<sup>256</sup> Id., Sec.3.4

<sup>257</sup> Exhibit G

<sup>258</sup> Item 4.1, COA Circular No. 96-003

<sup>259</sup> Exhibit C-6

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- To offer Technology and Livelihood program packages specifically designed for Congressional District areas;
- To coordinate, monitor and liaise facilitation of partnership programs/projects with Congressional Districts; and
- To perform such other functions as the Director General may deem necessary and appropriate.

As stated in the Memorandum Order, it is the LLO who is the person in charge and must monitor the release of PDAF to TLRC/TRC and facilitate the execution of the MOAs for the utilization of funds. In the same Memorandum, accused Ortiz ordered all operating units who may have on-going projects with members of the Congress to coordinate and turn over all related documents and provide status reports to the LLO for appropriate intervention and coordination.<sup>260</sup> It is then the duty of the LLO to ensure the proper accreditation of an NGO before the issuance of the necessary Memorandum recommending the release of the PDAF to the chosen NGO.

During cross-examination, accused Concepcion admitted that she did not comply with her duties as LLO as stated in Memorandum Order No. 7, dated June 22, 2005.<sup>261</sup> She admitted that they did not conduct any form of accreditation for KKKFI. Thus:

Q: Aside from this Endorsement of Congressman Alvarez, you no longer performed any accreditation for the Non-Government Organization (NGO) Kalinga sa Kapwa at Kalikasan Foundation, Inc. (KKKFI), correct Ma'am?

A: We don't conduct po accreditation, Ma'am.

Q: You don't conduct – (Interrupted)

A: We do not conduct accreditation of Non-Government Organization (NGO), Ma'am.

As the LLO officer-in-charge, accused Concepcion should have reviewed and verified the requirements and qualifications of KKKFI before she recommended the release of the PDAF to KKKFI. Indeed, accused Concepcion miserably failed to provide sufficient justification as to why KKKFI was selected as the project partner for the livelihood projects. Had accused Concepcion observed the

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<sup>260</sup> Id.

<sup>261</sup> TSN dated February 20, 2023, pp. 16-22

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proper vigilance required of her, she would have noticed the red flags on the legal existence and qualifications of KKKFI.

Accused Ortiz, Cunanan and Jover are similarly guilty of manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence in allowing the illegal disbursement of funds to KKKFI.

The term voucher, when used in connection with disbursement of money, implies some instrument that shows on what account or by what authority a particular payment has been made, or that services have been performed which entitle the party to whom it is issued for payment. Corollarily, when an authorized person approves a disbursement voucher, he/she certifies to the correctness of the entries therein, among others: that the expenses incurred were necessary and lawful, the supporting documents are complete, and the availability of cash therefor. He/she also attests that the person who performed the services or delivered the supplies, materials, or equipment is entitled to payment.<sup>262</sup>

Accused Cunanan, by signing Box A of the disbursement voucher, certified that the expenses are necessary and lawful when in fact, the fund transfer to KKKFI has no legal basis and the selection of KKKFI was not in accordance with existing laws, rules and regulations. On cross-examination, Cunanan admitted that he did not check whether the MOA executed by accused Ortiz and accused Soriano was in compliance with COA Circular No. 96-003. Thus:<sup>263</sup>

### PROSECUTOR VIVAS

Q: So, sir, did you check if this MOA... if the release of the funds stated in this MOA was in compliance with COA Circular No. 96-003?

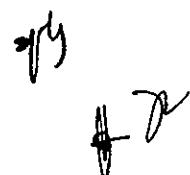
A: Again, ma'am, this document goes through our Legal and goes through the legislative... it did not emanate from my office, so I have to check if the signatories are there, if they have signed, then I sign.

Q: You did not check, sir?

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<sup>262</sup> *Zoleta v. Sandiganbayan*, G.R. No. 185224, July 29, 2015

<sup>263</sup> TSN dated January 23, 2023, pp. 60-65





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A: I checked all the signatories there, so they have signed it.

Q: No, sir. If the release of funds stated in this MOA was in compliance with COA Circular 96-003, did you check sir?

A: That is the role now of COA, not my role, ma'am.

Q: So, no, sir?

