



statutory authority supervision over a Constitutional organ. This cannot be countenanced.

This resolves the Petition for Certiorari<sup>1</sup> filed by the Republic of the Philippines, represented by the Office of the Solicitor General, assailing the Plea Bargaining Agreement between the Office of the Special Prosecutor and retired Major General Carlos F. Garcia (Garcia).

On December 19, 2003, customs agents at the San Francisco International Airport, United States of America, seized US\$100,000.00 of undeclared cash from brothers Juan Paolo Garcia (Juan Paolo) and Ian Carl Garcia (Ian Carl).<sup>2</sup>

United States Customs officials charged Juan Paolo and Ian Carl with bulk cash smuggling and making false statements. They both pleaded guilty to the charges against them.<sup>3</sup>

On April 6, 2004, their mother, Clarita Garcia (Clarita) executed two statements,<sup>4</sup> which were witnessed by Agent Matthew Van Dyke of the United States Customs, in support of her petition for the release of the seized US\$100,000.00.<sup>5</sup> Clarita attested that the funds were sourced from her husband's salary as a two-star general in the Philippines and their family's two (2) corporations, IJT Mango Orchard, Inc. and IJT Katamnan Corp., as well as a daycare.<sup>6</sup> Further, Clarita wrote that aside from receiving a salary, her husband was a military comptroller who often received gratuities from businesses that were awarded military contracts:

My husband Carlos Garcia (Two Star General in the Armed Forces) was assigned to the Comptrollers Officer until April 4, 2004. He receives a salary that is declared for income tax purposes. In addition, Carlos receives travel money and expenses in excess of several thousands of dollars. I often travel with my husband on business and my travel, expenses and shopping money in excess of US\$10,000 to \$20,000 is provided to me. He also receives cash for travel and expenses from the businesses that are awarded contracts for military hardware. These businesses are in Europe and Asia. He also receives gifts and gratitude money from several Philippine companies that are awarded military contracts to build roads, bridges and military housing.<sup>7</sup>

---

<sup>1</sup> *Rollo*, pp. 9–116.

<sup>2</sup> *Id.* at 412–413.

<sup>3</sup> *US turns over \$100,000 seized from retired military comptroller's sons*, INQUIRER, <<https://globalnation.inquirer.net/22699/us-turns-over-100000-seized-from-retired-military-comptrollers-sons>> [Last accessed on September 24, 2019].

<sup>4</sup> *Rollo*, pp. 659–662 and 663–666.

<sup>5</sup> *Id.* at 414.

<sup>6</sup> *Id.* at 659–660.

<sup>7</sup> *Id.* at 660.

She then narrated that the privileges her husband received was common and that as the wife of a general, she was also entitled to privileges such as a “4,000-gallon per month gasoline allowance, security detail and five drivers. [She also has] a military cook that also provides piano music upon request.”<sup>8</sup>

On April 5, 2005, the Office of the Special Prosecutor filed an Information<sup>9</sup> for plunder against Garcia, Clarita, and their children Ian Carl, Juan Paulo, and Timothy Mark Garcia (Timothy Mark). The accusatory portion of the Information read:

That during the period from 1993 or sometime prior thereto, until 17 November 2004, in Quezon City, Philippines, the above-named accused **MAJ. GEN. CARLOS F. GARCIA**, a high-ranking public officer, having been a colonel of the Armed Forces of the Philippines since 1990 until his retirement with the rank of Major General in November 2004, by himself and in connivance/conspiracy with his co-accused members of his family **CLARITA D. GARCIA, IAN CARL D. GARCIA, JUAN PAULO D. GARCIA, TIMOTHY MARK D. GARCIA**, and in connivance/conspiracy with his other co-accused persons **JOHN DOES, JAMES DOES, and JANE DOES**, did then and there, willfully, unlawfully, and criminally, amass, accumulate and acquire ill-gotten wealth in the form of funds, landholdings and other real and personal properties, in the aggregate amount of at least **THREE HUNDRED THREE MILLION TWO HUNDRED SEVENTY-TWO THOUSAND FIVE AND 99/100 PESOS (₱303,272,005.99)**, more or less, by himself, and in conspiracy with the above-named persons, through a series and/or combination of overt or criminal acts or similar schemes or means, by receiving commissions, gifts, shares, percentages, kickbacks or other forms of pecuniary benefits like “shopping money or gratitude money” from said **JAMES DOES** and **JANE DOES** and/or entities, in connection with government contracts or projects and/or by reason of the public office of position held by accused **MAJ. GEN. CARLOS F. GARCIA** and/or by his taking undue advantage of his official position, thereby unjustly enriching himself at the expense and to the damage of the Filipino People and the Republic of the Philippines.

**ALL WITHIN THE JURISDICTION OF THE COURT AND CONTRARY TO LAW.**<sup>10</sup> (Emphasis in the original)

Separate cases for plunder and money laundering,<sup>11</sup> which were eventually consolidated, were filed against the Garcia family before the Sandiganbayan. Only Garcia was arraigned for both cases, to which he pleaded not guilty.<sup>12</sup>

---

<sup>8</sup> Id. at 661.

<sup>9</sup> Id. at 379–381.

<sup>10</sup> Id. at 380.

<sup>11</sup> Id. at 206–207. The cases for plunder and money laundering were docketed as Criminal Case Nos. 28107 and SB-09-CRM-019, respectively and were ordered to be consolidated on January 7, 2010.

<sup>12</sup> Id. at 382 and 443.

On May 4, 2007, Garcia filed an Urgent Petition for Bail for his plunder charge, claiming that the Office of the Special Prosecutor failed to show strong evidence of his guilt.<sup>13</sup>

The Office of the Special Prosecutor opposed the petition for bail and was allowed to present evidence to support its contention that evidence of Garcia's guilt was strong.<sup>14</sup>

On December 11, 2009, an Information for violation of Section 4 (a) of Republic Act No. 9160 or the Anti-Money Laundering Act was filed against Garcia and his family. This was consolidated with the plunder case.<sup>15</sup>

On January 7, 2010, the Sandiganbayan<sup>16</sup> denied Garcia's petition for bail.

In denying the petition for bail, the Sandiganbayan ruled that the mass of evidence presented by the prosecution was strong which militated against the grant of bail.<sup>17</sup> Further it held that the admission of Clarita's Sworn Statement and handwritten statement into evidence did not violate her constitutional right to remain silent because "she was neither an accused nor a respondent at the time she voluntarily gave her statement."<sup>18</sup> The Sandiganbayan emphasized that neither she nor members of her family were under investigation and that she executed the statements in an attempt to retrieve the seized US\$100,000.00.<sup>19</sup>

The dispositive of the January 7, 2010 Resolution read:

**WHEREFORE**, in light of all the foregoing, and in the exercise of sound judicial discretion, the Court hereby resolves to deny, as it hereby **DENIES**, the Petition for Bail of Major General Carlos F. Garcia for lack of merit.

**SO ORDERED.**<sup>20</sup> (Emphasis in the original)

On March 16, 2010, as the prosecution was about to rest its case, the Office of the Special Prosecutor and Garcia filed a Joint Motion for

---

<sup>13</sup> Id. at 383.

<sup>14</sup> Id. at 383-384.

<sup>15</sup> Id. at 1538.

<sup>16</sup> Id. at 382-423. The Resolution was penned by Associate Justice Teresita V. Diaz-Baldos, concurred in by Associate Justices Samuel R. Martires and Roland B. Jurado, and dissented to by Associate Justices Edilberto G. Sandoval (Chairperson) and Alex D. Quiroz, of the Special Second Division, Sandiganbayan, Quezon City.

<sup>17</sup> Id. at 420-422.

<sup>18</sup> Id. at 414.

<sup>19</sup> Id. at 414-415.

<sup>20</sup> Id. at 422.

Approval of Plea Bargaining Agreement.<sup>21</sup> The agreement was approved and signed by then Ombudsman Merceditas N. Gutierrez (Ombudsman Gutierrez).<sup>22</sup>

In the Plea Bargaining Agreement,<sup>23</sup> Garcia withdrew his plea of not guilty to the crime of plunder and offered to enter a plea of guilty to the lesser offense of indirect bribery.<sup>24</sup>

In addition, Garcia entered a plea of not guilty to the charge of money laundering, but then withdrew it for purposes of plea bargaining and offered to enter a plea of guilty to the lesser offense of facilitating money laundering.<sup>25</sup> He also stated that his family members, who were charged in the same cases, had no participation in the cases filed against them.<sup>26</sup>

As part of the Plea Bargaining Agreement, Garcia offered to cede ₱135,433,387.84 worth of cash, real and personal properties owned by himself and his family in favor of the government.<sup>27</sup>

In consenting to the Plea Bargaining Agreement, the Office of the Ombudsman, citing *People v. Kayanan*,<sup>28</sup> stated that such an agreement was allowed when there was no “sufficient evidence to establish the guilt” of the accused.<sup>29</sup>

On May 4, 2010, the Sandiganbayan,<sup>30</sup> without acting on the Joint Motion for Approval of Plea Bargaining Agreement and the Plea Bargaining Agreement, directed Garcia to execute the necessary deeds of conveyance to transfer the properties covered in the Plea Bargaining Agreement in favor of the State.<sup>31</sup>

The Sandiganbayan held that Garcia’s change of plea under the Plea Bargaining Agreement was warranted because it complied with the applicable rules and guidelines contained in jurisprudence. It also pointed out that Garcia voluntarily agreed to the Plea Bargaining Agreement and was apprised of its consequences.<sup>32</sup>

---

<sup>21</sup> Id. at 440–441.

<sup>22</sup> Id. at 440.

<sup>23</sup> Id. at 442–449.

<sup>24</sup> Id. at 443.

<sup>25</sup> Id. at 443.

<sup>26</sup> Id. at 444.

<sup>27</sup> Id. at 444–447.

<sup>28</sup> 172 Phil. 728 (1978) [Per J. Barredo, En Banc].

<sup>29</sup> *Rollo*, pp. 447–448.

<sup>30</sup> Id. at 191–201. The Resolution was penned by Associate Justice Teresita V. Diaz-Baldoz and concurred in by Associate Justices Justices Edilberto G. Sandoval and Samuel R. Martires of the Special Second Division, Sandiganbayan, Quezon City.

