G.R. No. 220598 ***(Gloria Macapagal Arroyo v. People of the Philippines and the Sandiganbayan [First Division]);*** G.R. No. 220953 ***(Benigno B. Aguas v. Sandiganbayan [First Division])***

Promulgated:

July 19, 2016

x- -x

DISSENTING OPINION

SERENO, *CJ:*

Given the records and pleadings in these cases, I register my dissent from the *ponencia*. Contrary to the *ponencia*'s conclusion, I find that the prosecution has sufficiently alleged and established conspiracy in the commission of the crime of plunder involving, among others, petitioners Gloria Macapagal Arroyo (Arroyo) and Benigno B. Aguas (Aguas). I therefore find no grave abuse of discretion in the Sandiganbayan rulings, which denied petitioners' demurrers and motions for reconsideration.

In sum, my strong objection to the Majority Opinion is impelled by at least five (5) doctrinal and policy considerations.

1. The *ponencia* completely ignores the stark irregularities in the Confidential/Intelligence Fund (CIF) disbursement process and effectively excuses the breach of budget ceilings by the practice of commingling of funds;

2. The *ponencia* retroactively introduces two additional elements in the prosecution of the crime of plunder – the identification of a main plunderer and personal benefit to him or her – an effect that is not contemplated in the law nor explicitly required by any jurisprudence;

3. The *ponencia* denies efficacy to the concept of implied conspiracy that had been carefully laid down in *Alvizo v. Sandiganbayan;*[1]

4. The *ponencia* creates an unwarranted certiorari precedent by completely ignoring the evidentiary effect of formal reports to the Commission on Audit (COA) that had been admitted by the trial court; and

[1] 454 Phil. 34 (2003).

5. The *ponencia* has grossly erred in characterizing the prosecution's evidence as not showing "even the remotest possibility that the CIFs of the PCSO had been diverted to either [Arroyo] or Aguas or Uriarte,"[2] when petitioner Aguas himself reported to COA that ₱244 million of nearly ₱366 million controverted Philippine Charity Sweepstakes Office (PCSO) funds had been diverted to the Office of the President.

I
The prosecution has sufficiently alleged and established conspiracy among the accused specifically petitioners Arroyo and Aguas.

Preliminarily, the *ponencia* states that the prosecution did not properly allege conspiracy. I disagree.

Estrada v. Sandiganbayan[3] *(2002 Estrada)* is instructive as to when the allegations in the Information may be deemed sufficient to constitute conspiracy. In that case, We stated:

> [I]t is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc; or (2) by allegation of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[4]

In the Information[5] in this case, all the accused public officers were alleged to have "connived and conspired" in unlawfully amassing, accumulating and acquiring ill-gotten wealth in the total amount of ₱365,997,915 through (a) "diverting funds from the operating budget of PCSO to its [CIF] x x x and transferring the proceeds to themselves x x x for their personal gain and benefit; (b) "raiding the public treasury by withdrawing and receiving x xx and unlawfully transferring or conveying the same into their possession and control;" and (c) "taking advantage of their respective official positions x x x to unjustly enrich themselves x x x at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines."

---

[2] Decision, p. 42.
[3] G.R. No. 148965, 26 February 2002, 377 SCRA 538.
[4] Id. at 563, 565.
[5] Annex "D" of the Petition.

Contrary to the *ponencia*, I find the allegations above consistent with Our pronouncement in *2002 Estrada,*[6] wherein conspiracy was successfully proven.

On another point, the *ponencia* declares that the prosecution failed to establish or prove conspiracy. A review of the records before us contradicts this position.

The prosecution's theory of the conspiracy to commit plunder is that PCSO funds were repeatedly siphoned off purportedly to fund activities which were not actually conducted – a 3-year process which could not have been accomplished without the indispensable acts of accused public officers who took advantage of their positions to amass nearly ₱366 million.

To appreciate the prosecution's theory of conspiracy, it is necessary to have a bird's eye view of the procedure for disbursement of CIF funds. The testimony before the Sandiganbayan of prosecution witness, Atty. Aleta Tolentino, Chairperson of the PCSO Audit Committee, provides the procedure briefly outlined below:

1. Provision or allotment of a budget for the CIF in the Corporate Operating Budget;[7]
2. Approval of the release of the CIF by the President of the Philippines;[8]
3. Designation of a disbursing officer who will have custody of the amounts received as cash advances for the confidential/intelligence (CI) operation;
4. Issuance of the check for the cash advance and disbursement thereof;
5. Liquidation of the CIF cash advances with the documents sent directly by sealed envelope to the COA chairperson or his/her representative;[9] and
6. Clearing of accountability on the basis of the Credit Notice issued by the COA chairperson or his/her representative.[10]

The PCSO funds are comprised of the Prize Fund (PF), Charity Fund (CF) and the Operating Fund (OF). These have specific allotments from PCSO net receipts: 55% for prizes, 30% for charity and only 15% are allotted for operating expenses and capital expenditures.[11] However, the CIF expenditures are by nature operating expenses. Therefore, the funding is and must be sourced from the Operating Fund.

---

[6] G.R. No. 148965, 26 February 2002, 377 SCRA 538.
[7] *Rollo* (G.R. No. 220598), p. 466; *see* also COA Circular 92-385.
[8] Id.; *see* also COA Circular 92-385 and Letter of Instruction No. 1282 (1983).
[9] Id. at 466-469; *see* also COA Circulars 92-385 and 2009-02.
[10] Id. at 471.
[11] *See* Section 2, Batas Pambansa Blg. 42, An Act Amending the Charter of the Philippine Charity Sweepstakes Office.

