G.R. Nos. 238579-80 — WILFREDO M. BAUTISTA, GERRY C. MAMIGO, and ROWENA C. MANILA-TERCERO, *petitioners, versus* **THE HONORABLE SANDIGANBAYAN, SIXTH DIVISION, and the OFFICE OF THE OMBUDSMAN,** *respondents.*

Promulgated:

24 JUL 2019

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DISSENTING OPINION

CAGUIOA, *J.*:

At the heart of the present petition is the right of an accused to the speedy disposition of cases.

The case stemmed from the Pola Watershed project by the Department of Environment and Natural Resources (DENR) in 1999, where the petitioners worked as members of the Technical Inspection Committee in charge of monitoring the project and ensuring that the contractor performed his contractual obligations. The project was completed in 2000, and petitioners issued a certification that they had "inspected the project in accordance with the Job Order dated November 3, 1999."[1]

The DENR then constituted a fact-finding team in 2001 to investigate the alleged irregularities in the project. The fact-finding team issued its report in 2002 and it concluded that "contrary to the petitioners' certification, no perimeter survey or mapping was actually conducted."[2] The report was then forwarded to the Office of the Ombudsman (Ombudsman).

The Field Investigation Office (FIO) of the Ombudsman, however, only filed its complaint **11 years after**, or on August 27, 2013. In its complaint, the FIO alleged principally that the bidding which resulted in the award to the contractor was only a simulation, and that the petitioners did not conduct the required survey or mapping they certified to have done. The Ombudsman, in turn, finished its preliminary investigation almost exactly three years after, or on August 26, 2016. The corresponding Informations were then filed almost one year after, or only on July 14, 2017.

In the Sandiganbayan, the petitioners filed an Urgent Omnibus Motion to Dismiss and Motion to Suspend Arraignment (Motion), arguing that their right to speedy disposition of cases had been violated. The Sandiganbayan, however, denied the Motion, and ruled that the delay should be counted only from the time of the filing of the complaint by the FIO to the date of filing of

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1 *Rollo*, p. 40.
2 Id.

the Informations in court. It then concluded that the total time period consumed by the Ombudsman was only four years – 2013 to 2017 – and this period was reasonable in light of the number of respondents involved.

The *ponencia* affirms the Sandiganbayan's ruling on the basis of the Court's decision in *Cagang v. Sandiganbayan*[3] (*Cagang*).

This case, to my mind, highlights how the ruling in *Cagang* as to how to count the period of delay can, and does, result to a substantial deprivation of an accused's right to the speedy disposition of a case. This case demonstrates how the unexplained delay in the fact finding made by, and the ineptitude of, the FIO is rewarded to the utter detriment of an accused whose right to defend himself is severely damaged by the length of time that has lapsed from the transaction in question to the time the complaint is filed with the Ombudsman.

Thus, in line with my dissenting Opinion in *Cagang*, I respectfully register anew my dissent in this case to emphasize the need to revisit *Cagang* and the manner in which to count the reasonableness of the period of "delay".

In deciding this case, the Court used the same four-fold test used in *Cagang* to determine whether the several accused had been denied their right to a speedy disposition of cases, to wit: (1) the length of delay; (2) the reason for delay; (3) the defendant's assertion or non-assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay.

In turn, in determining the length of the delay, the Court here uses the principle laid down in *Cagang* that "[t]he period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay."[4] The *ponencia* expounds:

> Hence, the period constituting the fact-finding investigation concluded by the DENR and the FIO should not be considered for purposes of determining whether petitioners' right to the speedy disposition of their cases was violated. **This is especially considering that such investigation was non-adversarial and was only determinative of whether or not formal charges should be filed against petitioners. As such, it cannot be said that petitioners suffered any vexation during these proceedings.**[5] (emphasis and underscoring supplied)

I disagree.

To rule that the delay in the fact-finding proceedings brought no vexation upon the petitioners simply because the investigation was non-

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3 G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, accessed at <http://elibrary.judiciary.gov.ph /thebookshelf/showdocs/1/64581>.

4 Id.

5 *Ponencia*, p. 6.

adversarial fails to properly consider the real prejudice visited upon the petitioners. Indeed, the present case is the perfect illustration of the ***real prejudice*** suffered by the petitioners, or any other accused in the same situation, and that is the impairment of one's defense. As the petitioners in this case themselves directly and pointedly raised, the delay that occurred prior to the conduct of the preliminary investigation — which spanned **12 years** — had led to the loss of material documents that they could have used in their defense. The petitioners stated:

> x x x Lamentably, due to the inordinate delay in the fact-finding stage of the investigation, they already suffered immeasurable damage and prejudice. Owing to the long passage of time, the relevant [files at] DENR PENRO Office in Calapan City, Oriental Mindoro were damaged by heavy rains last October 28-29, 2005 as evidenced by the Memorandum to the Regional Director, Regional IV MIMAROPA dated November 7, 2005 and photographs. This was followed by a termite attack in the Records Room in 2007 which further destroyed the files at DENR PENRO in Calapan City, Oriental Mindoro as shown in the Memorandum to the Regional Director Region IV MIMAROPA dated September 24, 2007.[6]