<sup>31</sup> Id. at 200–201.

<sup>32</sup> Id. at 199.

The dispositive portion of the Resolution reads:

ACCORDINGLY, and to this end, the Court hereby orders accused Gen. Carlos F. Garcia to execute immediately the appropriate deeds of conveyance in order to transfer, convey, cede, surrender, and relinquish to the Republic of the Philippines his ownership and any and all interests which he may personally have over the real properties in his own name, and in the names of spouse Clarita Depakakibo Garcia, children Ian Carl D. Garcia, Juan Paolo D. Garcia, and Timothy Mark D. Garcia, as well as all the personal properties itemized and identified in the inventory of properties in the Plea Bargaining Agreement belonging to him, his spouse and three children, and thereafter to present to the Court within sixty (60) days from receipt hereof, such resultant titles and certificates of ownership in the name of the Republic of the Philippines.<sup>33</sup>

Meanwhile, in a separate civil forfeiture case against Garcia before Branch 27 of the Regional Trial Court of Manila and docketed as AMLC Case No. 09-003, the Office of the Solicitor General filed a motion<sup>34</sup> to allow the transfer of the Garcia family's assets to the government.

There, the Office of the Solicitor General, representing the Anti-Money Laundering Council, recognized the Plea Bargaining Agreement between the Office of the Special Prosecutor and Garcia. The Office of the Solicitor General stated that the Office of the Special Prosecutor wrote to ask for assistance from the Anti-Money Laundering Council in light of the common properties covered by both the Plea Bargaining Agreement and civil forfeiture case.<sup>35</sup>

On November 5, 2010,<sup>36</sup> noting that Garcia's counsel interposed no objection to the Office of the Solicitor General's motion for transfer of assets and that a Plea Bargaining Agreement duly approved by Ombudsman Gutierrez had already been executed between the Office of the Special Prosecutor and Garcia, the Regional Trial Court granted the motion. The dispositive portion of the Regional Trial Court's Order read:

WHEREFORE, premises considered, the assets of the respondent M/Gen. Carlos F. Garcia and his wife and children are hereby ordered transferred to the Republic of the Philippines pursuant to the February 26, 2010 Plea Bargaining Agreement which was approved by the 2<sup>nd</sup> Division of the Sandiganbayan in its Resolution dated May 4, 2010 covering Crim. Case No. 28107 and Crim. Case No. SB 09CR MO 194, for Plunder and Violation of R.A. 9160 otherwise known as Anti-Money Laundering Law, respectively.

So ordered.<sup>37</sup>

---

<sup>33</sup> Id. at 200–201.

<sup>34</sup> Id. at 1705–1718.

<sup>35</sup> Id. at 1712–1713.

<sup>36</sup> Id. at 1719. The Order was penned by Executive Judge Amor A. Reyes.

<sup>37</sup> Id. at 1719.

On November 18, 2010, the Office of the Special Prosecutor filed a Manifestation of Substantial Compliance<sup>38</sup> informing the Sandiganbayan that Garcia had executed the appropriate deeds of conveyances and turned them over to the Office of the Special Prosecutor.<sup>39</sup>

On December 16, 2010, Garcia pleaded guilty to the lesser offense of direct bribery<sup>40</sup> and to the offense of violation of Section 4 (b) of Republic Act No. 9160 or Facilitating Money Laundering.<sup>41</sup>

That same day, Garcia filed an Urgent Motion to Post Bail,<sup>42</sup> and the Sandiganbayan allowed him to post bail in the amount of ₱30,000.00 per case or ₱60,000.00 in total.<sup>43</sup>

On January 5, 2011, the Office of the Solicitor General filed a Motion to Intervene and to admit its attached Omnibus Motion in Intervention.<sup>44</sup>

In its Motion for Intervention, the Office of the Solicitor General declared that it had the necessary personality to intervene because it had the mandate of promoting and protecting public weal.<sup>45</sup> The Office of the Solicitor General likewise stated that the Armed Forces of the Philippines sought guidance on what its available remedies were in light of the fact that Plea Bargaining Agreement included some of its funds. The Office of the Solicitor General thus emphasized that the Armed Forces of the Philippines was an indispensable party for the Plea Bargaining Agreement to be valid.<sup>46</sup>

In its Omnibus Motion-In-Intervention,<sup>47</sup> the Office of the Solicitor General underscored that the Sandiganbayan's reliance on Section 5, Rule 116 of the Revised Rules of Criminal Procedure was misplaced because the said rule dealt with the withdrawal of an improvident plea of guilty, which was not applicable to Garcia.<sup>48</sup>

---

<sup>38</sup> Id. at 468–473.

<sup>39</sup> Id. at 469–472.

<sup>40</sup> Id. at 476.

<sup>41</sup> Id. at 477.

<sup>42</sup> Id. at 478–480.

<sup>43</sup> Id. at 480–481.

<sup>44</sup> Id. at 482–498. Urgent Motion for Leave to Intervene and to Admit Attached Omnibus Motion-in-Intervention to (1) Nullify the Plea Bargaining Agreement Between Accused Maj. Gen. Carlos F. Garcia (ret.) and the Office of the Special Prosecutor, (2) Set Aside the Honorable Court's Resolution Promulgated on May 4, 2010 Approving Said Plea Bargaining Agreement (3) Recall the Resolution of the Honorable Court Promulgated on December 16, 2010 which Granted Accused Garcia's Motion for Bail.

<sup>45</sup> Id. at 484.

<sup>46</sup> Id. at 486–489.

<sup>47</sup> Id. at 500–532.

<sup>48</sup> Id. at 505–506.

The Office of the Solicitor General continued that the Sandiganbayan's reliance on *People v. Camay*<sup>49</sup> was misplaced because the requirements listed in *Camay* only applied to an accused who pleaded guilty to a capital offense. It pointed out that indirect bribery and facilitating money laundering were not capital offenses.<sup>50</sup> It likewise insisted that the evidence of guilt against Garcia was very strong, as the Sandiganbayan itself declared when it denied his first motion to post bail.<sup>51</sup>

It stressed that the Plea Bargaining Agreement was without the Republic's consent.<sup>52</sup> Further, the lopsided terms of the Plea Bargaining Agreement greatly favored Garcia but worked against the Filipino people, as Garcia was accused of plundering ₱300,000,000.00 from the State coffers yet the Plea Bargaining Agreement only agreed to return ₱135,000,000.00 in cash and properties.<sup>53</sup> It then called out the Sandiganbayan's undue haste in implementing the Plea Bargaining Agreement which violated the Rules of Court and well-settled jurisprudence.<sup>54</sup>

In its Supplement to the Omnibus Motion,<sup>55</sup> the Office of the Solicitor General added that Garcia's arraignment for the lesser crime of direct bribery was a nullity because it was not necessarily included in the allegations in the Information charging him with plunder.<sup>56</sup>

On May 6, 2011, Ombudsman Gutierrez tendered her resignation as Ombudsman to President Benigno Aquino, Jr., who accepted it.<sup>57</sup>

On May 9, 2011, the Sandiganbayan<sup>58</sup> denied the Motion for Intervention and Omnibus Motion-in-Intervention.

In denying the motion for intervention, the Sandiganbayan maintained that the statutory authority to represent the government in the case lay with the Office of the Ombudsman as it had the primary jurisdiction over cases cognizable by the Sandiganbayan. It stated that it was only in the cases of recovery of Marcos' ill-gotten wealth that the Office of the Solicitor General could represent the Republic of the Philippines before the Sandiganbayan.<sup>59</sup>

---

<sup>49</sup> 236 Phil. 431 (1987) [Per J. Sarmiento, First Division].

<sup>50</sup> *Rollo*, pp. 506–507.

<sup>51</sup> *Id.* at 511–519.

<sup>52</sup> *Id.* at 522–526.

<sup>53</sup> *Id.* at 521–522.

<sup>54</sup> *Id.* at 526–527.

<sup>55</sup> *Id.* at 533–545.

<sup>56</sup> *Id.* at 537–540.

<sup>57</sup> *Ombudsman submits resignation to PNoy*, ABS-CBN NEWS, <<https://news.abs-cbn.com/nation/04/29/11/ombudsman-submits-resignation-pnoy-sources>> (Last accessed on October 15, 2019).

<sup>58</sup> *Rollo*, pp. 202–357. The Resolution was penned by Associate Justice Samuel R. Martires and concurred in by Associate Justices Edilberto G. Sandoval and Teresita V. Diaz-Baldos of the Second Division, Sandiganbayan, Quezon City.

<sup>59</sup> *Id.* at 225–227, Sandiganbayan Resolution.

The Sandiganbayan then emphasized that Republic Act No. 6770 or the Ombudsman Act of 1988 explicitly stated that the Special Prosecutor had “the power to enter into plea bargaining agreement[s]” in cases under the Sandiganbayan’s jurisdiction.<sup>60</sup>

Additionally, the Sandiganbayan opined that plunder was a crime against the State, hence, the offended party was the State and not the Armed Forces of the Philippines, which is a part of the State<sup>61</sup> and has no legal personality that is “separate and distinct from the State.”<sup>62</sup>

The Sandiganbayan also stressed that the Office of the Special Prosecution was unable to prove Garcia’s guilt beyond reasonable doubt because it “failed to mention the name of a contractor, supplier, host country, or any individual from whom the accused and his alleged co-conspirators allegedly received gifts, commissions, kickbacks and/or percentages.”<sup>63</sup>

The dispositive of the Sandiganbayan May 9, 2011 Resolution reads:

**WHEREFORE**, the Urgent Motion for Leave to Intervene and the attached Omnibus Motion-in-Intervention are hereby DENIED for utter paucity of merit.<sup>64</sup> (Emphasis in the original)

Also on May 9, 2011, the Sandiganbayan<sup>65</sup> approved both the Joint Motion and Plea Bargaining Agreement.

In approving the Plea Bargaining Agreement, the Sandiganbayan pointed out that a change of plea was allowed under the Rules.<sup>66</sup> Further, it referred to its Resolution of even date which denied the Motion for Intervention to substantiate its stand that the totality of the evidence presented by the Office of the Special Prosecutor was weak and did not support the allegations in the “equally weak Information for plunder.”<sup>67</sup>

Nonetheless, instead of allowing Garcia to plead guilty to indirect bribery, the Sandiganbayan allowed Garcia to plead guilty to direct bribery

---

<sup>60</sup> Id. at 230–231.