Expenditures for prizes and charity follow strict disbursement, accounting, and liquidation procedures.[12] In contrast, procedures for CIF expenditures are less strict because of their confidential nature.

Funds for confidential or intelligence projects are usually released as cash advances. Under COA rules, the liquidation documents therefor are sent in sealed envelopes directly to the COA chairperson (or his/her representative).

Given the prosecution's claim that PCSO funds were all commingled in one account, it is easier to see the significance of using the CIF route in diverting funds for personal gain. Utilizing that route minimizes the risks of discovery and the tracking of any anomaly, irregularity, or illegality in the withdrawal of funds.

The lax process of disbursement, accounting, and liquidation has been identified in the field of financial management as a possible, if not perfect, locus for fraud. In *Fraud and Corruption Awareness Handbook, How It Works and What to Look For: A Handbook for Staff,*[13] the World Bank states that fraud thrives in accounting systems with vulnerabilities.[14]

> Fraud in financial management (FM) can take the form of either individuals taking advantage of system vulnerabilities to redirect funds for their own purposes, or working with other parties in a collusive set-up.
> x x x
>
> Theft may range from very small amounts to sophisticated schemes involving large sums of money. **More often than not, theft is performed in a manner that is premeditated, systematic or methodical, with the explicit intent to conceal the activities from other individuals.** Often, it involves a trusted person embezzling only a small proportion or fraction of the funds received, **in an attempt to minimize the risk of detection.** The method usually involves direct and gradual transfers of project funds for personal use or diversion of payments for legitimate expenses into a personal account.[15] (Emphases ours)

To my mind, the prosecution has successfully established the conspiracy scheme through the various irregularities in the CIF disbursement. These irregularities or red flags clearly spell a conspiracy to commit plunder when the amounts involved and the processes of requesting, approval, and liquidating the amounts are holistically considered.

---

[12] See for example, PCSO's answers to Frequently Asked Questions on how to claim prizes and request for medical assistance (http://www.pcso.gov.ph/index.php/frequently-ask-questions/) and its Prize Payment workflow chart (http://www.pcso.gov.ph/wp-content/uploads/2015/03/44.-functional-chart-treas.pdf), both accessed on 6 July 2016).

[13] *Fraud and Corruption Awareness Handbook, How it Works and What to Look For: A Handbook for Staff,* http://siteresources.worldbank.org/INTDOII/Resources/INT_inside_fraud_text_090909.pdf (last accessed on 15 July 2016).

[14] Id.

[15] Id.

The irregularities in the approval, disbursement, and liquidation of the funds

First, when Arroyo approved the requests, the PCSO was operating on a deficit.[16] This situation means that it is irregular to authorize additional CIF when the fund source is negative. It is tantamount to authorizing the use of other PCSO funds – that of the Prize Fund and Charity Fund – for purposes other than those allowed by law.

In 2005, the PCSO had a deficit of ₱916 million.[17] In 2006, the deficit was ₱1,000,078,683.23, ₱215 million of which comprised the CIF expenses. For that year, the CIF budget was only ₱10 million.[18] Otherwise stated, the CIF expense exceeded the budget by ₱205 million.

On the other hand, the CIF disbursements amounted to ₱77,478,705[19] in 2007 when the CIF budget was only ₱25,480,550.[20] The CIF expenditure exceeded its budget by almost ₱52 million.

In 2008, Uriarte asked for and received approval from Arroyo for additional CIF in the amount of ₱25 million in April and another ₱50 million in August.[21] In its Corporate Operating Budget (COB) approved in May, the PCSO board allocated ₱28 million for the CIF.[22] The actual disbursement amounted to ₱86,555,060[23] so CIF expenditures were ₱58 million more than its allocated budget.[24]

Four times in 2009, Uriarte asked for and received approval from Arroyo for additional CIF in the total amount of ₱90 million – ₱50 million in January, ₱10 million in April, another ₱10 million in July and then ₱20 million in October.[25] The board allocated ₱60 million in its Corporate Operating Budget approved in March.[26] The actual CIF disbursement was ₱138,420,875,[27] so the overspending was more than ₱78 million.

For 2010, Uriarte asked for and received approval from Arroyo for additional CIF in the amount of ₱150 million in January.[28] The board allocated ₱60 million for the CIF in its Corporate Operating Budget, which was approved in March. The CIF disbursement, as of June 2010, was ₱141,021,980,[29] so overspending was by more than ₱81 million.

---

[16] *Rollo* (G.R. No. 220598), p. 463; "They were working on a deficit from 2004 to 2009."
[17] Id. at 464.
[18] Id.
[19] Id.
[20] Id.
[21] Id. at 157.
[22] Id.
[23] Id. at 466.
[24] Or ₱10 million if the budget was ₱28 million.
[25] *Rollo* (G.R. No. 220598), p. 158.
[26] Id.
[27] Id. at. 470.
[28] Id. at 158.
[29] Id. at 466.