A: That's the role of COA, not mine.<sup>264</sup>

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Q: So, you no longer check if KKKFI had legal personality or has officers who are responsible and accountable for its operations and is based in the community where the project shall be implemented, correct sir?

A: Ma'am, there are offices in our office who undertakes that, not me. It's not under my office.<sup>265</sup>

The duty of signing the disbursement voucher is not a ministerial duty on the part of accused Cunanan. The duty to certify that the expenses are necessary and lawful requires wide and strict discretion so as to ensure the necessary and lawful release of public funds. Before signing the disbursement voucher, accused Cunanan should have reviewed the qualifications and legal existence of KKKFI as required under COA Circular No. 96-003. As the Deputy Director General of the TLRC/TRC and a veteran government official, accused Cunanan is familiar with government processes and as such he should have acted with more circumspect in carrying out his duties. Accused Cunanan should not have merely relied on the findings of the other TLRC/TRC officials as he should have personally verified the documents attached in the DV.

The Court also finds that accused Jover similarly exhibited manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence, by affixing her signature in the disbursement voucher without checking if the requirements were in

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<sup>264</sup> Id., p. 60

<sup>265</sup> Id., p. 68

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compliance with COA circular 96-003. Accused Jover certified the availability of funds and the completeness of the supporting documents even though the transfer of funds to KKKFI is not proper as it was not in accordance with existing laws, rules and regulations. As the Division Chief of the Accounting and Billing Division, accused Jover has the duty to ensure that all accounting transactions are in compliance/conformity with COA and TLRC/TRC policies, rules and regulations.<sup>266</sup>

As the Chief Accountant, accused Jover is also guided by COA Circular No. 92-389 cited in Office Circular No. 00FN0059, in the performance of her duties. COA Circular No. 92-389 provides that the submission of the supporting documents enumerated under each type of transaction does not preclude reasonable questions on the funding, legality, regularity, necessity or economy of the expenditure or transaction. Such questions may be raised by any of the signatories to the voucher.<sup>267</sup> Accused Jover has the duty to personally check, verify and examine the documents attached to the DV before she signs the same. By certifying the DV, accused Jover is not only certifying the availability of funds but also that the DV was properly supported by documents as required by the COA circulars. Accused Jover did not deem it necessary to raise reasonable questions when the full amount of ₱4,800,000.00 was about to be released to KKKFI notwithstanding the clear provision of COA Circular 96-003 that requires the release of funds to be in three tranches.

COA Circular 96-003 also provides for the duties and responsibilities of the government office and the NGO project partner, to wit:

#### **4.0 DUTIES AND RESPONSIBILITIES OF THE GO**

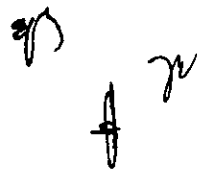
The GO shall :

- 4.1 accredit the NGO/PO after proper verification and validation of required documents and statements;
- 4.2 develop standards for project implementation and acceptance;
- 4.3 release the grant as required and record it as Cash Funds Entrusted to NGO/POs (8-70-910);

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<sup>266</sup> Exhibit A-37

<sup>267</sup> COA Circular No. 92-389, Item 3



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- 4.4 require monthly or quarterly financial and physical status reports as it deems necessary;
- 4.5 monitor and inspect project implementation and verify financial records and reports of the NGO/PO;
- 4.6 issue certificates of acceptance upon completion of the project and acceptance by its beneficiaries and take up the credit to the NGO/PO account;
- 4.7 forfeit the performance bond for non-completion and credit the proceeds as income of the GO or to the account of the NGO/PO, as the case may be;
- 4.8 request the COA for special audits of NGO/PO on a case to case basis;
- 4.9 authorize the use of savings from the assistance for prosecution of related projects;
- 4.10 demand the refund of unused funds for savings after project completion;
- 4.11 demand the refund of the disallowed amounts after financial audit;
- 4.12 institute appropriate actions against the NGO/PO for material violation of the provision(s) of the MOA.