<sup>61</sup> Id. at 235.

<sup>62</sup> Id. at 236.

<sup>63</sup> Id. at 247.

<sup>64</sup> Id. at 357.

<sup>65</sup> Id. at 358–378. The Resolution was penned by Associate Justice Teresita V. Diaz-Baldos and concurred in by Associate Justices Edilberto G. Sandoval and Samuel R. Martires of the Second Division, Sandiganbayan.

<sup>66</sup> Id. at 366–368 and 373–375.

<sup>67</sup> Id. at 368.

under Article 210 of the Revised Penal Code as the latter was a predicate offense to plunder.<sup>68</sup>

The dispositive of the Sandiganbayan May 9, 2011 Resolution reads:

**WHEREFORE**, in view of all the foregoing, this Court hereby **APPROVES** the Plea Bargaining Agreement between the Office of the Ombudsman and Major General Carlos F. Garcia.

**SO ORDERED.**<sup>69</sup> (Emphasis in the original)

The Office of the Solicitor General moved for a reconsideration<sup>70</sup> of the denial of its Motion for Intervention. While this was pending, retired Supreme Court Justice Conchita Carpio-Morales (Ombudsman Carpio-Morales) was appointed as Ombudsman on July 26, 2011.<sup>71</sup>

On August 12, 2011, Ombudsman Carpio-Morales filed before the Sandiganbayan a motion to hold in abeyance its final action on the Office of the Solicitor General's pending motion for reconsideration and to grant her 30 days to submit a position paper. Her motion was granted.<sup>72</sup>

In her Position Paper,<sup>73</sup> Ombudsman Carpio-Morales declared that the Plea Bargaining Agreement was received and approved by the Sandiganbayan before the prosecution rested its case. Hence, it was premature to conclude that the evidence against Garcia was weak.<sup>74</sup>

She likewise stated that as a compromise, the Plea Bargaining Agreement was an implied admission of Garcia's guilt and may be received as evidence in the plunder case against him.<sup>75</sup>

Ombudsman Carpio-Morales further contended that the Sandiganbayan erred in denying the Office of the Solicitor General's motion to intervene because the Sandiganbayan failed to cite any specific law which expressly prohibited the Office of the Solicitor General from participating when the Ombudsman or the Office of the Special Prosecutor had already entered an appearance.<sup>76</sup> She emphasized that as the "law office of the Government[,]"<sup>77</sup> the Office of the Solicitor General's power was broad,

---

<sup>68</sup> Id. at 373–374.

<sup>69</sup> Id. at 378.

<sup>70</sup> Id. at 1328–1451.

<sup>71</sup> *Conchita Carpio Morales*, <<http://www.ombudsman.gov.ph/about-us/previous-ombudsmen/conchita-carpio-morales/>> (Last accessed on October 15, 2019).

<sup>72</sup> *Rollo*, p. 919.

<sup>73</sup> Id. at 927–945.

<sup>74</sup> Id. at 928–929.

<sup>75</sup> Id. at 937–942.

<sup>76</sup> Id. at 930–931.

<sup>77</sup> Id. at 931.

thus, it was empowered to represent the government in any manner of legal controversy which would affect the people's welfare.<sup>78</sup>

Ombudsman Carpio-Morales thus prayed on September 15, 2011 that: (1) the Office of the Solicitor General be allowed to intervene; (2) the May 9, 2011 Resolution approving the Plea Bargaining Agreement be nullified; and (3) the trial against Garcia be allowed to proceed.<sup>79</sup>

On April 10, 2013,<sup>80</sup> the Sandiganbayan denied the Office of the Solicitor General's Motion for Reconsideration.

The Sandiganbayan noted that Ombudsman Carpio-Morales in her Position Paper presented a "turnabout position"<sup>81</sup> to the Plea Bargaining Agreement, which was jointly submitted to it by former Ombudsman Gutierrez and Garcia, prompting the Sandiganbayan to set a clarificatory hearing for the Office of the Ombudsman to explain its final position on the Plea Bargaining Agreement.<sup>82</sup>

However, during the clarificatory hearing, representatives from the Office of the Ombudsman stated that Ombudsman Carpio-Morales was not repudiating the Plea Bargaining Agreement, and instead, merely voiced out her views and stand in her Position Paper. Thus, it should not be treated as a motion to set aside the Plea Bargaining Agreement.<sup>83</sup> Quoting portions from the clarificatory hearing, the Sandiganbayan wrote:

During the clarificatory hearing, the Court asked the panel representing Honorable Ombudsman Morales if they would convert the Position Paper into a motion so that the accused, with whom it had entered into plea bargaining, could be directed to file his comment. Surprisingly, however, Atty. Christian Uy, a member of the Ombudsman panel, categorically declared that the Position Paper *should not be treated as a motion (which the accused could comment or oppose) as it was only an expression of the new Ombudsman's views and stand and that basically it was just food for thought. Neither did Atty. Uy admit that the new Ombudsman was repudiating the action of the previous Ombudsman.*

In view of the ambivalent stance posted by the Office of the Ombudsman, there was no way by which the Court could grant the prayer in the Position Paper without according due process to Maj. Gen. Garcia who was of one mind with the Ombudsman in seeking for the Court's approval of the Plea Bargaining Agreement. *Hence, since the*

---

<sup>78</sup> Id. at 931-932.

<sup>79</sup> Id. at 944.

<sup>80</sup> Id. at 118-190. The Joint Resolution was penned by Associate Justice Samuel R. Martires and concurred in by Associate Justices Teresita V. Diaz-Baldos (Chairperson), Roland B. Jurado and Alex L. Quiroz, and dissented by Associate Justice Oscar C. Herrera, Jr. of the Special Second Division, Sandiganbayan, Quezon City.

<sup>81</sup> Id. at 123.

<sup>82</sup> Id.

<sup>83</sup> Id. at 123-127.

*Ombudsman, for reasons which the Court cannot fathom, was not willing to have its Position Paper converted into a motion so that the nullification of the Plea Bargaining Agreement, among others, could be passed upon,* the Court found no reason to require the accused Maj. Gen. Garcia to comment.

This is very clear from the transcript of stenographic notes taken during the clarificatory hearing where the Office of the Ombudsman is quoted to have said that:

JUSTICE BALDOS: *(Chairperson)*

As we all know the Position Paper maybe cognizable in the Office of the Ombudsman or even in other agencies like the NLRC but in Court the significance of a Position Paper is not really that much, inasmuch as the Position Paper contradictory prayed for affirmative relief. So would you want the motion, your Position Paper to be treated as a motion?

ATTY. UY:

Your Honor, the –

JUSTICE MARTIRES:

You stand up when you make a manifestation.

ATTY. UY:

Yes, your Honor. **The Position Paper should be treated as such a Position Paper not as a motion.** It is basically just an expression of a new Ombudsman's views and stand on the matter. We would just like to point out that the Court should be thrown off by the fact that the Position Paper also contains a prayer. We believe it does not detract from its character and standing as a Position Paper, merely as an expression over views and her stand on the matters which were discussed therein.

JUSTICE BALDOS: *(Chairperson)*

If it were to be treated *per se* as a Position Paper, so we disregarded the prayer for affirmative relief contained in another portion of the Position Paper.

ATTY. UY:

Yes, your Honor. Actually, we leave it up to the Court, to the Honorable Justices to dispose of it as it is basically just food for thought.

JUSTICE BALDOS: *(Chairperson)*

Because if there is nothing that you want the Court to do, then we will just note the Position Paper.

ATTY. UY:

Yes, your Honor. If the Court is so inclined.

JUSTICE BALDOS: *(chairperson)*

Because you also prayed for the setting aside of [sic] the May 9 Resolution denying the OSG's Motion for Intervention.

ATTY. UY:

Yes, your Honor.

JUSTICE BALDOS: (chairperson)  
So which is which?

ATTY. UY:

As I mentioned a while ago, your Honor, please do not be thrown off by the prayer. It just so happens as I said a while ago the new Ombudsman, this is her stand. And naturally, if someone makes a stand it can imply from the contents thereof whether explicitly or implicitly that this is what she hopes for. That is what she wants to accomplish by the solution of the Position Paper. Hopefully it will shed light, it can be tackled from a different point of view and [maybe] help the justices in resolving the Motion for Intervention, that is all.

JUSTICE BALDOS: (chairperson)  
You also prayed for the nullification of the plea bargaining?

ATTY. UY:  
Yes, your Honor.

JUSTICE BALDOS: (chairperson)  
Are you aware that when the plea bargaining agreement was submitted for approval by the Court, it was through a joint motion for approval. So can a nullification be unilaterally made?

ATTY. UY:  
Your Honor, the Ombudsman recognizes that these are very complex issued [sic] and therefore these cannot just be easily resolved because there are actually so many persons involved. So I will not even venture, to venture an opinion as to whether the Joint Motion to Approve the Plea Bargaining Agreement shall be nullified unilaterally. All that the new Ombudsman wants is to set her view points, set her thoughts on the matter. It is basically just an expression of her opinion.

JUSTICE BALDOS: (chairperson)  
So if this is just an opinion, we disregard the prayer?

ATTY. UY:  
Yes, your Honor.<sup>84</sup> (Emphasis in the original)

Considering the Office of the Ombudsman's pronouncements during the clarificatory hearing, the Sandiganbayan merely noted its Position Paper and did not consider it as a motion to set aside the Plea Bargaining Agreement.<sup>85</sup>

The Sandiganbayan also added that the Office of the Ombudsman cannot unilaterally withdraw from the Plea Bargaining Agreement because the same had already been approved.<sup>86</sup>

---

<sup>84</sup> Id. at 123–126.

<sup>85</sup> Id. at 131.

<sup>86</sup> Id. at 176.