It is worth noting that from previous allocations of ₱10 million (₱5 million each for the Office of the Chairperson and for the Office of the Vice-Chairperson), the CIF budget was gradually but significantly increased to ₱60 million in 2009 and 2010. Still, additional amounts were requested and authorized, reaching very significant CIF expenditures in the years when the PCSO was on a deficit, from 2004 to 2009. For a fuller context, the information is tabulated:

Year	CIF Allocation in PCSO COB	Actual CIF Disbursements	CIF Disbursement Over Budget	Additional CIF approved by Arroyo
2006	₱10,000,000	₱215,000,000	₱205,000,000	*No information*
2007	₱25,480,550	₱77,478,705	₱51,998,155	*No information*
2008	₱28,000,000	₱86,555,060	₱58,555,060	₱75,000,000
2009	₱60,000,000	₱138,420,875	₱78,420,875	₱90,000,000
2010	₱60,000,000	₱141,021,980[30]	₱81,021,980	₱150,000,000
Total	**₱183,480,550**	**₱658,476,620**	**₱474,996,070**	**₱315,000,000**

From the above, various irregularities can already be noted. The repeated and unqualified approval of additional CIF was made even when there were no more operating funds left. The requests were made and approved even before the Corporate Operating Budget was approved by the PCSO Board. And the amounts requested were significantly large amounts.

Despite the above facts and figures culled from the records, the *ponencia* remarks that commingling was far from illegal.[31] The *ponencia* downplays the fact that there was no longer any budget when Arroyo approved the requests and considers the approval justified "considering that the funds of the PCSO were commingled into one account x x x." While the act of commingling may not by itself be illegal, the fact that it continued to be successfully maintained despite the COA advice to stop the practice means that it was deliberately used to facilitate the raid of government coffers. The majority should not have downplayed the viciousness of this practice. It is a critical red flag of financial fraud.

Second, the prosecution witness testified that for 2009, the recorded CIF expense was only ₱24,968,300, while actual vouchers for the CIF cash advances totalled ₱138,420,875.[32] This discrepancy is another red flag.

The CIF cash advances remain as accountabilities of the special disbursing officers until liquidated. After they are properly liquidated and cleared by the COA chairperson or his/her representative, the Confidential/Intelligence expenses are then recorded as such.

---

[30] For six months, up to June 2010 only.
[31] Decision, p. 29.
[32] *Rollo* (G.R. No. 220598), p. 476.

The witness found, however, that receivables from Uriarte and Valencia for the CIF disbursements amounting to ₱106,386,800 and ₱90,428,780, respectively, were removed. These were instead recorded as expenses under the Prize Fund and Charity Fund.[33] For 2008, another ₱63.75 million was obtained from the Charity Fund and the Prize Fund.[34]

These facts and figures are the most compelling evidence of a fraudulent scheme in this case — cash advances being taken as CIF expenses for withdrawal purposes and thereafter being passed off as PF and CF expenses for recording purposes. Apparently, the reason for taking cash advances from the common (commingled) account as CIF expenses was the relative ease of withdrawal and subsequent liquidation of the funds. On the other hand, the apparent purpose of recording the same cash advances in the books as PF and CF expenses was to avoid detection of the lack of CIF.

Red flags are again readily noticeable here in the form of **missing funds** and **apparent misuse**. **Missing funds** occur when cash appears to be missing after a "review of transaction documentation and financial documents," while **apparent misuse** happens when funds are spent on "personal or non-business-related" matters.[35]

The prosecution witness pointed out these red flags as follows:

> The witness also related that she traced the records of the CIF fund (since such was no longer stated as a receivable), and reviewed whether it was recorded as an expense in 2008. She found out that the recorded CIF fund expense, as recorded in the corporate operating budget as actually disbursed, was only ₱21,102,000. **As such, she confronted her accountants and asked them "*Saan tinago itong amount na to*?"**The personnel in the accounting office said that the balance of the ₱86 million or the additional ₱21 million **was not recorded in the operating fund budget because they used the prize fund and charity fund as instructed by Aguas.** Journal Entry Voucher No. 8121443 dated December 31, 2008, signed by Elmer Camba, Aguas (Head of the Accounting Department), and Hutch Balleras (one of the staff in the Accounting Department), showed that this procedure was done. x x x
>
> Attached to the Journal Entry Voucher was a document which reads "Allocation of Confidential and Intelligence Fund Expenses," and was the basis of Camba in doing the Journal Entry Voucher. In the same document, **there was a written annotation** dated 12-31-2008 which reads that the adjustments of CIF, CF and IF, **beneficiary of the fund is CF and PF and signed by Aguas**.
>
> The year 2009 was a similar case x x x.[36] (Emphases ours)

---

[33] Id.
[34] Id.
[35] *See* note 13.
[36] *Rollo* (G.R. No. 220598), p. 475.

From the foregoing, the participation of petitioner Aguas is established. He was intimately privy to the transactions and to the scheme. His participation was necessary for diverting the funds from the Prize Fund and the Charity Fund to underwrite the lack of Operating Fund for the CIF cash advances. He is thus proven to have committed an indispensable act in covering the tracks of Uriarte and Valencia, as will be explained further.

Third, witness Tolentino reported that for their respective cash advances, Uriarte and Valencia approved the vouchers certifying the necessity and the legality of the disbursement and thereafter authorized the payment thereof. They also co-signed with the treasurer the checks payable to their own names.

Thus, a situation in which the same person approved the disbursement and signed the check for payment to that same person is readily observed. This situation is irregular. In the usual course of things, payees do not get to approve vouchers and sign checks payable to themselves.