### **5.0 DUTIES AND RESPONSIBILITIES OF THE NGO/PO**

The NGO/PO shall:

- 5.1 ensure project implementation in accordance with the MOA;
- 5.2 keep and maintain separate COMBO/savings account and subsidiary records for assistance received from each GO;
- 5.3 require beneficiaries to issue certificate of acceptance for accomplished/ completed projects;
- 5.4 submit the required financial and physical status reports;
- 5.5 submit to the GO certificate of accomplishment with required evidence, and for projects involving assistance of P100,000 or more, duly audited financial statements;

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- 5.6 return to the GO any unutilized amount or request authority to use the savings for allied activities.

It is evident from the records that even the duty to monitor the implementation of the livelihood project was not done by accused Cunanan, Concepcion and Jover. Indeed, there was no showing that the livelihood projects were implemented by KKKFI. Accused Concepcion should have reached out to KKKFI for the status and updates on the project upon the release of the funds, but did not. Accused Cunanan, Concepcion and Jover clearly likewise flagrantly disregarded their duties and responsibilities under the existing laws.

Clearly, nothing demonstrates manifest partiality, evident bad faith and gross inexcusable negligence more than the manner by which KKKFI was selected as the project partner for the implementation of the PDAF-funded project of Cong. Alvarez. Accused Cunanan, Concepcion and Jover merely relied on the letter of Cong. Alvarez requesting that KKKFI implement the livelihood projects in his District. The illegal transfer of funds to KKKFI would not have materialized if not for the indispensable roles of accused Cunanan, Concepcion and Jover.

As to the third element, accused Cunanan, Concepcion and Jover were charged to have given unwarranted benefits to KKKFI and caused undue injury to the government in the amount of ₱4,800,000.00.

The Supreme Court has consistently held that there are two ways by which a public official violates Section 3(e) of RA 3019 in the performance of his/her functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of RA 3019.<sup>268</sup>

In *Santos v. People*,<sup>269</sup> the Supreme Court held that the term "undue injury" in the context of Section 3(e) of RA 3019 punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." The Supreme Court elaborated in *Llorente v. Sandiganbayan*:<sup>270</sup>

<sup>268</sup> *Braza v. Sandiganbayan*, G.R. No. 195032, February 20, 2013

<sup>269</sup> G.R. No. 161877, March 23, 2006, 485 SCRA 185, 197

<sup>270</sup> 350 Phil. 820

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Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

In *Pecho v. Sandiganbayan*,<sup>271</sup> the Supreme Court defined the word "injury" as any wrong or damage done to another, either in his person, rights, reputation or property; the invasion of any legally protected interest of another. It must be more than necessary or are excessive, improper or illegal. It is required that the undue injury caused by the positive or passive acts of the accused be quantifiable and demonstrable and proven to the point of moral certainty.<sup>272</sup>

"Undue" means illegal, immoral, unlawful, void of equity and moderations.<sup>273</sup> The prosecution is burdened to prove the factual basis and amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party. Courts cannot simply rely on speculations, conjectures or guesswork in determining the fact and the amount of damages.<sup>274</sup>

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action.<sup>30</sup> "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.<sup>275</sup>

In these cases, the prosecution has sufficiently established that the PDAF funds released to KKKFI amounting to ₱4,800,000.00 for the implementation of the livelihood projects of the 1<sup>st</sup> District of Palawan remain unliquidated and that the livelihood project was never implemented. With the individual and collective actions of accused Cunanan, Concepcion and Jover, the funds were illegally

<sup>271</sup> G.R. No. 111399, November 14, 1994,

<sup>272</sup> *Cabrera v. Sandiganbayan*, G.R. No. 162314017, October 25, 2004

<sup>273</sup> *Id.*

<sup>274</sup> *Caugma v. People*, G.R.No. 167048, April 7, 2006

<sup>275</sup> *Cabrera v. Sandiganbayan*, G.R.No. 162314017, October 25, 2004

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released to KKKFI. The Court finds that the acts of the accused caused undue injury as defined in Sec. 3(e) of RA 3019.

The prosecution was also able to prove that accused Cunanan, Concepcion and Jover gave unwarranted benefits and advantage to KKKFI when it was selected as the project partner of TLRC/TRC in the absence of public bidding and proper accreditation of the NGO. There is no doubt that the accused gave unwarranted benefit, advantage or preference to KKKFI when it was selected as the project partner on the basis of a mere endorsement letter from the legislator and without the required public bidding and proper accreditation.