The Sandiganbayan then reiterated its earlier ruling that the Office of the Solicitor General did not have the authority to intervene in the case against Garcia.<sup>87</sup> It further declared that there was no private offended party in the case before it, as the Armed Forces of the Philippines was a government institution with no separate personality from the government.<sup>88</sup>

The Sandiganbayan declared that it deliberately did not make a pronouncement on the weakness of the prosecution evidence in its May 4, 2010 Resolution, which directed Garcia to execute the necessary deeds of conveyance, so that Garcia will not withdraw his offer for a plea bargain agreement and so that his family members will not withdraw the special power of attorney they executed in his favor authorizing him to transfer the properties in their name to the government.<sup>89</sup>

The dispositive portion of the Joint Resolution reads:

**WHEREFORE**, for utter paucity of merit, the Motion for Reconsideration to allow the Office of the Solicitor General to intervene is hereby **DENIED**.

Correspondingly, for lack of legal personality/authority to intervene in this case and considering further that the Plea Bargaining Agreement is in accord with law and jurisprudence and is for the best interest of the government, the prayer of the Office of the Solicitor General to set aside the plea bargaining agreement is also **DENIED**.

**SO ORDERED.**<sup>90</sup> (Emphasis in the original)

On June 7, 2013, petitioner Republic of the Philippines, represented by the Office of the Solicitor General, filed a Petition for Certiorari<sup>91</sup> claiming that the Special Second Division of the Sandiganbayan acted with grave abuse of discretion in approving the “scandalously and grossly disadvantageous”<sup>92</sup> Plea Bargaining Agreement despite its own admission of the strong evidence against private respondent Carlos Garcia presented by public respondent Office of the Special Prosecutor.<sup>93</sup>

Petitioner likewise avers that the Sandiganbayan committed grave abuse of discretion in granting the Plea Bargaining Agreement despite the lack of consent thereto from the Armed Forces of the Philippines, the

---

<sup>87</sup> Id. at 139.

<sup>88</sup> Id. at 145.

<sup>89</sup> Id. at 162–163.

<sup>90</sup> Id. at 190.

<sup>91</sup> Id. at 9–113.

<sup>92</sup> Id. at 27.

<sup>93</sup> Id. at 31–32.

offended party.<sup>94</sup> It then reiterates its standing to intervene as provided by the Administrative Code of 1987.<sup>95</sup>

It asserts that the Plea Bargaining Agreement was actually a “compromise agreement” between the Office of the Private Prosecutor and private respondent Garcia.<sup>96</sup> Moreover, it points out that public respondent Sandiganbayan gravely erred when it allowed private respondent to plead guilty to the lesser offenses of direct bribery and facilitating money laundering prior to approving the Plea Bargaining Agreement.<sup>97</sup>

Petitioner likewise highlights that direct bribery was “not necessarily included” in plunder and the Information for plunder did not allege all the elements for direct bribery.<sup>98</sup> Finally, it underscores that Clarita’s letters were “admissible in evidence” and could be considered as admissions by a conspirator.<sup>99</sup>

On July 1, 2013,<sup>100</sup> this Court directed respondents to file their respective comments to the Petition and issued a temporary restraining order enjoining public respondent Sandiganbayan from continuing with the proceedings against private respondent. The temporary restraining order reads:

**NOW THEREFORE**, You, your agents, representatives and/or any person or persons acting upon your orders or in your place or stead, are hereby **ENJOINED** from continuing with proceedings below in Criminal Case Nos. 28107 and SB-09-SRM-0194, both entitled “*People of the Philippines, Plaintiff versus Major General Carlos F. Garcia (Ret.), Accused, et al.*” and promulgating judgment based on the assailed plea bargaining agreement, and (2) enjoining the respondent Sandiganbayan from implementing the December 16, 2010 resolution granting approval of respondent Major Gen. Carlos F. Garcia’s request for bail, effective immediately and continuing until further orders from the Court.<sup>101</sup> (Emphasis in the original)

In their Compliance with Manifestation and Motion (In Lieu of Comment),<sup>102</sup> Sandiganbayan Associate Justices Teresita V. Baldos, Roland B. Jurado and Samuel R. Martires state that they were adopting<sup>103</sup> their previous rulings in their assailed resolutions as their comment to the Petition for Certiorari.

---

<sup>94</sup> Id. at 69–74.

<sup>95</sup> Id. at 97–100.

<sup>96</sup> Id. at 74–77.

<sup>97</sup> Id. at 86–87.

<sup>98</sup> Id. at 89–93.

<sup>99</sup> Id. at 36–43.

<sup>100</sup> Id. at 901–902.

<sup>101</sup> Id. at 905.

<sup>102</sup> Id. at 1069–1072.

<sup>103</sup> Id. at 1070.

In his separate Comment,<sup>104</sup> Sandiganbayan Associate Justice Alex L. Quiroz (Associate Justice Quiroz) underscores that he was limiting his comment to the issue of whether the Office of the Solicitor General had standing to intervene in the Plea Bargaining Agreement between public respondent Office of the Special Prosecutor and private respondent and not the merits of the Plea Bargaining Agreement, as he did not participate in its approval.<sup>105</sup>

Associate Justice Quiroz opines that the Office of the Solicitor General's motion for intervention was correctly denied because it was the Ombudsman who was empowered to represent the government in the case before the Sandiganbayan. He likewise emphasizes that contrary to the Office of the Solicitor General's statements, the government was the offended party in the disputed Plea Bargaining Agreement, not the Armed Forces of the Philippines.<sup>106</sup>

Further, he points out that the Office of the Solicitor General's reliance on the Administrative Code of 1987 was misplaced as it may only act for or represent the Republic upon authorization of the President, which is lacking in this case.<sup>107</sup>

In his separate Comment,<sup>108</sup> Sandiganbayan Associate Justice Oscar C. Herrera (Associate Justice Herrera) stated that he dissented from the April 10, 2013 Joint Resolution which denied the Office of the Solicitor General's Motion for Reconsideration over the denial of its Motion for Intervention and the approval of the Plea Bargaining Agreement.<sup>109</sup>

Associate Justice Herrera likewise recounts that because he dissented from the April 10, 2013 Joint Resolution, a special division of five members had to be created. He states that instead of choosing the two other members by raffle as provided for in the Sandiganbayan Internal Rules, then Presiding Justice Francisco Villaruz, Jr. picked Associate Justices Roland B. Jurado and Alex L. Quiroz to become part of the special division because of their familiarity with the cases. Four<sup>110</sup> of the five members of the Special Division then voted to deny the Office of the Solicitor General's Motion for Reconsideration, while he maintained his dissent.<sup>111</sup>

In its Comment,<sup>112</sup> the Office of the Special Prosecutor echoes the

---

<sup>104</sup> Id. at 1312–1327.

<sup>105</sup> Id. at 1320.

<sup>106</sup> Id. at 1322–1324.

<sup>107</sup> Id. at 1320–1321.

<sup>108</sup> Id. at 1484–1487.

<sup>109</sup> Id. at 1484. Associate Justice Herrera's dissenting opinion can be found in *Rollo*, pp. 946–988.

<sup>110</sup> The April 10, 2013 Joint Resolution was penned by Associate Justice Samuel R. Martires and concurred in by Associate Justices Teresita V. Diaz-Baldos, Rolando B. Jurado and Alex L. Quiroz.

<sup>111</sup> *Rollo*, pp. 1485–1486.

<sup>112</sup> Id. at 1080–1199.

Sandiganbayan's position that the Office of the Solicitor General did not have the requisite personality to assail the Plea Bargaining Agreement. It likewise underscores that there was no substantial difference between "People of the Philippines" and "Republic of the Philippines," such that the Office of the Ombudsman would represent the "People of the Philippines" in a plunder case before the Sandiganbayan, while the Office of the Solicitor General would represent the "Republic of the Philippines."<sup>113</sup> It maintains that the only time the Office of the Solicitor General may appear before the Sandiganbayan is when it represents the Presidential Commission on Good Government in prosecuting cases of ill-gotten wealth against former President Ferdinand E. Marcos, his relatives and cronies.<sup>114</sup>

The Office of the Special Prosecutor likewise disputes petitioner's claim that the Armed Forces of the Philippines' consent was needed in the Plea Bargaining Agreement as it was never mentioned as a complainant nor as an offended party in the Information against Garcia.<sup>115</sup> It adds that assuming Armed Forces of the Philippines funds were used, it was already represented before the Sandiganbayan by the Office of the Special Prosecutor as it is part of the "People of the Philippines," and did not need additional representation from the Office of the Solicitor General.<sup>116</sup>

As for the sufficiency of evidence against Garcia to prove the charge of plunder against him, the Office of the Special Prosecutor admits that it continued to look for evidence against Garcia even after the Information for plunder was filed, since it was convinced that Clarita's statements before the US Customs was not sufficient for a plunder conviction.<sup>117</sup> The Office of the Special Prosecutor also admits that it was unable to uncover the identities of the John Does, James Does and Janes Does in the Information who supposedly connived and conspired with private respondent and his family to commit the crime of plunder.<sup>118</sup>

The Office of the Special Prosecutor then concedes that it was unable to specify private respondent's specific criminal acts, which led to his unjust enrichment to the damage and prejudice of the Filipino people.<sup>119</sup>

The Office of the Special Prosecutor maintains that it was only able to establish the Garcia family's ownership of various properties, but that it was unable to prove beyond reasonable doubt that the acquired wealth was due to criminal acts.<sup>120</sup>

---

<sup>113</sup> Id. at 1091-1092.

<sup>114</sup> Id. at 1093.

<sup>115</sup> Id. at 1096-1097.

<sup>116</sup> Id. at 1099.

<sup>117</sup> Id. at 1111-1112.

<sup>118</sup> Id. at 1113-1118.

<sup>119</sup> Id. at 1120.

<sup>120</sup> Id. at 1130-1132.