The witness further found that while Uriarte was authorized by the Board of Directors[37] to be the Special Disbursing Officer (SDO), Valencia designated himself as the SDO for his own cash advances, upon the recommendation of COA Auditor Plaras.[38] Under COA rules, the Board of Directors, not the Chairperson, has authority to designate SDOs.

The usual check-and-balance mechanism for the segregation of duties was therefore totally ignored. The disregard of that mechanism strongly indicates an intention to keep knowledge of the transactions to as few people as possible. In fraudulent schemes, risks of detection are avoided by keeping the conspiracy or connivance known to as few people as necessary. This is therefore another red flag.

Fourth, the accountabilities of Uriarte and Valencia for the CIF cash advances they availed of were removed from the records on the basis of the issuance of a Credit Notice. And this issuance of credit notice by COA CIF Unit Head Plaras is also marked by irregularities.[39]

The relevant testimony of prosecution witness Atty. Aleta Tolentino is summed up by the Sandiganbayan in its Resolution dated 5 November 2013 as follows:

> As regards the sixth step – the credit notice, the same was not validly issued by the COA. The credit notice is a settlement or an action made by the COA Auditors and is given once the Chairman, in the case of CIF Fund, finds that the liquidation report and all the supporting papers are in order. In this case, the supporting papers and the liquidation report were not in order, hence, the credit notice should not have been issued.

---

[37] Id. at 467.
[38] Id.
[39] Id. at 471.

> Further, the credit notice has to follow a specific form. The COA Chairman or his representative can: 1) settle the cash advance when everything is in order; 2) suspend the settlement if there are deficiencies and then ask for submission of the deficiencies; or 3) out rightly disallow it in case said cash advances are illegal, irregular or unconscionable, extravagant or excessive. **Instead of following this form, the COA issued a document dated January 10, 2011, which stated that there is an irregular use of the price fund and the charity fund for CIF Fund.** The document bears an annotation which says, "wait for transmittal, draft" among others. **The document was not signed by Plaras, who was the Head of the Confidential and Intelligence Fund Unit under COA Chairman Villar.** Instead, she instructed her staff to "please ask Aguas to submit the supplemental budget." This document was not delivered to PCSO General Manager J.M. Roxas. They instead received another letter dated January 12, 2011 which was almost identical to the first document, except it was signed by Plaras, and the finding of the irregular use of the prize fund and the charity fund was omitted. Instead, the word "various" was substituted and then the amount of ₱137,500,000. **Therefore, instead of the earlier finding of irregularity, suddenly, the COA issued a credit notice as regards the total of ₱140,000,000. The credit notice also did not specify that the transaction has been audited, indicating that no audit was made.**[40] (Emphases ours)

In effect, Uriarte and Valencia were cleared of the responsibility to liquidate their CIF cash advances, thereby rendering the funds fully in their control and disposition.

The clearance made by COA Auditor Plaras, despite the presence of several irregularities, is another red flag – a species of **approval override** which ignores an irregularity with respect to payment.[41]

Finally, the purposes for the amounts were supposedly for the conduct of CIF activities as reflected in the accomplishment report but these activities were subsequently belied by testimonial evidence. **The prosecution in this regard sufficiently established an aspect of the conspiracy scheme by showing that the final destination of the amount was linked to petitioner Arroyo and her Office as admitted by a co-conspirator.**

In its Resolution dated 6 April 2015, the Sandiganbayan stated the following:

> In an attempt to explain and justify the use of these CIF funds, Uriarte, together with Aguas, certified that these were utilized for the following purposes:
>
> a) Fraud and threat that affect integrity of operation.
> b) Bomb threat, kidnapping, destabilization and terrorism.
> c) Bilateral and security relation.

---

[40] Id.
[41] *See* note 13.

> According to Uriarte and Aguas, **these purposes were to be accomplished through "cooperation" of law enforcers which include the military, police and the NBI**. The second and third purposes were never mentioned in Uriarte's letter-requests for additional CIF funds addressed to Arroyo. Aguas, on the other hand, issued an accomplishment report addressed to the COA, **saying that the "Office of the President" required funding from the CIF funds of the PCSO to achieve the second and third purposes abovementioned**. For 2009 and 2010, the funds allegedly used for such purposes amounted to ₱244,500,000.
>
> Such gargantuan amounts should have been covered, at the very least, by some documentation covering fund transfers or agreements with the military, police or the NBI, notwithstanding that these involved CIF funds. **However, all the intelligence chiefs of the Army, Navy, Air Force, the PNP and the NBI, testified that for the period 2008-2010, their records do not show any PCSO-related operations involving any of the purposes mentioned by Uriarte and Aguas in their matrix of accomplishments**. Neither were there any memoranda of agreements or any other documentation covering fund transfers or requests for assistance or surveillance related to said purposes. x x x **As it stands, the actual use of these CIF funds is still unexplained.**[42] (Citations omitted and emphases ours)

These statements made by the anti-graft court are not without any legal or factual basis.