Verily, the prosecution was able to prove that (1) accused Cunanan, Concepcion and Jover were all public officers discharging official functions; (2) the acts of accused Cunanan, Concepcion and Jover in processing and releasing the PDAF to KKKFI without public bidding and proper accreditation were tainted with manifest partiality, evident bad faith or at the very least gross inexcusable negligence; and (3) the accused caused undue injury to the government in the amount of ₱4,800,000.00 and gave unwarranted benefit to KKKFI.

The Court finds that the prosecution proved the existence of conspiracy among the accused.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.<sup>276</sup>

In *Macapagal-Arroyo v. People*,<sup>277</sup> the Supreme Court held that implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same

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<sup>276</sup> *Bahilidad v. People*, G.R. No. 185195, March 17, 2010

<sup>277</sup> G.R. No. 220598, July 19, 2016

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unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.

The prosecution was able to prove beyond reasonable doubt the existence of implied conspiracy between the accused as evidenced by their respective acts and participation in the transaction. The Court is convinced that the acts of the accused were so connected and related and with the common aim of defrauding the government by allowing KKKFI to serve as a project partner of TLRC/TRC in the absence of public bidding and the required accreditation under COA Circular No. 96-003.

The singularity of intent exhibited by the accused can be deduced from the following circumstances:

By virtue of SARO No. ROCS-07-00428, dated January 12, 2007,<sup>278</sup> the DBM, through the BTr, released the amount of ₱5,000,000.00 as financial assistance for the livelihood program to be implemented by TLRC/TRC in the 1<sup>st</sup> District of Palawan. The said amount was received by TLRC/TRC as evidenced by Official Receipt No. 5295286 H dated February 20, 2007, issued by TLRC/TRC's collecting officer.

However, the DBM's release of the said fund was found to be improper. Silverio testified that the SARO and NCA were released in the absence of documents required under DBM National Budget Circular No. 476 to be submitted by TLRC/TRC to DBM as implementing agency. In particular, the project profile and endorsement by IA shall serve as basis for the DBM to release the SARO and corresponding NAC.<sup>279</sup> It is incumbent upon accused Ortiz to ensure that these important requirements were submitted by the TLRC/TRC for the successful implementation of the PDAF projects. Notwithstanding the absence of these critical documents, the ₱5,000,000.00 was released to TLRC/TRC.

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<sup>278</sup> Exhibit A-49

<sup>279</sup> Records, Vol. III, p. 44

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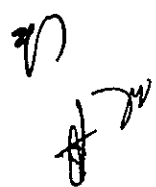
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After the TLRC/TRC received the PDAF, it then processed the illegal release of the funds to KKKFI. It must be emphasized that the transfer of funds from TLRC/TRC to KKKFI has no legal basis as the NGOs were not among those identified in the GAA for the year 2007 to implement PDAF projects. TLRC/TRC likewise failed to comply with RA 9184 for the conduct of competitive public bidding as well as with the guidelines set forth in COA Circular 96-003.

Specifically, accused Ortiz entered into a MOA with Cong. Alvarez through Jeb Bundang and KKKFI without the benefit of public bidding required under RA 9184. Accused Ortiz signed the MOA despite the fact that it contravened with the provisions of COA Circular No. 96-003 which provides for the schedule of releases of funds which should be in three tranches. The same MOA also did not include certain provisions that were required under the COA Circular. Accused Concepcion also failed to ensure the proper accreditation of KKKFI when she issued the Release Memoranda recommending the release of the PDAF to KKKFI. Thereafter, accused Ortiz, Cunanan and Jover signed and processed the DV for the immediate release of PDAF to KKKFI despite the defective MOA and the manifest red flags on the qualifications of KKKFI. Accused Ortiz then issued the check to KKKFI thereby releasing the full amount of ₱4,800,000.00 in one instance. Lastly, all of the accused failed to monitor the implementation of the project by requiring KKKFI to submit progress and liquidation reports.

The actions of all of the accused are all directed to the common goal of allowing the unlawful disbursement of fund to KKKFI. Each of the accused played an indispensable role and without any of them, the transfer of the PDAF to KKKFI would not have materialized.