In this regard, the *ponencia* ruled:

> Furthermore, records are bereft of showing that the delay caused any material prejudice to petitioners which would warrant serious consideration. The [Sandiganbayan] fittingly held that the alleged loss of documents in the DENR office was not caused by the mere passage of time, **but by intervening events such as heavy rains and termite attacks. In any case, the Court observes that the prejudicial circumstances alleged by petitioners had all occurred during the fact-finding stage, which for reasons earlier discussed, are irrelevant for purposes of determining the existence of inordinate delay.**[7] (emphasis and underscoring supplied)

With due respect to my esteemed colleague, the above disquisition — brought, in part, by its reliance on *Cagang* — is unfair. To be candid, the Court is being ***unreasonable*** in expecting the petitioners to present any other proof of material prejudice, for what could the petitioners possibly present in court that would prove that the ensuing **lack** or **absence** of documents ***brought about by the delay*** has prejudiced them? In other words, the Court is asking for positive proof or evidence of something that no longer exists precisely because it has already been lost or destroyed through the passage of time. Only to stress, the "passage of time" in this case refers to a delay which spanned 12 years, all of which were left **unexplained** by the State.

The gravity of the prejudice is further illustrated by the fact that one of the grounds relied upon by the Ombudsman in finding probable cause against the petitioners is their supposed failure to provide "evidence that the said Invitation to Bid was published in a newspaper of general circulation, as required by the IRR of PD 1594."[8] Again, and even prescinding on who has

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6 *Rollo*, p. 10.
7 *Ponencia*, p. 6.
8 *Rollo*, p. 185.

the burden of proving compliance with this requirement, how could the petitioners furnish proof or evidence when these pieces of evidence have already been lost or destroyed due to the passage of time?

The *ponencia* also draws a distinction between loss of documents through the passage of time, on the one hand, and loss of documents through supervening events, on the other. I submit that the distinction is more illusory than real, **for it is precisely the passage of time that allowed the supervening events, *i.e.*, heavy rains and termite attacks, to cause the destruction of the documents.**

At this juncture, I reiterate anew that to continue construing the right to speedy disposition of cases in the way that *Cagang* did would continually result in rendering the said right inutile. To rule that, in each and every case, the period of fact-finding prior to the conduct of preliminary investigation need not be considered in determining whether the right was violated would undoubtedly tolerate, if not totally champion, neglect in the performance of duties by the officers involved in fact-finding investigations. **Stated differently, to rule that <u>any delay</u> — regardless of duration or reasons for such delay — as long as that delay was incurred during the period prior to preliminary investigation, is immaterial for purposes of invoking the right to speedy disposition of cases, would effectively render the Constitutional right utterly useless as against the incompetence or inefficiency of the State, particularly its fact-finding officers.** It would thus reward or incentivize delay in the fact-finding process because for as long as the preliminary investigation proper has not started, the State could intentionally or unintentionally delay the case which, in either case, would always be detrimental to the accused.

I submit that the foregoing construction of the right to speedy disposition of cases unwarrantedly tilts even further to the side of the State the already uneven relationship between it and its citizens. To stress, the State has immense resources it can utilize at its disposal against the individual citizen at any time. Just to provide perspective, the investigative arms of the government, namely the National Bureau of Investigation, the Department of Justice, and the Ombudsman, have a combined number of 198,189 key permanent personnel as of 2018[9] such as uniformed personnel, prosecutors, and investigation agents. This number does not even include administrative or support staff, those who hold casual or contractual positions, those whose items are under local government units, and even personnel of the prosecutorial arms of the government like the Office of the Solicitor General.

Against this overwhelming number — against this armada — the individual only has himself, his counsel, and the Bill of Rights to rely on in guarding his freedoms. Borrowing the words of the Court in the case

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[9] Staffing summary as of 2018 by the Department of Budget and Management, accessed at <https://www.dbm.gov.ph/index.php/budget-documents/2018/staffing-summary-2018>.

of *Secretary of Justice v. Lantion*,[10] "[t]he individual citizen is but a speck of particle or molecule *vis-a-vis* the vast and overwhelming powers of government. **His only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need.**"[11]

The right to speedy disposition of cases is one of such fundamental liberties. **The Court cannot thus construe the said right in a way that would render it nugatory, like in the way that it did so in *Cagang*.** It bears emphasis that the Bill of Rights reserves certain areas for "the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will."[12] And to limit the right to the speedy disposition of cases as a right that may be invoked merely against the prosecutorial arms of the government, and not its investigative ones, would be to render it useless, or worse, to be a complete illusion.