In the Formal Offer of Exhibits for the Prosecution dated 4 June 2014 in addition to the Exhibits previously offered in evidence on the Formal Offer of Exhibits for the Prosecution dated 26 February 2013, various pieces of documentary evidence were presented. Among them are the certifications made by Uriarte and Aguas. The most pertinent of these are the following:

Exhibit "Z^7-14"	PCSO Matrix of Intelligence Accomplishments for the period of January 2009 to December 2009 dated March 9, 2010
Exhibit "Z^7-17"	PCSO Matrix of Intelligence Accomplishments for the period of January 2009 to December 2009
Exhibit "Z^7-42"	Letter dated February 8, 2010 addressed to Reynaldo A. Villar, Chairman, COA, from Rosario C. Uriarte, showing the amount of P73,993,846.00 as the Total IF advanced and liquidated covering the period of July 1 to December 31, 2009
Exhibit "Z^7-72"	Letter dated February 8, 2010 addressed to Reynaldo A. Villar, Chairman, COA, from Sergio O. Valencia, PCSO Chairman, re: cash advances and liquidation made from the Intelligence/Confidential Fund in the amount of P2,394,654.00

[42] Id. at 163-164.

Exhibit "Z[7]-84"	Letter dated October 19, 2009 addressed to Reynaldo A. Villar, Chairman, COA, from Sergio O. Valencia, re: various cash advances and liquidation made from the Intelligence/Confidential Fund in the amount of P2498,300.00
Exhibit "A[8]-16"	Matrix of Intelligence Accomplishment period covered January 2010 to June 2010 dated 06.29.10 prepared by OIC, Manager, Budget and Accounting Department and Reviewed by Vice Chairman and General Manager dated 06.29.10
Exhibit "A[8]-35"	PCSO Matrix of Intelligence Accomplishment from January 2010 to June 2010
Exhibit "A[8]-55"	PCSO Matrix of Intelligence Accomplishment from January 2010 to June 2010

Exhibit "Y[7]-68," the Accomplishment Report on the Utilization of the CIF of the PCSO, is most crucial. In this report, petitioner Aguas specifically stated:

> But what is more pronounce (sic) in the disposition and handling of the CIF was those activities and programs coming from the Office of the President which do not only involved the PCSOs (sic) operation but the national security threat (destabilization, terrorist act, bomb scare, etc.) in general which require enough funding from available sources coming from different agencies under the Office of the President.

These pieces of documentary evidence were used as basis by the Sandiganbayan to conclude that the Office of the President had required and received the CIF funds of the PCSO to purportedly achieve the second and third purposes, i.e. bomb threat, kidnapping, destabilization and terrorism and bilateral and security relation, respectively. **The testimonies of all the intelligence chiefs of the Army, Navy, Air Force, the Philippine National Police and the National Bureau of Investigation, however, all prove that for the period 2008-2010, there never was any PCSO-related or funded operation.**

The conspiracy is thus sufficiently shown through the repeated approvals of Arroyo of additional CIF requests in the course of three years; the irregularities in the disbursement, accounting, and liquidation of the funds and the active participation therein of the accused; and finally, a showing that the Office of the President, which Arroyo controlled, was the final destination of the amounts. The CIF releases would not have been made possible without the approval of Arroyo. The funds could not have been disbursed without the complicity and overt act of Aguas. Uriarte (the one who received the amounts) was definitely part of the scheme. Aguas could not have cleared Uriarte (and Valencia) without the credit notice of Plaras. Thus, the connivance and conspiracy of Arroyo, Uriarte, Valencia, Aguas and Plaras are clearly established.

Relevant Plunder Law provisions and jurisprudence in relation to the case

Section 4 of the Plunder Law states:

> Section 4. *Rule of Evidence.* — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

For purposes of proving the crime of plunder, proof of each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth is not required. Section 4 deems sufficient the establishment beyond reasonable doubt of "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

Estrada v. Sandiganbayan[43] *(2001 Estrada)* provides an instructive discussion on "pattern" by using the provisions of the Anti-Plunder Law:

> [A] 'pattern' *consists of at least a combination or series of overt or criminal acts enumerated in subsections* (1) to (6) of Sec. 1 (d). Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is *directed towards a common purpose or goal which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth.* And thirdly, there must either be an *'overall unlawful scheme' or 'conspiracy'* to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public officer and others conniving with him, follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.[44]

By "series," *Estrada* teaches that there must be at least two overt or criminal acts falling under the same category of enumeration found in Section 1, paragraph (d) of the Anti-Plunder Law, such as misappropriation, malversation and raids on the public treasury, all of which fall under Section 1, paragraph (d), subparagraph (1) of the law.[45]

With respect to "combination," *Estrada* requires at least two acts that fall under the different categories of the enumeration given by Section 1, paragraph (d) of the Plunder Law. Examples would be raids on the public

---

[43] 421 Phil. 290, 515.
[44] Id.
[45] Id.

treasury under Section 1, paragraph (d), subparagraph (1), and fraudulent conveyance of assets belonging to the National Government under Section 1, paragraph (d), subparagraph (3).

For ease of reference, Section 1 (d) is quoted below:

> SECTION 1. . . . . (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 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 office 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 the 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 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.

It is well to note, too, that conspiracy may be made by evidence of a chain of circumstances.[46] It may be established from the **"mode, method, and manner** by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a **joint purpose and design, concerted action and community of interest."**[47]

---

[46] *People v. Bergonia*, 339 Phil. 284 (1997).
[47] *Salapuddin v. Court of Appeals*, 704 Phil. 577 (2013).