All of the accused blatantly disregarded and violated the provisions of the GAA for 2007, RA 9184 and COA Circular No. 96-003 in selecting KKKFI as the project implementor of the PDAF project of Cong. Alvarez. Clearly, all of the acts of the accused when taken together point to the same criminal goal that is to give unwarranted benefits, advantage and preference to KKKFI and cause undue injury to the government in the amount of ₱4,800,000.00.





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### CRIMINAL CASE NO. SB-21-CRM-0103

Malversation is defined and penalized under Art. 217 of the RPC, as amended by RA 10951. Thus, the said article provides:

**Article 217. Malversation of public funds or property; Presumption of malversation.** –Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

xxx

5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

In all cases, persons guilty of malversation shall, also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.<sup>280</sup>

The elements of malversation under said provision of law are: (1) that the offender is a public officer; (2) that he or she had custody or control of funds or property by reason of the duties of his or her office; (3) that those funds or property were funds or property for which he or she was accountable; and (4) that he or she

<sup>280</sup> Zoleta v. Sandiganbayan, G.R. No. 185224, July 29, 2015

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appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

In addition, in the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer had received the public funds and that such officer failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.<sup>281</sup>

The first element is undisputed. The accused are all public officers at the times material and relevant to the present cases.

The second and third elements are both present. An accountable officer is a public officer who, by reason of his or her office, is accountable for public funds or property.<sup>282</sup> Corollarily, Sections 101 and 102 of PD 1445,<sup>283</sup> provides that:

**Section 101. Accountable officers; bond requirement.**

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.
2. Every accountable officer shall be properly bonded in accordance with law.

**Section 102. Primary and secondary responsibility.**

1. The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency.
2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.

Cong. Alvarez as a Member of the House of Representatives is considered an accountable officer for being entrusted with his PDAF allocation. In *Belgica v. Ochoa*,<sup>284</sup> the Supreme Court held that

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<sup>281</sup> *Venezuela v. People*, G.R. No. 205693, February 14, 2018

<sup>282</sup> *Corpuz v. People*, G.R. No. 241383, June 8, 2020, citing *Venezuela v. People*, G.R. No. 205693, February 14, 2018

<sup>283</sup> Presidential Decree No. 1445, *entitled* Ordaining and Instituting a Government Auditing Code of the Philippines

<sup>284</sup> G.R. No. 208566, November 19, 2013

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the PDAF had become personal funds under the effective control of each legislator and given unto them on the sole account of their office.

Initially, Cong. Alvarez had the control over his PDAF, which according to *Belgica*, was under his "effective control". However, the effective control of such funds was transferred upon the release of the funds by the BTr to TLRC/TRC. By virtue of SARO No. ROCS-07-00428, dated January 12, 2007,<sup>285</sup> the DBM, through the BTr, released to TLRC/TRC the amount of ₱5,000,000.00 as financial assistance for the livelihood program to be implemented by TLRC/TRC in the 1<sup>st</sup> District of Palawan. The receipt of the funds was acknowledged by the TLRC/TRC as evidenced by Official Receipt No. 5295286 H, dated February 20, 2007, issued by its collecting officer. Upon the release of the funds and actual receipt of TLRC/TRC, Cong. Alvarez's effective control of such funds had ceased and was transferred to TLRC/TRC. Thus, the entire amount of ₱5,000,000.00 was with the TLRC/TRC's custody before the amount of ₱4,800,000.00 was transferred to KKKFI.

Consequently, as the Director General and head of the agency, accused Ortiz was responsible for all government funds and property received by the TLRC/TRC including the PDAF allocation of Cong. Alvarez. Accused Ortiz, Cunanan, Concepcion and Jover's accountability as officers of TLRC/TRC was attached to their acts of signing, certifying and approving the DV for the release of the amount of ₱4,800,000.00 to KKKFI. Indeed, without the signatures of the said accused on the Memorandum recommending the release to KKKFI of the subject PDAF, DV No. 012007030435,<sup>286</sup> and Check No. 0000850372, dated March 13, 2007,<sup>287</sup> the amount of ₱4,800,000.00 would not have been transferred to KKKFI.