Thus, I reiterate the point I raised in my dissent in *Cagang* that "[t]he right to speedy disposition covers the periods 'before, during, and after trial.' Hence, the protection afforded by the right to speedy disposition, as detailed in the foregoing provision, **covers not only preliminary investigation, but extends further, to cover the fact-finding process**."[13] Moreover:

> [I]n *Torres v. Sandiganbayan (Torres)* the Court categorically stated that the speedy disposition of cases covers "not only the period within which the preliminary investigation was conducted, but also all stages to which the accused is subjected, **even including fact-finding investigations conducted prior to the preliminary investigation proper**."
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> *Unreasonable delay incurred during fact-finding and preliminary investigation, like that incurred during the course of trial, is equally prejudicial to the respondent, as it results in the impairment of the very same interests which the right to speedy trial protects — against oppressive pre-trial incarceration, unnecessary anxiety and concern,* ***and the impairment of one's defense.*** To hold that such right attaches only upon the launch of a formal preliminary investigation would be to sanction the impairment of such interests at the first instance, and render respondent's right to speedy disposition *and* trial nugatory. Further to this, it is oppressive to require that for purposes of determining inordinate delay, the period is counted only from the filing of a formal complaint or when the person being investigated is required to comment (in instances of fact-finding investigations).
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> *Prejudice is not limited to when the person being investigated is notified of the proceedings against him. Prejudice is more real in the form of denial of access to documents or witnesses that have been buried or forgotten by time, and in one's failure to recall the events due to the*

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10 379 Phil. 165-251 (2000) [En Banc, Per J. Melo]

11 Id. at 185.

12 *Salonga v. Paño*, 219 Phil. 402, 429 (1985).

13 Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Cagang, supra* note 3. Emphasis in the original.

> *inordinately long period that had elapsed since the acts that give rise to the criminal prosecution. Inordinate delay is clearly prejudicial when it impairs one's ability to mount a complete and effective defense.* Hence, contrary to the majority, **I maintain that *People v. Sandiganbayan* and *Torres* remain good law in this jurisdiction**. The scope of right to speedy disposition corresponds *not* to any specific phase in the criminal process, but rather, attaches the very moment the respondent (or accused) is exposed to prejudice, which, in turn, may occur as early as the fact-finding stage.[14] (emphasis in the original; underscoring and italics supplied)

I thus once again call upon the Court to reconfigure its understanding of the element of prejudice in the four-fold test. The prejudice caused by the delay in the fact-finding stage cannot simply be brushed aside just because the said period is viewed to be non-adversarial. Delays in this stage cause real and serious prejudice to the accused because facts on which his innocence is hinged would be more difficult, if not impossible, to prove.

In sum, the last of the four-fold test in determining whether an accused had been denied the right to speedy disposition of cases (*i.e.*, the prejudice caused by the delay) would have tilted the scales of justice in favor of the petitioners in this case had the Court taken into consideration the **12-year delay** before the preliminary investigation proper.

In any event, even if the Court were to continue using the framework laid down in *Cagang,* it is my view that the result should nevertheless be the same. By the Ombudsman's own admission, the period of preliminary investigation took a total of three years and nine months.[15] Of these, the period between April 30, 2013 to January 8, 2014 was excusable because this period was spent giving opportunities to the petitioners-defendants to file their respective counter-affidavits. However, the period from January 9, 2014 to August 26, 2016, or the time it took before the Ombudsman came out with a resolution finding probable cause against the petitioners, was still left insufficiently explained by the State. The Ombudsman tried to explain this period of a total of two years and seven months as brought about by: (1) the technical nature of the project involved; (2) the fact that there were 11 respondents; and (3) the steady stream of cases reaching the Ombudsman.

The second reason — the number of respondents — was already taken into consideration when the period for filing counter-affidavits was excluded in determining the length of delay.

With regard to the first reason, or the so-called technical nature of the project involved, it is my view that this is not a valid justification for the delay. A perusal of the Ombudsman's resolution finding probable cause reveals that they completely relied on the administrative findings of the fact-finding team of the DENR:

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[14] Dissenting Opinion of Justice Caguioa in *Cagang, supra* note 3.
[15] *Rollo,* p. 324.

> Investigations on the financial and technical aspects of the projects conducted by Franco and Serna, respectively, of the DENR, established that the Pola Watershed Project was actually a "ghost project" and that Lacanienta did not actually render services, yet, A.M Lacanienta was still paid the amount of PhP5,250,000.00, as evidenced by a Request for Obligation of Allotment, computed as follows:
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> x x x x
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> There is no reason for this Office to question the findings of Franco and Serna. It is an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[16]

Thus, the Ombudsman did not conduct its own survey or investigation that required technical knowledge of the project. It cannot therefore use the nature of the case as justification for the two-year delay in resolving the case. In addition, the fact-finding team of the DENR only took two months to finish investigating the supposed irregularities in the project, thereby completely and definitively debunking the Ombudsman's excuse that the significant size of the project spanning 15,000 hectares and its technical nature caused the delay in the preliminary investigation.

Lastly, as regards the steady stream of cases to the Ombudsman, I reiterate the point I raised in *Cagang* regarding the reality of institutional delay. As I had said, although "this 'reality' may exist, as it exists in any government, it does not, as it should not, in any way justify the State's act of subjecting its citizens to unreasonable delays that impinge on their fundamental rights."[17]

All told, it is my view that the delays incurred by the State both in the fact-finding and the preliminary investigation stage violated the right to speedy disposition of cases of the petitioners in this case.

In view of the foregoing, I vote to **GRANT** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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16 *Rollo*, pp. 187-188.

17 Dissenting Opinion of Justice Caguioa in *Cagang, supra* note 3.