Ombudsman Conchita Carpio-Morales in her Manifestation in Lieu of Comment,<sup>121</sup> in turn, clarified that she had no hand in the preparation and submission of the contested Plea Bargaining Agreement to the Sandiganbayan, as this was done under the tenure of her predecessor, Ombudsman Gutierrez.<sup>122</sup>

Further, Ombudsman Carpio-Morales recounts that when she assumed office and reviewed the records which led to the Plea Bargaining Agreement, she filed a motion to hold in abeyance the Sandiganbayan's final action on petitioner's motion for reconsideration of the Sandiganbayan's May 9, 2011 denying petitioner's motion for intervention. She then filed a Position Paper<sup>123</sup> impugning and repudiating the Plea Bargaining Agreement as the prosecution had not yet rested its case and evidence of Garcia's guilt was strong.<sup>124</sup>

Ombudsman Carpio-Morales concludes by manifesting that she was adopting *in toto* the allegations of the Petition for Certiorari as well as its prayer before the Court.<sup>125</sup>

In his Comment,<sup>126</sup> private respondent Garcia also avers that the Office of the Solicitor General's motion for intervention was rightly denied by the Sandiganbayan because there was no concurrence of jurisdiction between the Office of the Solicitor General and the Ombudsman in prosecuting criminal cases before it. He stresses that the Ombudsman had primary jurisdiction, to the exclusion of everyone else, to prosecute cases cognizable by the Sandiganbayan under Republic Act No. 6770 or the Ombudsman Act of 1989.<sup>127</sup> He points out that the power to enter into a plea bargaining agreement in cases within the Sandiganbayan's jurisdiction was conferred by Republic Act No. 6770 upon the Office of the Special Prosecutor, under the Ombudsman's supervision.<sup>128</sup>

He also adds that contrary to the Office of the Solicitor General's claims, the Armed Forces of the Philippines was neither an indispensable nor necessary party in the plunder case against him as it was not an offended party in the plunder case and it already had its day in court in the proceedings against him before the General Court Martial.<sup>129</sup>

Respondent Garcia then underscores that the Office of the Solicitor General acted in bad faith in filing its Motion for Intervention after it

---

<sup>121</sup> Id. at 917-925.

<sup>122</sup> Id. at 917-918.

<sup>123</sup> Id. at 927-945.

<sup>124</sup> Id. at 918-920.

<sup>125</sup> Id. at 923.

<sup>126</sup> Id. at 1527-1704.

<sup>127</sup> Id. at 1565-1574.

<sup>128</sup> Id. at 1575-1578.

<sup>129</sup> Id. at 1581-1587.

actively participated in the approval and implementation of the Plea Bargaining Agreement.<sup>130</sup> He also points out that the Office of the Solicitor General kept the surrendered assets subject of the Plea Bargaining Agreement while moving to nullify the same in its petition in intervention before the Sandiganbayan.<sup>131</sup>

In its Consolidated Reply,<sup>132</sup> petitioner reiterates the authority and duty of the Office of the Solicitor General to intervene in the Plea Bargaining Agreement between the Office of the Special Prosecutor and private respondent Garcia pursuant to its mandate under the Administrative Code of 1987.<sup>133</sup> Petitioner points out that there was no inconsistency between the Office of the Solicitor General's mandate under the Administrative Code and the Ombudsman's own mandate under the Ombudsman Act of 1989.<sup>134</sup>

Petitioner then asserts that as the actual offended party, the Armed Forces of the Philippines needed to give its consent to the Plea Bargaining Agreement for its validity.<sup>135</sup>

Finally, petitioner denies that it was estopped from questioning the Plea Bargaining Agreement because of its supposed participation in the transfer of assets before the Regional Trial Court as it was not privy to the circumstances surrounding the Plea Bargaining Agreement's execution.<sup>136</sup>

On June 30, 2014, this Court resolved to give due course to the Petition and directed the parties to file their respective memoranda.<sup>137</sup>

Respondents Sandiganbayan<sup>138</sup> and the Office of the Special Prosecutor<sup>139</sup> filed manifestations in lieu of their memoranda where Sandiganbayan stated that it would not be filing a memorandum in light of the separate comments filed by the members of its Special Second Division,<sup>140</sup> and the Office of the Special Prosecutor stated that with the Ombudsman's submission of her position, there was no reason for it to submit one as it was under the Ombudsman's supervision and authority.<sup>141</sup>

---

<sup>130</sup> Id. at 1647–1648.

<sup>131</sup> Id. at 1695.

<sup>132</sup> Id. at 1760–1822.

<sup>133</sup> Id. at 1763–1764 and 1770–1773.

<sup>134</sup> Id. at 1769.

<sup>135</sup> Id. at 1773–1777.

<sup>136</sup> Id. at 1815–1817.

<sup>137</sup> Id. at 1887–1888.

<sup>138</sup> Id. at 1895–1898.

<sup>139</sup> Id. at 1911–1914.

<sup>140</sup> Id. at 1897.

<sup>141</sup> Id. at 1912.

In its Memorandum,<sup>142</sup> petitioner reiterates that respondent Sandiganbayan acted with grave abuse of discretion in approving the “grossly disadvantageous”<sup>143</sup> Plea Bargaining Agreement, despite proof beyond reasonable doubt of private respondent Garcia’s guilt for plunder.<sup>144</sup> Petitioner states:

As consistently shown by the totality of the prosecution evidence presented during the bail hearings and trial of the main case, there is in fact a combination of series of at least two (2) different predicate acts constituting the offense of Plunder. The admissions of Clarita Garcia, the testimony of Heidi Mendoza and the additional evidence presented by the prosecution all show a combination of series of at least two (2) predicate acts, namely: 1) receiving pecuniary benefits in connection with government contracts or by reason of office; and 2) taking undue advantage of official position – used as means or schemes in acquiring, amassing and accumulating ill-gotten wealth totaling Php303,272,005.99.

Simply put, there is evidence “sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy” to commit the crime of Plunder.

Unfortunately, instead of weighing the evidence presented by the prosecution during the bail hearing and trial on the main case as a whole, the respondent Court separately “analyzed” segments of the prosecution evidence to determine absolute certainty of guilt. It then ruled on its inadmissibility and/or lack of weight to prove beyond reasonable doubt the guilt of respondent Garcia and his co-accused for the crime of Plunder.<sup>145</sup> (Citation omitted, emphasis in the original)

It also stresses that Heidi Mendoza’s (Mendoza) testimony coupled with several documentary evidence show that there was ₱50,000,000.00 unaccounted for from the ₱200,000,000.00 transferred to the Armed Forces of the Philippines fund. It insists that this could have only been facilitated by private respondent Garcia.<sup>146</sup>

In his Memorandum,<sup>147</sup> private respondent Garcia emphasizes that the Plea Bargaining Agreement was validly entered into and that he surrendered and transferred ₱135,433,387.87 worth of assets to the government in compliance with its terms. Thus, the government cannot now nullify the Plea Bargaining Agreement after it enjoyed its benefits.<sup>148</sup> He also points out that despite the execution of the Plea Bargaining Agreement, he continues to be detained without a conviction.<sup>149</sup>

---

<sup>142</sup> Id. at 1916–2031.

<sup>143</sup> Id. at 1933.

<sup>144</sup> Id. at 1940–1944.

<sup>145</sup> Id. at 1943–1944.

<sup>146</sup> Id. at 1960–1968.

<sup>147</sup> Id. at 2212–2569.

<sup>148</sup> Id. at 2213–2214.

<sup>149</sup> Id. at 2212, Footnote No. 2.

Private respondent Garcia maintains that despite respondent Office of the Special Prosecutor's voluminous documentary exhibits and 40 witnesses, respondent Sandiganbayan still found them insufficient to support a conviction for plunder. He insists that being the trier of facts, respondent Sandiganbayan's findings must be duly respected.<sup>150</sup>

Finally, private respondent Garcia posits that the Plea Bargaining Agreement, which he relied upon with good faith, has the force and effect of *res judicata*.<sup>151</sup>

On September 15, 2015, former Ombudsman Simeon V. Marcelo (Marcelo) filed a Motion [For Leave to Intervene, Adopt the *Petition for Certiorari* Dated 14 June 2013 Filed by the Office of the Solicitor General for and on Behalf of the Republic of the Philippines and Admit the Attached Reply].<sup>152</sup>

In his motion for intervention, aside from asserting his status as a taxpayer who has the right to be vigilant in the disbursement of public funds,<sup>153</sup> Marcelo also claims to possess legal interest in the matter under litigation in light of its transcendental importance.<sup>154</sup>

In his Reply,<sup>155</sup> Marcelo argues that the prosecution's evidence proved respondent Garcia's guilt for plunder beyond reasonable doubt. He points out that Clarita's statements in her Sworn Statement could be considered as an admission by a conspirator.<sup>156</sup>

Additionally, he contends that the Plea Bargaining Agreement should be struck down for being grossly disadvantageous to the government due to the Office of the Special Prosecutor's "sheer inexcusable gross incompetence"<sup>157</sup> which amounted to an abandonment<sup>158</sup> of its duties and a deliberate sabotage<sup>159</sup> of its case against private respondent Garcia. He also claims that the reopening of the criminal prosecution against private respondent will not result in double jeopardy because of the "grave prosecutorial misconduct which deprived the state of its right to due process."<sup>160</sup>

---

<sup>150</sup> Id. at 2329.

<sup>151</sup> Id. at 2542–2554.

<sup>152</sup> Id. at 2571–2581.

<sup>153</sup> Id. at 2575–2578.

<sup>154</sup> Id. at 2574–2575.

<sup>155</sup> Id. at 2582–2655.

<sup>156</sup> Id. at 2585–2596.

<sup>157</sup> Id. at 2596.

<sup>158</sup> Id. at 2609.

<sup>159</sup> Id. at 2615–2623.

<sup>160</sup> Id. at 2647.

On April 24, 2017,<sup>161</sup> this Court granted Marcelo's motion to intervene and adopt petitioner's Petition, and also noted his Reply.

The two issues for this Court's resolution are:

(1) Whether or not the Office of the Solicitor General could validly intervene in the plunder case against private respondent Garcia before the Sandiganbayan; and

(2) Whether or not the Plea Bargaining Agreement was validly entered into by respondents Office of the Special Prosecutor and Garcia.

The Petition must be denied.

## I

The Office of the Solicitor General is an autonomous and independent office attached to the Department of Justice.<sup>162</sup> It is headed by the Solicitor General who is considered to be the "principal law officer and legal defender of the Government"<sup>163</sup> and its powers and functions can be found in Book 4, Title III, Chapter 12, Section 35 of Executive Order No. 292 or the 1987 Administrative Code, which provides:

SECTION 35. *Powers and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

(2) Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines the Solicitor General may

---

<sup>161</sup> Id. at 3582–3583.

<sup>162</sup> Executive Order No. 300 (1987), sec. 1.

<sup>163</sup> Executive Order No. 300 (1987), sec. 2.

employ counsel to assist in the discharge of the aforementioned responsibilities.

(3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court.

(4) Appear in all proceedings involving the acquisition or loss of Philippine citizenship.

(5) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon as well as lands held in violation of the Constitution.

(6) Prepare, upon request of the President or other proper officer of the National Government, rules and guidelines for government entities governing the preparation of contracts, making of investments, undertaking of transactions, and drafting of forms or other writings needed for official use, with the end in view of facilitating their enforcement and insuring that they are entered into or prepared conformably with law and for the best interests of the public.

(7) Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment.

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts, and exercise supervision and control over such legal officers with respect to such cases.

(9) Call on any department, bureau, office, agency or instrumentality of the Government for such service, assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks.

Departments, bureaus, agencies, offices, instrumentalities and corporations to whom the Office of the Solicitor General renders legal services are authorized to disburse funds from their sundry operating and other funds for the latter Office. For this purpose, the Solicitor General and his staff are specifically authorized to receive allowances as may be provided by the Government offices, instrumentalities and corporations concerned, in addition to their regular compensation.

(10) Represent, upon the instructions of the President, the Republic of the Philippines in international litigations, negotiations

or conferences where the legal position of the Republic must be defended or presented.

(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require; and

(12) Perform such other functions as may be provided by law.

*Gonzales v. Chavez*<sup>164</sup> traced the statutory origins of the Office of the Solicitor General and its role of representing the government, and concluded that the clear intention was to consolidate in one official the responsibility of representing the government in all manners of legal proceedings.<sup>165</sup> *Gonzales* explained the policy objective behind the creation of the Office of the Solicitor General:

The rationale behind this step is not difficult to comprehend. Sound government operations require consistency in legal policies and practices among the instrumentalities of the State. Moreover, an official learned in the law and skilled in advocacy could best plan and coordinate the strategies and moves of the legal battles of the different arms of the government. Surely, the economy factor, too, must have weighed heavily in arriving at such a decision.

It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term “shall,” which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).<sup>166</sup>

Nonetheless, despite the Office of the Solicitor General’s seemingly broad and unqualified power to represent the government, *Office of the Solicitor General v. Court of Appeals*,<sup>167</sup> clarified that its mandate under the Administrative Code must be reckoned alongside other statutes which likewise endow other government bodies with the power of also representing the government before courts.<sup>168</sup>

In *Office of the Solicitor General*, the Court of Appeals directed the Office of the Solicitor General, as the purported legal representative of the Municipality of Saguiran, Lanao Del Sur, to file a memorandum for the Municipality. The Office of the Solicitor General denied being the Municipality’s rightful representative as the Local Government Code provided that the municipal legal officer should represent the local

---

<sup>164</sup> 282 Phil. 858 (1992) [J. Romero, En Banc].

<sup>165</sup> Id.

<sup>166</sup> Id. at 879 Phil. 880.

<sup>167</sup> 735 Phil 622 (2014) [Per J. Reyes, First Division].

<sup>168</sup> Id.

government unit in civil actions or special proceedings in court proceedings.<sup>169</sup>

In granting the Office of the Solicitor General's petition and holding that the Local Government Code and not the Administrative Code was the controlling law, *Office of the Solicitor General* emphasized that the Office of the Solicitor General's power to represent the government was not only limited by statute but also by jurisprudence:

It bears mentioning that notwithstanding the broad language of the Administrative Code on the OSG's functions, the LGC is not the only qualification to its scope. Jurisprudence also provides limits to its authority. In *Urbano v. Chavez*, for example, the Court ruled that the OSG could not represent at any stage a public official who was accused in a criminal case. This was necessary to prevent a clear conflict of interest in the event that the OSG would become the appellate counsel of the People of the Philippines once a judgment of the public official's conviction was brought on appeal.<sup>170</sup> (Citation omitted)

On the other hand, the power and authority of the present Office of the Ombudsman emanate from the 1987 Constitution and Republic Act No. 6770 or The Ombudsman Act of 1989.

The concept of a people's protector was first institutionalized in the 1973 Constitution with the creation of the Tanodbayan.<sup>171</sup> Article XIII, Section 6 of the 1973 Constitution provided:

SECTION 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

Presidential Decree No. 1487 or the Tanodbayan Decree of 1977 then established the position of the Tanodbayan, with two deputies in Luzon and one deputy each in Visayas and Mindanao.<sup>172</sup> The Tanodbayan was vested with the twin powers of investigation<sup>173</sup> and prosecution.<sup>174</sup>

---

<sup>169</sup> Id.

<sup>170</sup> Id. at 631.

<sup>171</sup> *Gonzales III v. Office of the President of the Philippines*, 694 Phil. 52 (2012) [Per J. Perlas-Bernabe, En Banc].

<sup>172</sup> Presidential Decree No. 1487 (1988), sec. 2.

<sup>173</sup> Presidential Decree No. 1487 (1988), sec. 10 provides:

SECTION 10. *Powers.* — The Tanodbayan shall have the following powers:

(a) He may investigate, on complaint, any administrative act of any administrative agency including any government-owned or controlled corporation;

(b) He may prescribe the methods by which complaints are to be made, received, and acted upon; he may determine the scope and manner of investigations to be made; and, subject to the requirements of

Years later, the framers of the 1987 Constitution endeavored to strengthen and increase the Tanodbayan's authority to make it more effective in its mandate of investigating and prosecuting erring government employees.<sup>175</sup> As a result, the 1987 Constitution made the Office of the Ombudsman an independent<sup>176</sup> and fiscally autonomous body<sup>177</sup> with the following powers, functions and duties:

SECTION 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

- (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so

---

this Decree, he may determine the form, frequency, and distribution of his conclusions and recommendations;

(c) He may request and shall be given by each administrative agency the assistance and information he deems necessary for the discharge of his responsibilities; he may examine the records and documents of all administrative agencies; and he may enter and inspect premises within any administrative agency's control, provided, however, that where the President in writing certifies that such information, examination or inspection might prejudice the national interest, the Tanodbayan shall desist. All information so obtained shall be confidential, unless the President, in the interest of public service, decides otherwise;

(d) He may issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence the Tanodbayan deems relevant to a matter under his inquiry;

(e) He may undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies.

<sup>174</sup> Presidential Decree No. 1487 (1988), sec. 17 provides:

SECTION 17. *Prosecution of public personnel.* — If the Tanodbayan has reason to believe that any public official, employee, or other person has acted in a manner resulting in a failure of justice, he shall file and prosecute the corresponding criminal, civil, or administrative case before the Sandiganbayan or the proper court or body.

<sup>175</sup> *Gonzales III v. Office of the President of the Philippines*, 694 Phil 52 (2012) [Per J. Perlas-Bernabe, En Banc] citing Bernas, S.J., *The Intent of the 1986 Constitution Writers*, 771 (1995).

<sup>176</sup> CONST., art. XI, sec. 5.

<sup>177</sup> CONST., art. XI, sec. 14.

warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.<sup>178</sup>

Executive Order No. 243<sup>179</sup> then created the Office of the Ombudsman, while Executive Order No. 244<sup>180</sup> created the Office of the Special Prosecutor which inherited the powers exercised by the Tanodbayan prior to the 1987 Constitution.<sup>181</sup> The Ombudsman Act of 1989 eventually placed the Office of the Special Prosecutor under the Ombudsman's supervision and control.<sup>182</sup>

The Office of the Ombudsman, as the people's protector, is mandated to act promptly on all complaints filed against government employees and initiate prosecution against them if warranted by the evidence to promote efficient government service to the people.<sup>183</sup>

In recognition of the Office of the Ombudsman's mandate as the people's protector and its specific role of prosecuting erring government officials, the Ombudsman Act of 1989 bestowed the Office of the Ombudsman with "primary jurisdiction over cases cognizable by the Sandiganbayan"<sup>184</sup> and "it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases."<sup>185</sup>

*Uy v. Sandiganbayan*<sup>186</sup> explains that while the Ombudsman has primary jurisdiction over cases which may be filed before the Sandiganbayan, his or her power of investigation and prosecution is not limited to cases cognizable by the Sandiganbayan but covers "all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office."<sup>187</sup>

Nonetheless, the grant of primary jurisdiction to the Office of the Ombudsman to investigate and prosecute complaints against government

<sup>178</sup> CONST., art. XI, sec. 13.

<sup>179</sup> Declaring the Effectivity of the Creation of the Office of the Ombudsman as Provided for in the 1987 Constitution.

<sup>180</sup> Declaring the Effectivity of the Creation of the Office of the Special Prosecutor as Provided for in the 1987 Constitution.

<sup>181</sup> Executive Order No. 244 (1987), sec. 2.

<sup>182</sup> Republic Act No. 6770 (1989), sec. 11.

<sup>183</sup> Republic Act No. 6770 (1989), sec. 13.

<sup>184</sup> Republic Act No. 6770 (1989), sec. 15(1).

<sup>185</sup> Republic Act No. 6770 (1989), sec. 15(1).

<sup>186</sup> 407 Phil. 154 (2001) [Per J. Pardo, En Banc].

<sup>187</sup> Id. at 165.

employees is not an exclusive power as it is shared with other government agencies with similar authorities.<sup>188</sup>

Executive Order No. 14, series of 1986 which defined the Presidential Commission on Good Government's jurisdiction over cases involving the ill-gotten wealth of former President Marcos, his family members, relatives, associates, and dummies, empowered the Office of the Solicitor General<sup>189</sup> to assist the Presidential Commission on Good Government in filing and prosecuting cases before the Sandiganbayan, which had exclusive and original jurisdiction over ill-gotten wealth cases.<sup>190</sup>

Thus, the general rule is that while the Office of the Ombudsman has primary jurisdiction over cases filed before the Sandiganbayan, when it comes to civil and criminal cases involving the Marcos' ill-gotten wealth, it is the Presidential Commission on Good Government, represented by the Office of the Solicitor General as the "law office of the [Presidential Commission on Good Government],"<sup>191</sup> who is authorized to investigate and prosecute these cases before the Sandiganbayan.

Here, the Office of the Solicitor General relies upon its mandate to represent the Government under the Administrative Code to substantiate its right to intervene<sup>192</sup> in the Plea Bargaining Agreement, which it claimed to be "grossly disadvantageous and prejudicial to the interest of the Republic of the Philippines and the welfare of the . . . Filipino people."<sup>193</sup>

The Office of the Solicitor General does not dispute the Office of the Ombudsman's authority to file the plunder case against respondent Garcia and enter into a plea bargaining agreement,<sup>194</sup> rather, it claims that due to its mandate to protect and promote the interests of the people, and its representation of the Armed Forces of the Philippines, it had the right to intervene in the Plea Bargaining Agreement.<sup>195</sup>

Petitioner is mistaken.

---

<sup>188</sup> *Office of the Ombudsman v. Galicia*, 589 Phil. 314 (2008) [Per J. Reyes, R.T., En Banc], citing *Panlilio v. Sandiganbayan*, 285 Phil. 927 (1992) [Per J. Nocon, En Banc]; and *Cojuangco, Jr. v. Presidential Commission on Good Government*, 268 Phil. 235 (1990) [Per J. Gancayco, En Banc].

<sup>189</sup> Executive Order No. 14 (1986), sec. 1 provides:  
SECTION 1. Any provision of the law to the contrary notwithstanding, the Presidential Commission on Good Government, with the assistance of the Office of the Solicitor General and other government agencies, is hereby empowered to file and prosecute all cases investigated by it under Executive Order No. 1, dated February 28, 1986, and Executive Order No. 2, dated March 12, 1986, as may be warranted by its findings.

<sup>190</sup> Executive Order No. 14 (1986), sec. 2 provides:  
SECTION 2. The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof.

<sup>191</sup> *Gonzales v. Chavez*, 282 Phil. 858, 859 (1992) [J. Romero, En Banc].

<sup>192</sup> *Rollo*, pp. 2013–2015.

<sup>193</sup> *Id.* at 2013.

<sup>194</sup> *Id.* at 2014–2016.

<sup>195</sup> *Id.* at 2016.

ℓ

The Office of the Solicitor General's authority to represent the Government is not plenary or all-encompassing. Book IV, Title III, Chapter 12, Section 35(11)<sup>196</sup> of the Administrative Code does not give it *carte blanche* authority to swoop in at any time and in any circumstance simply because it believes that the people's welfare and the ends of justice require its intervention, especially if the government is already represented by the appropriate agency.

The mandate to represent the government in proceedings before the Sandiganbayan generally lies with the Office of the Ombudsman, with the Office of the Solicitor General allowed to prosecute a case before the Sandiganbayan in Marcos ill-gotten wealth cases and only in representation of the Presidential Commission on Good Government. The present case does not involve Marcos ill-gotten wealth, thus, the Office of the Ombudsman rightfully represented the government in the plunder case against private respondent Garcia before the Sandiganbayan.

More importantly, the Office of the Solicitor General, which is a statutory creation, cannot be expressly or impliedly allowed to have personality or the power of supervision or control over the actions of the Special Prosecutor and the Office of the Ombudsman which is a constitutional body.

To allow the Office of the Solicitor General to cherry-pick its jurisdiction under the pretext that it believes its intervention is warranted by the greater good and the ends of justice, would be to impliedly give it supervisory powers or even control over other agencies with a similar mandate of representing the government in different courts and fora. This cannot be allowed, as the Office of the Solicitor General's broad mandate under the Administrative Code to represent the Government does not involve the power of control or even supervision over other agencies which also represent the government.

*Pimentel, Jr. v. Aguirre*,<sup>197</sup> citing *Drilon v. Lim*,<sup>198</sup> differentiated between control and supervision as follows:

---

<sup>196</sup> SECTION 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

....  
(11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require[.]

<sup>197</sup> 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

<sup>198</sup> 305 Phil. 146 (1994) [Per J. Cruz, En Banc].

In a more recent case, *Drilon v. Lim*, the difference between control and supervision was further delineated. Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.<sup>199</sup>

Here, the Office of the Solicitor General believed that the Plea Bargaining Agreement brokered by the Office of the Special Prosecutor under Ombudsman Gonzales' control, was disadvantageous to the government and public welfare since it allowed respondent Garcia to plead to a lesser offense despite the strong evidence of respondent Garcia's guilt. Hence, it opines that it was within its mandate, as the government's law firm, to ensure that the people's interests were protected and promoted, and also, impliedly, to correct the Office of the Ombudsman's error.

Again, the Office of the Solicitor General is mistaken.

The government was already rightfully represented by the Office of the Ombudsman in the plunder case before the Sandiganbayan. Thus, the Office of the Solicitor General overstepped its bounds by insisting on providing additional representation. Further, the Office of the Solicitor General had no power of control or supervision over the Office of the Ombudsman, an independent constitutional body. It had no authority to impose on the latter's handling of the Plea Bargaining Agreement, even if it strongly believed that the Plea Bargaining Agreement was grossly disadvantageous to the government and the people's welfare.

## II

Plea bargaining is defined as "a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval."<sup>200</sup> Generally, plea bargaining is made during the pre-trial stage and the accused pleads guilty to a lesser offense in exchange for a lighter sentence.<sup>201</sup> Pleading to a lesser offense is provided for under Rule 116, Section 2 of the Revised Rules of Criminal Procedure:

---

<sup>199</sup> *Pimentel, Jr. v. Aguirre*, 391 Phil. 85, 99-100 (2000) [Per J. Panganiban, En Banc].

<sup>200</sup> *People v. Villarama*, 285 Phil. 723, 730 (1992) [Per J. Medialdea, First Division].

<sup>201</sup> *Id.*

SECTION 2. *Plea of Guilty to a Lesser Offense.* — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

A careful reading of this provision shows that the plea bargaining process consists of two parts: (1) the out of court agreement between the offended party and the prosecutor; and (2) the presentation of the plea bargain before the court for its approval.

The prosecutorial discretion inherent in a plea bargaining agreement is further emphasized in Rule 118, Section 1(a) of the Revised Rules of Criminal Procedure which mandates courts, including the Sandiganbayan, to consider plea bargaining during pre-trial:

SECTION 1. *Pre-trial; Mandatory in Criminal Cases.* — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

Further, *People v. Villarama*<sup>202</sup> stressed that the prosecutor enjoyed full control over the prosecution of criminal actions, thus, prosecutorial consent “is a condition precedent to a valid plea of guilty to a lesser offense.”<sup>203</sup>

*Daan v. Sandiganbayan*<sup>204</sup> summarized the requirements of a valid plea bargaining and emphasized that the trial courts exercise full discretion on whether to accept the plea bargaining proffered by the parties:

Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, *i.e.*, that it should be with the consent of the offended party and the prosecutor, and that the plea

<sup>202</sup> 285 Phil. 723 (1992) [Per J. Medialdea, First Division].

<sup>203</sup> *Id.* at 725.

<sup>204</sup> 573 Phil. 368 (2008) [Per J. Austria-Martinez, Third Division].

of guilt should be to a lesser offense which is necessarily included in the offense charged. The rules however use word *may* in the second sentence of Section 2, denoting an exercise of discretion upon the trial court on whether to allow the accused to make such plea. Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.<sup>205</sup> (Citations omitted)

Nonetheless, the trial court's discretion must be grounded on the sufficiency of the prosecution's evidence:

In the case at bar, the private respondent (accused) moved to plead guilty to a lesser offense after the prosecution had already rested its case. In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that *the rules allow such a plea only when the prosecution does not have sufficient evidence to establish guilt of the crime charged*. In his concurring opinion in *People v. Parohinog* (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale of the law:

. . . (A)fter the prosecution had already rested, *the only basis on which the fiscal and the court could rightfully act in allowing the appellant to charge his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record*. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.<sup>206</sup> (Citations omitted; emphasis in the original)

Private respondent Garcia was charged with the crime of plunder, which is defined in Section 2 of Republic Act No. 7080,<sup>207</sup> as amended by Republic Act No. 7659, as follows:

SECTION 2. *Definition of the Crime of Plunder; Penalties*. – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof, in the aggregate amount or total value of at least [Fifty million] pesos [P50,000,000.00] shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for

<sup>205</sup> Id. at 376–377.

<sup>206</sup> *People v. Villarama, Jr.*, 285 Phil. 723, 730–731 (1992) [Per J. Medialdea, First Division] citing *People v. Kayanan*, 172 Phil. 728 (1978) [Per J. Barredo, En Banc]; and J. Barredo, Concurring Opinion in *People v. Parohinog*, 185 Phil. 266 (1980) [Per J. Abad Santos, Second Division].

<sup>207</sup> An Act Defining and Penalizing the Crime of Plunder.

such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

*Enrile v. People*<sup>208</sup> specified the three (3) elements of plunder:

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

- a. through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- b. by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;
- c. by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government-owned or -controlled corporations or their subsidiaries;
- d. by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- e. by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- f. by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

- (3) That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.<sup>209</sup>

On the other hand, direct bribery is defined in Article 210 of the Revised Penal Code:

ARTICLE 210. *Direct bribery.* – Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the

<sup>208</sup> 766 Phil. 75 (2015) [Per J. Brion, En Banc].

<sup>209</sup> Id. at 115–116.

mediation of another, shall suffer the penalty of *prision mayor* in its minimum and medium periods and a fine of not less than the value of the gift and not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period and a fine of not less than the value of the gift and not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

*Magno v. Commission on Elections*<sup>210</sup> lists down the elements of direct bribery:

1. the offender is a public officer;
2. the offender accepts an offer or promise or receives a gift or present by himself or through another;
3. such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and
4. the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.<sup>211</sup> (Citation omitted)

Both plunder and direct bribery involve public officers who capitalize on their official positions to commit a crime or an unjust act which would lead to their financial benefit. Thus, the plea of guilt to the lesser offense of direct bribery is necessarily included in the charged offense of plunder, because some of the essential elements of the crime of plunder constitute direct bribery.<sup>212</sup>

<sup>210</sup> 439 Phil. 359 (2002) [Per J. Corona, En Banc].

<sup>211</sup> Id. at 346.

<sup>212</sup> RULES OF COURT, Rule 120, sec. 5 provides:

SECTION 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily

In the same manner, the new charge of violation of Section 4(b)<sup>213</sup> of the Anti-Money Laundering Act, or facilitating money laundering, is necessarily included in the original charge of violation of Section 4(a),<sup>214</sup> or money laundering, against respondent Garcia.

Additionally, it is not disputed that the Office of the Special Prosecutor, upon the authority of the Ombudsman, has the power to enter into a plea bargaining agreement.<sup>215</sup> Here, Special Prosecutor Wendell Barrera-Sulit, under the direct supervision and control of Ombudsman Gutierrez, entered into the assailed Plea Bargaining Agreement with private respondent Garcia.

At this juncture, it must be emphasized that this Court will not interfere with the substance of or the wisdom behind the Plea Bargaining Agreement, as that falls squarely within the Office of the Ombudsman's mandate of investigating and prosecuting erring government employees.<sup>216</sup> Absent any blatant evidence of irregularity or grave abuse of discretion, this Court will generally confine itself to the legal and technical issues surrounding a plea bargaining agreement or any similar agreement.

The acceptance of a plea bargain is purely upon the discretion of the prosecutor, while the approval of the plea bargain is subject to the judicial discretion of the court trying the facts. Hence, any review of a plea bargain approved by the Office of the Ombudsman would be tantamount to an

---

included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

<sup>213</sup> SECTION 4. *Money Laundering Offense*. — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above[.]

<sup>214</sup> SECTION 4. *Money Laundering Offense*. — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property[.]

<sup>215</sup> Republic Act No. 6770 (1989), sec. 11 (4) (b) provides:

SECTION 11. *Structural Organization*. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b) To enter into plea bargaining agreements; and

(c) To perform such other duties assigned to it by the Ombudsman.

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman[.]

<sup>216</sup> *Joson v. Office of the Ombudsman*, 816 Phil. 288 (2017) [Per J. Leonen, Second Division].

appeal on a question of fact and not the proper subject of a petition for certiorari.

Here, the Plea Bargaining Agreement appears to be procedurally sound, thus, the only remaining issue is if the prosecution was able to prove respondent Garcia's guilt for plunder and money laundering beyond reasonable doubt, thereby rendering the Plea Bargaining Agreement unnecessary.

Former Ombudsman Marcelo insists that private respondent Garcia's wife, Clarita, admitted the illicit nature of their family's source of funds and the predicate crimes from which their funds came from.<sup>217</sup> He maintains that Clarita's two written declarations before the United States Customs agent already served as an exception to the *res inter alios* rule, since they could be considered as admissions by a co-conspirator, hence, the prosecution no longer needed to find a whistleblower who would admit to paying off respondent Garcia in exchange for military contracts.<sup>218</sup>

On the other hand, the Sandiganbayan pointed out that the United States Customs agent's testimony on Clarita's letters was only to their authenticity and did not mean to prove the truth of their content.<sup>219</sup> Additionally, the Sandiganbayan emphasized that Clarita's letters did "not contain details of any amount given to them, who gave them, or the circumstances of how they were given."<sup>220</sup>

For a successful prosecution of plunder, the prosecution must prove beyond reasonable doubt that a public officer amassed ill-gotten wealth of at least ₱50,000,000.00 through a combination or series of overt criminal acts defined in Section 1 (d) of Republic Act No. 7080, which provides:

SECTION 1. *Definition of Terms.* — As used in this Act, the term —

d) "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit

<sup>217</sup> *Rolla*, p. 2585.

<sup>218</sup> *Id.* at 2585-2596.

<sup>219</sup> *Id.* at 152.

<sup>220</sup> *Id.* at 153.

- from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
  4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
  5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
  6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

There is no quibble that private respondent Garcia was a public officer, being a general with the Armed Forces of the Philippines, at the time the alleged plunder took place. Clarita's letters likewise show that respondent Garcia received gifts in connection with his position as army comptroller. However, the letters do not show that the gifts he received amounted to more than ₱50,000,000.00.

The prosecution's failure to provide evidence of ill-gotten wealth within the threshold for plunder is primarily due to its failure to find a military contractor or supplier who could provide concrete and supporting details to Clarita's admissions, as shown in the hearing for the Office of the Solicitor General's motion for intervention before the Sandiganbayan:

JUSTICE BALDOS:

What among the elements of plunder do you think you were not able to prove beyond reasonable doubt that gave you no option but to enter into a Plea Bargaining Agreement with the accused as subsequent evidence and facts would show?

PROSEC. CAPISTRANO:

More particularly, Your Honors, on the basis of the information, contractors and suppliers, in other words with reference to the elements of the crime of plunder and as regards the overt act.

JUSTICE BALDOS:

Overt act?

PROSEC. CAPISTRANO:

Yes, Your Honor. As regards the information, the plunder was allegedly committed by receiving gifts, kickbacks and commission from the suppliers and the contractors.



JUSTICE BALDOS:

And the prosecution was unable to?

PROSEC. CAPISTRANO:

To be candid with the Court, Your Honors, we do not have any contractors and suppliers.

JUSTICE BALDOS:

Were you able to get in touch with any of the contractors? St. John (*sic*) did not want to testify?

PROSEC. CAPISTRANO:

We failed to find any supplier or contractor that would substantiate these wordings of the information, Your Honor.

JUSTICE BALDOS:

And because of that you felt that you would not be able to prove beyond reasonable doubt for (*sic*) plunder?

PROSEC. CAPISTRANO:

Yes, Your Honor, that is very [*sic*] big risk that we will not be able to prove that, [*sic*] Your Honor.

JUSTICE BALDOS:

Is the testimony of the contractor the only substantiating factor?

PROSEC. CAPISTRANO:

Well, it is the very wordings of the information, Your Honor, we just took into consideration that there is a possibility that the Court might rule on the technical side of this issue merely on the basis of the information.

JUSTICE BALDOS:

Are you practically admitting that the words of the information filed by the prosecution were quite defective or insufficient?

PROSEC. CAPISTRANO:

I would say that there is no corresponding evidence to support the wordings of the information, Your Honor, insofar as the records of the case are concerned when we took over the case.

JUSTICE BALDOS:

What about your evidence?

PROSEC. CAPISTRANO:

We tried to present as many as possible evidence we can get even those evidence that are not even available at the onset of the case we conducted additional investigation just to be able to possibly looking for support the very wordings of the information, [*sic*] Your Honor, we failed to do that.

JUSTICE BALDOS:

So because of that, you entered into a Plea Bargaining Agreement with the accused?



**PROSEC. CAPISTRANO:**

It's one of the options, Your Honor, in order to protect the interest of the state[,] we weighed in each evidence and the we find that there might be a possible consequence.<sup>221</sup>

Even Mendoza's testimony over the missing funds of the Armed Forces of the Philippines could not be directly attributed to private respondent Garcia's misuse.<sup>222</sup> Further, witnesses from the Armed Forces of the Philippines belied Mendoza's testimony that ₱50,000,000.00 from the ₱200,000,000.00 received by the Armed Forces of the Philippines from the United Nations was missing. Instead, they testified that the entire amount had been accounted for and had eventually been used for the Armed Forces of the Philippines contingent to East Timor.<sup>223</sup>

Grave abuse of discretion is defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."<sup>224</sup> Considering the prosecution's failure to prove private respondent Garcia's guilt for plunder and money laundering beyond reasonable doubt, respondent Sandiganbayan cannot be said to have gravely abused its discretion in approving the assailed Plea Bargaining Agreement.

**WHEREFORE**, premises considered, the Petition for Certiorari is **DISMISSED**. The Temporary Restraining Order enjoining the Sandiganbayan from continuing with the proceedings in Criminal Case Nos. 28107 and SB-09-SRM-0194, both entitled "*People of the Philippines v. Major General Carlos F. Garcia*," and from implementing its December 16, 2010 Resolution approving Major Gen. Carlos F. Garcia's request for bail, is **LIFTED**.

**SO ORDERED.**



**MARVIC M.V.F. LEONEN**  
Associate Justice

<sup>221</sup> *Rollo*, pp. 173–175.

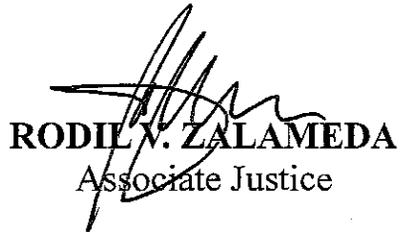
<sup>222</sup> *Id.* at 154–155.

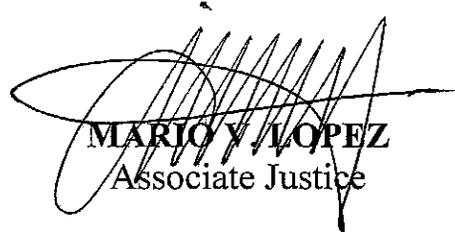
<sup>223</sup> *Id.* at 155–158.

<sup>224</sup> *Rodriguez v. Hon. Presiding Judge of the Regional Trial Court of Manila, Branch 17, et al.*, 518 Phil. 455, 462 (2006) [Per J. Quisumbing, En Banc] citing *Zarate v. Maybank Philippines, Inc.*, 498 Phil. 825 (2005) [Per J. Callejo, Sr., Second Division].

WE CONCUR:

  
**ROSMARI D. CARANDANG**  
Associate Justice

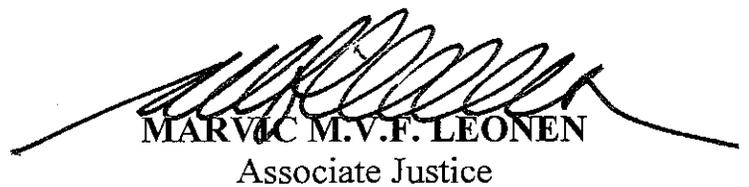
  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**MARIO Y. LOPEZ**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

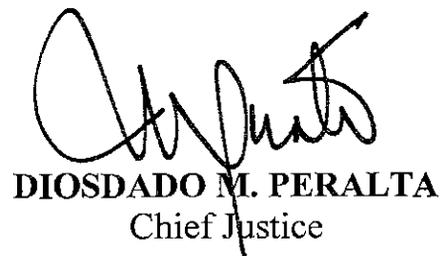
**ATTESTATION**

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

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Chief Justice