In *Zoleta*,<sup>288</sup> the Supreme Court ruled that public officers whose signatures are needed before any disbursement of public funds can be made, are considered to have control and responsible over the subject funds. Thus:

As a required standard procedure, the signatures of, among others, the Vice-Governor and the Provincial Accountant are needed before any disbursement of public funds can be made.

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<sup>285</sup> Exhibit A-49

<sup>286</sup> Exhibit A-62

<sup>287</sup> Exhibit A-63

<sup>288</sup> Please see Note 280.

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No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval. Thus, Constantino and Camanay, in their capacities as Vice-Governor and Provincial Accountant, had control and responsibility over the subject funds.

In the case of *Panganiban v. People*,<sup>289</sup> the Supreme Court held that the public officers are said to have custody or control of government funds by reason of their office until they shall have endorsed such money or property to other accountable officers or concerned offices, thus:

To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or **until they shall have endorsed such money or property to other accountable officers or concerned offices**. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. Needless to say, he was not accountable for any public funds or property simply because it never became his duty to collect money or property from the public.<sup>31</sup> Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.<sup>290</sup> (Boldface supplied.)

The fourth element is also present. As stated in the discussion on the charge of violation of Section 3(e) of RA 3019, at the very least, accused Ortiz, Cunanan, Concepcion and Jover could also be held liable for violating the said law, because of their gross inexcusable negligence. In this case, such negligence likewise permitted Soriano of KKKFI to take and misappropriate the said funds.

In this case, it was sufficiently established that Cong. Alvarez requested TLRC/TRC that KKKFI implement the livelihood projects in his district as evidenced by his letter, dated February 19, 2007.<sup>291</sup> Accused Ortiz and Concepcion recommended the release of Cong. Alvarez PDAF to KKKFI without undergoing public bidding and/or strict accreditation process to ensure that it was qualified and

<sup>289</sup> G.R. No. 211543, December 9, 2015.

<sup>290</sup> *Id.*

<sup>291</sup> Exhibit A-52

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capable of implementing the livelihood projects. Also, accused Ortiz, Cong. Alvarez through Jeb Bundang, Chief of Staff of Cong. Alvarez, and KKKFI through accused Soriano, entered into an undated MOA.<sup>292</sup> Then, accused Ortiz, Cunanan and Jover knowingly and willfully signed, certified and processed DV No. 012007030435,<sup>293</sup> authorizing the release of Cong. Alvarez's PDAF to KKKFI, even without the proper screening and accreditation of KKKFI as the implementor of Cong. Alvarez's supposed livelihood projects in Palawan. Lastly, accused Ortiz signed Check No. 0000850372,<sup>294</sup> covering the said amount. The release of the PDAF would not have been possible if not for the signatures and individual participations of the accused in the said transaction. The PDAF was released to KKKFI, as evidenced by Official Receipt No. 0053, dated March 13, 2007, issued by the KKKFI.

Indeed, the gross inexcusable negligence of accused Ortiz, Cunanan, Concepcion and Jover allowed the subject public funds to be misappropriated and illegally transferred to KKKFI through accused Soriano. As accountable officers, accused Ortiz, Cunanan, Concepcion and Jover totally disregarded the rules as laid down in COA Circular No. 96-003 when they facilitated the release of the funds to KKKFI.

It is not disputed in this case that the projects were never implemented and the amount of ₱5,000,000.00 PDAF allocation of Cong. Alvarez has remained unliquidated/unaccounted. There is also nothing on record that would show that the PDAF allocation was ever utilized for the purpose it was intended. Moreover, COA issued *Notices of Disallowances* dated October 26, 2015,<sup>295</sup> directing the persons liable in the transactions including accused Ortiz, Cunanan, Concepcion and Jover, to settle immediately the said disallowances. However, all of the said accused failed to heed the said notice.