Our pronouncement in *Alvizo v. Sandiganbayan*[48] is instructive:

> Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only. (citations omitted)[49]

The indispensable role of petitioner Arroyo

In this regard, Arroyo's approval now assumes greater significance. Petitioner Arroyo's act – her repeated and unqualified approval – represented the necessary and indispensable action that started the "taking" process. The repeated approval of the requests in the course of three years is the crucial and indispensable act without which the amount of nearly ₱366 million could not have been plundered.

The *ponencia* rules that the prosecution failed to establish an overt act in furtherance of the conspiracy, either on the part of petitioner Arroyo or Aguas. It reasons that Arroyo's "mere approval"[50] of Vice Chairman and General Manager Uriarte's requests for CIF did not make her part of any criminal conspiracy. On the other hand, as regards petitioner Aguas, the *ponencia* explains that "without GMA's participation, he could not release any money because there was then no budget available for the additional CIFs. Whatever irregularities he might have committed did not amount to plunder, or to any conspiracy to commit plunder."[51]

These pronouncements, however, are perceptibly conflicted. Contrary to the pronouncements of the *ponencia*, Arroyo's manner of approving requests for additional CIFs, seven times in the course of three years, reveals the initial, indispensable act in the conspiracy to commit plunder. All the individual acts of the conspirators from the time the requests were approved until the moment the amounts were finally in the Office of the President

---

[48] 454 Phil. 34 (2003).
[49] Id. at 106.
[50] Decision, p. 27.
[51] Id. at 40.

indicate a complete whole. The intent to accumulate, amass, or acquire the PCSO funds is thus shown through the successive acts which at first appear to be independent but, in fact, are connected and cooperative. The chain of circumstances from the inscription of a mere "ok" of petitioner Arroyo on all the requests, up to the time the amounts were proven to be with the Office of the President as indicated in the accomplishment report (Exhibit "Y^7-68") sufficiently proves the conspiracy to commit plunder.

In other words, Arroyo's approval of Uriarte's request cannot be simply downplayed as an innocent, legal, common and valid practice, as the *ponencia* would want, to exonerate Arroyo and Aguas. As aptly stated by the Sandiganbayan:

> While it is true that Arroyo was never involved in the actual withdrawals/cash advances and release of the CIF or in their disbursements and its liquidation, Arroyo's approval of the grant and release of these funds facilitated Uriarte's commission of the series of raids on PCSO coffers because without Arroyor's approval of the release, Uriarte could not have succeeded in accumulating the same.[52]

The power of control over the PCSO of petitioner Arroyo

Given the totality of the circumstances discussed above, the prosecution's claim that Arroyo had known that Uriarte would raid the public treasury and misuse the funds the latter had disbursed, owing to the fact that the former President had the power of control over the PCSO, consequently appears to be correct.

The *ponencia,* however, misses this point and deliberately chooses to reject the prosecution's claim by stating that the doctrine of command responsibility does not apply since this case does not involve Arroyo's functions as Commander-in-Chief of the Armed Forces of the Philippines, or a human rights issue.

Contrary to that statement of the *ponencia*, however, the control of the President, not only over the PCSO, but also over the intelligence funds, is clearly mandated by Letter of Instruction No. (LOI) 1282 which sheds light on the role of the President when it comes to the expenditure of intelligence funds. LOI 1282 provides:

> In recent years intelligence funds appropriated for the various ministries and certain offices have been, as reports reaching me indicate, spent with less than full regard for secrecy and prudence. On the one hand, there have been far too many leakages of information on expenditures of said funds; and on the other hand, where secrecy has been observed, **the President himself was often left unaware of how these funds had been utilized.**

---

[52] *Rollo* (G.R. No. 220598), p. 502.

> Effective immediately, **all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes** for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.
>
> The requests and the detailed explanations shall be submitted to the President **personally**.
>
> It is imperative that such detailed presentations be made to the Presidents in order **to avoid such duplication of expenditures** as has taken place in the past because of the lack of centralized planning and organized disposition of intelligence funds.
>
> Full compliance herewith is desired. (Emphases ours)

The foregoing shows the nature of the control of the President over the intelligence funds. Unless Arroyo were to demonstrate in her defense, the responsibility and control of intelligence funds is direct and personal. The irregularities that transpired should therefore be within the knowledge of Arroyo as President of the Philippines, considering the fact that this case involves not one but repeated and unqualified approval of seven requests for release of CIF funds in a span of three years. Even the *ponencia* admits: "[w]ithout GMA's participation, he (Aguas) could not release any money because there was then no budget available for the additional CIFs."[53]

II
There is evidence to show that Uriarte, Arroyo, or Aguas amassed, accumulated, or acquired ill-gotten wealth.

The *ponencia* states that "the Prosecution adduced no evidence showing that either Arroyo or Aguas or even Uriarte, for that matter, had amassed, accumulated or acquired ill-gotten wealth of any amount. It also did not present evidence, testimonial or otherwise, showing even the remotest possibility that the CIFs of the PCSO had been diverted to Arroyo, Aguas, or Uriarte."[54] I must disagree.

As held by this Court in *2001 Estrada,*[55] the only elements of the crime of plunder are the following:

> 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;

---

[53] Decision, p. 40.
[54] Id. at 42.
[55] 421 Phil. 290, 515.

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 ₱50,000,000.00.

To emphasize, the prosecution, as previously discussed, presented evidence proving that Uriarte had made several cash advances. The Sandiganbayan quoted pertinent parts of its Resolution dated 5 November 2013 denying the petitions for bail in its Resolution dated 6 April 2015 denying the petitioners' demurrers. The Sandiganbayan stated therein that "Uriarte was able to accumulate during that period CIF funds in the total amount of ₱352,681,646;" that "Uriarte looted government funds and appears to have not been able to account for it;" and that "the encashment of the checks, which named her as the 'payee,' gave Uriarte material possession of the CIF funds that she disposed of at will."[56]

From January 2008 to June 2010, the following cash advances were made:

	2008	2009	2010	Total
CIF in the COB from the previous 10M CIF in 2000	₱28,000,000	₱60,000,000	₱60,000,000	**₱148,000,000**
Additional CIF requested by Uriarte and granted by Arroyo	₱75,000,000	₱90,000,000	₱150,000,000	**₱315,000,000**
Cash advances by Uriarte	₱81,698,060	₱132,760,096	₱138,223,490	**₱352,681,646**
Cash advances by Valencia	₱4,857,000	₱5,660,779	₱2,798,490	**₱13,316,269**
TOTAL	₱86,555,060	₱138,420,875	₱141,021,980	**₱365,997,915**

[56] Id. at 160; Sandiganbayan Resolution dated 6 April 2015, p. 31.

Again, in its 6 April 2015 Resolution, the Sandiganbayan considered the accomplishment report that was submitted by petitioner Aguas to COA. He said therein that the Office of the President required funding from the CIF funds of the PCSO to achieve the second and the third purposes, i.e., bomb threat, kidnapping, destabilization and terrorism; and bilateral and security relation.[57]

The act of amassing, accumulating, or acquiring CIF funds is thus evident. I agree with the Sandiganbayan's pronouncement that Arroyo was rightly charged as a co-conspirator of Uriarte who received the cash advance for most of the amounts.[58]

It had been argued that receipt by the Office of the President is not necessarily receipt of the moneys by Arroyo. This however is a matter of defense, considering that Arroyo controls the Office of the President.

III
Personal benefit need not be proven.

The *ponencia* harps on the failure of the prosecution to allege in the Information and prove that the amount amassed, accumulated, and acquired was for the benefit of an identified main plunderer.

In particular, the *ponencia* leans on this Court's pronouncement that what is required in a conspiracy charge is not that every accused must have performed all the acts constituting the crime of plunder, but that "each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada."[59]

The *ponencia* also takes issue with the Sandiganbayan's statement that all that is required is that the public officer must have raided the public coffers, without need to prove personal benefit on the part of the public officer.

It cites the deliberations on Senate Bill No. 733, which later on became Republic Act No. 7080, to support the thesis that personal benefit on the part of the main plunderer, or the co-conspirators by virtue of their plunder, is still necessary. It then concludes that the prosecution failed to show not only where the money went but, more important, whether Arroyo and Aguas had personally benefited therefrom.

---

[57] Id. at 163.
[58] *Rollo* (G.R. No. 220598), p. 205; Sandiganbayan Resolution dated 10 September 2015.
[59] Id.

To begin with, the failure of the Information to name the main plunderer in particular is not crucial.

Section 2 of the Plunder Law does not require a mastermind or a main recipient when it comes to plunder as a collective act:

> 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 (₱50,000,000.00)** 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 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. (Emphasis ours)

On the other hand, as can be seen from above, all that is required by Section 2 is that there is a public officer who acts in connivance with other offenders in a common design to amass, accumulate or acquire ill-gotten wealth, the aggregate amount of which is at least P50 Million. In other words, it is only the conspiracy that needs to be alleged in an Information.

In a conspiracy, the act of one is the act of all.[60] Every conspirator becomes a principal even if the person did not participate in the actual commission of every act constituting the crime.[61] Hence, it is not material if only Uriarte among all the accused is proven or shown to have taken material possession of the plundered amount.

It is thus not crucial to identify the main plunderer in the Information, so long as conspiracy is properly alleged and established. Identification in the Information of the main plunderer or the accused who acquires the greatest loot is immaterial, as it suffices that any one or two of the conspirators are proven to have transferred the plundered amount to themselves.

In this case, there is ample evidence to show that Uriarte gained material possession of the amounts through cash advances facilitated by the repeated and unqualified approval of the requests by Arroyo and that a large portion of the amount received as cash advance was later certified by Aguas to have been used by the Office of the President.

---

[60] *U.S. v. Ipil,* 27 Phil. 530 (1914).
[61] Id.

What should be underscored at this juncture is that in prosecution for plunder, it is enough that one or more of the conspirators must be shown to have gained material possession of at least ₱50 million through any or a combination or a series of overt criminal acts, or similar schemes or means enumerated in the law and stated in the Information.

Our ruling in *Valenzuela v. People,*[62] a theft case, is instructive:

> The ability of the offender to freely dispose of the property stolen is not a constitutive element of the crime of theft. x x x To restate what this Court has repeatedly held: the elements of the crime of theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.
>
> x x x **it is immaterial to the product of the felony that the offender, once having committed all the acts of execution for theft, is able or unable to freely dispose of the property stolen since the deprivation from the owner alone has already ensued from such acts of execution**. This conclusion is reflected in Chief Justice Aquino's commentaries, as earlier cited, **that [i]n theft or robbery the crime is consummated after the accused had material possession of the thing with intent to appropriate the same, although his act of making use of the thing was frustrated**.
>
> x x x x
>
> Indeed, we have, after all, held that **unlawful taking, or *apoderamiento,* is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same**.

So it is with plunder. How the money was disposed of and who inevitably benefited the most therefrom among all the accused need not be shown for as long as material possession of at least ₱50 million was shown through the unlawful acts mentioned in the law.

I quote with approval the Sandiganbayan in its pronouncement, as follows:

> It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a "raid on the public treasury" can be said to have been achieved thru the pillaging or looting of

[62] G. R. No. 160188, 21 June 2007.

public coffers either through misuse, misappropriation or conversion, without need of establishing gain or profit to the raider. Otherwise stated, **once a "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed.** x x x

x x x x

It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008-2010. Uriarte was able to accumulate during that period CIF funds in the total amount of ₱352,681,646. x x x

x x x x

These flagrant violations of the rules on the use of CIF funds evidently characterize the series of withdrawals by and releases to Uriarte as "raids" on the PCSO coffers, which is part of the public treasury. These were, in every sense, "pillage," as Uriarte looted government funds and appears to have not been able to account for it. The monies came into her possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus, amounting to "misuse" of the same. Therefore, the additional CIF funds are ill-gotten, as defined by R.A. 7080, the PCGG rules, and *Republic v. Sandiganbayan*. **The encashment of the checks, which named her as "payee," gave Uriarte material possession of the CIF funds which she disposed of at will.**

x x x x

x x x **These were thus improper use of the additional CIF funds amounting to raids on the PCSO coffers and were ill-gotten because Uriarte had encashed the checks and came into possession of the monies, which she had complete freedom to dispose of, but was not able to account for.** (Emphases ours)

These matters considered, I find the pronouncements in the *ponencia* unwarranted.

IV
Arroyo and Aguas failed to show evidence that the Sandiganbayan gravely abused its discretion.

Section 23 of Rule 119 states:

SECTION 23. Demurrer to Evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

> If the court denies the demurrer to evidence filed with leave of court, **the accused may adduce evidence in his defense.** When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> **The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)**[63] (Emphases supplied)

Jurisprudence has affirmed the rule, subject to the recognized exception that the denial of a demurrer may be the proper subject of a Rule 65 petition when the denial is tainted with grave abuse of discretion.[64]

Certiorari therefore is not the proper recourse against a denial of a demurrer to evidence. Under the Rules of Court, the appropriate remedy is for the court to proceed with the trial, after which the accused may file an appeal from the judgment rendered by the lower court.

Consequently, I am not prepared to impute grave abuse of discretion on the part of the Sandiganbayan. For reasons already discussed, the prosecution's evidence has satisfactorily established the elements of the crime of plunder.

Further, it must be emphasized that access to this Court through a Rule 65 petition is narrow and limited. That recourse excludes the resolution of factual questions.[65] In the present case, the question of whether a denial of the demurrer to evidence is proper is factual in nature, as it involves a test of the sufficiency of evidence.

This Court has made a pronouncement on the nature of a demurrer to evidence in this wise:

> [A d]emurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is

---

[63] Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, 3 October 2000.
[64] *People v. Go*, G.R. No. 191015, 6 August 2014, 732 SCRA 216, and *Alarilla v. Sandiganbayan,* 393 Phil. 143 (2000).
[65] *Don Orestes Romualdez Electric Cooperative, Inc. v. NLRC,* 377 Phil. 268 (1999).

> insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. **The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.**[66]

What constitutes sufficient evidence has also been defined as follows:

> Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[67]

When there is no showing of such grave abuse, certiorari is not the proper remedy. Rather, the appropriate recourse from an order denying a demurrer to evidence is for the court to proceed with the trial, after which the accused may file an appeal from the judgment of the lower court rendered after such trial. In the present case, I am not prepared to rule that the Sandiganbayan has gravely abused its discretion when it denied petitioners' demurrer to evidence. The Sandiganbayan found that the prosecution's evidence satisfactorily established the elements of the crime charged. There is nothing in the records of this case, nor in the pleadings of petitioners that would show otherwise.

Further, it must be borne in mind that the Sandiganbayan is a constitutionally-mandated tribunal designed to resolve cases involving graft and corruption. As such, it is the expert in the field of graft cases. On the other hand, this Court is not a trier of facts. The Sandiganbayan must be allowed to complete the entire course of the trial as it sees fit.

A final note. The crime charged, the personalities involved, the amount in question, and the public interest at stake – are considerations that should prompt us to demonstrate an even hand, conscious that the benefits of the Decision would cascade to the least powerful accused in all future proceedings. We must be mindful of the potentially discouraging impact of a grant of this particular demurrer on the confidence of trial courts.

Nearly ₱366 million of the People's money is missing. Direct documentary evidence whereby petitioner Aguas states that a large part of this or ₱244.5 million to be exact was diverted to the Office of the President under petitioner Arroyo was considered sufficient by the Sandiganbayan to require both petitioners herein to proceed with the presentation of their

---

[66] *Gutib v. CA*, 371 Phil. 293 (1999).
[67] Id. at 305.

defense evidence. This cogent conclusion by the constitutionally-mandated court that has tried the prosecution's evidence on plunder cannot be overridden willy-nilly by this Court.

I further fully agree with Justice Marvic Mario Victor F. Leonen in his Separate Dissenting Opinion.

I therefore vote to **DISMISS** the petitions.

MARIA LOURDES P. A. SERENO
Chief Justice