In the crime of malversation of public funds, all that is necessary for conviction is proof that the accountable officer/s had received the public funds and that he/she failed to account for the said funds upon demand without offering a justifiable explanation for the shortage.<sup>296</sup> An accountable officer may thus be convicted of malversation even if there is no direct evidence of misappropriation

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<sup>292</sup> Exhibit A-60

<sup>293</sup> Exhibit A-62

<sup>294</sup> Exhibit A-63

<sup>295</sup> Exhibit FF and GG

<sup>296</sup> *Venezuela v. People*, G.R. No. 205693, February 14, 2018

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*[Handwritten signature]*

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and the only evidence is that there is a shortage in the officer's account which he has not been able to explain satisfactorily.<sup>297</sup>

The imposable penalty for the malversation under Article 217 of the RPC depends on the value of the public funds or property involved, which in this case amounts to ₱4,800,000.00. Additionally, those found guilty of the said offense shall also suffer the penalty of perpetual special disqualification, and a fine equivalent to the amount involved.

As to the penalty to be imposed, it must be noted that at the time of the commission of the offense, Article 217 of the RPC prescribed a penalty of *reclusion temporal* in its maximum period to *reclusion perpetua*, if the amount malversed exceeds ₱22,200.00. However, on August 29, 2017, RA 10951<sup>298</sup> was passed into law, amending Article 217 of the RPC. Under Section 40 of RA 10951, if the amount involved is more than ₱4,400,000.00 but does not exceed ₱8,800,000.00, the imposable penalty is *reclusion temporal* in its maximum period.

Section 100 of RA 10951 provides that “[t]his Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.” Although Sec. 40 of RA 10951 provides for a lower penalty (*reclusion temporal* in its maximum period) than that of what was provided in the old law (*reclusion temporal* in its maximum period to *reclusion perpetua*), the Court shall apply the old law, as it is more favorable to the accused. Hence, applying Article 61, par. 3 of the RPC, in relation to the Indeterminate Sentence Law, the indeterminate sentence to be imposed upon accused Cunanan, Concepcion and Jover is 10 years and 1 day of *prison mayor*, as minimum, to 18 years and 9 months of *reclusion temporal*, as maximum.

**WHEREFORE**, in light of all the foregoing, judgment is hereby rendered:

1. In Criminal Case No. SB-21-CRM-0102, accused **DENNIS L. CUNANAN, BELINA A. CONCEPCION** and **MARIVIC V. JOVER** are hereby found **GUILTY** beyond reasonable doubt of violation of Section 3 (e) of RA 3019, and are hereby sentenced to suffer the

<sup>297</sup> *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005

<sup>298</sup> An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty Is Based, and the Fines Imposed Under the Revised Penal Code, Amending for the Purpose Act No. 3815, otherwise known as “The Revised Penal Code,” as Amended.

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indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, up to ten (10) years, as maximum, with perpetual disqualification from holding public office.

2. In Criminal Case No. **SB-21-CRM-0103**, accused **DENNIS L. CUNANAN, BELINA A. CONCEPCION** and **MARIVIC V. JOVER** are hereby found **GUILTY** beyond reasonable doubt of Malversation of Public Funds, defined and penalized under the Revised Penal Code, and are hereby sentenced to suffer an indeterminate penalty of 10 years and 1 day of *prision mayor*, as minimum, to 18 years and nine months of *reclusion temporal*, as maximum, there being no mitigating or aggravating circumstance, with perpetual disqualification from holding public office.

Accused **DENNIS L. CUNANAN, BELINA A. CONCEPCION** and **MARIVIC V. JOVER** are hereby ordered to jointly and severally indemnify the Republic of the Philippines, through the Bureau of Treasury, the amount of ₱4,800,000.00 with legal interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full satisfaction.

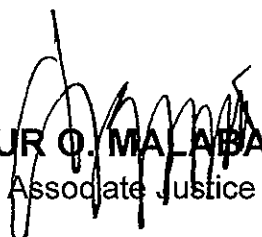
3. Since this Court did not acquire jurisdiction over the persons of accused **ANTONIO Y. ORTIZ** and **JOEL L. SORIANO**, who have remained at-large, the cases against them are hereby **ARCHIVED**, to be revived upon their arrest.

**SO ORDERED.**

  
**EFREN N. DE LA CRUZ**  
Chairperson/Associate Justice

**WE CONCUR:**

  
**GERALDINE FAITH A. ECONG**  
Associate Justice

  
**ARTHUR O. MALABAGUIO**  
Associate Justice

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**ATTESTATION**

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Decision.

  
**EFREN N. DE LA CRUZ**  
Chairperson, First Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice

