



SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

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SENATE

RECEIVED BY: *JW*

COMMITTEE REPORT NO. 288

Submitted by the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) by its Subcommittee on May 25, 2015.

Re: Proposed Senate Resolution No. 826, introduced by Senator Antonio "Sonny" F. Trillanes IV

Recommending the adoption of its findings and approval of the same.

Sponsor: Senator Teofisto "TG" Guingona III

MR. PRESIDENT:

The Committee on Accountability of Public Officers and Investigations (Blue Ribbon) through its Subcommittee chaired by Senator Aquilino "KOKO" Pimentel III, has conducted an inquiry, in aid of legislation, on the following referral:

Proposed Senate Resolution No. 826, introduced by Senator Antonio "Sonny" F. Trillanes IV, entitled:

"RESOLUTION DIRECTING THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICIALS AND INVESTIGATIONS OF THE SENATE OF THE PHILIPPINES TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED P1.601 BILLION OVERPRICING OF THE 11-STOREY NEW MAKATI CITY HALL II PARKING BUILDING, THE REPORTED OVERPRICING OF THE 22-STOREY MAKATI CITY HALL BUILDING AT THE AVERAGE COST OF P240,000.00 PER SQUARE METER AND RELATED ANOMALIES PURPORTEDLY COMMITTED BY FORMER AND CURRENT LOCAL GOVERNMENT OFFICIALS AND FOR OTHER RELATED PURPOSES"

And Proposed Senate Resolution No. 1114, introduced by Senator Antonio "Sonny" F. Trillanes IV, entitled:

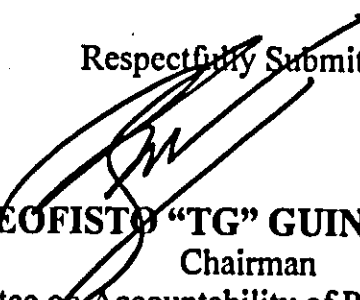
"RESOLUTION DIRECTING THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICIALS AND INVESTIGATIONS OF THE SENATE OF THE PHILIPPINES, WITH THE REQUEST THAT IT BE REFERRED TO

THE SUBCOMMITTEE, TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED IRREGULAR TRANSACTIONS ENTERED INTO BY THE HOME DEVELOPMENT MUTUAL FUND (HDMF)/PAG-IBIG FUND AND THE BOY SCOUTS OF THE PHILIPPINES (BSP), UNDER THE LEADERSHIP OF VICE PRESIDENT JEJOMAR BINAY AS CHAIR OF THE HDMF/PAG-IBIG BOARD OF TRUSTEES AND AS PRESIDENT OF BSP, RESPECTIVELY, AND OTHER RELATED ANOMALIES, WITH THE END IN VIEW OF ENACTING REMEDIAL LEGISLATION AND TO RECOMMEND AMENDMENTS TO THE APPROPRIATE PROCUREMENT LAWS AND LAWS GOVERNING THE TRANSACTIONS OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS (GOCCS), TO ENSURE THE PROPER USE OF PUBLIC FUNDS"

The Committee has the honor to submit its Partial Report in relation to Proposed Senate Resolution No. 826, introduced by Senator Antonio "Sonny" F. Trillanes, after conducting an inquiry, to the Senate.

Recommending the adoption of the recommendation contained therein.

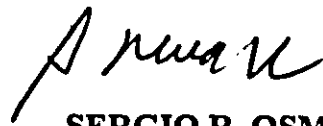
Respectfully Submitted:


TEOFISTO "TG" GUINGONA III
Chairman
Committee on Accountability of Public Officers and
Investigations (Blue Ribbon)

COMMITTEE REPORT NO. 288 ON PROPOSED SENATE RESOLUTION N. 826

A. Pimentel
AQUILINO "KOKO" PIMENTEL III


GREGORIO B. HONASAN II



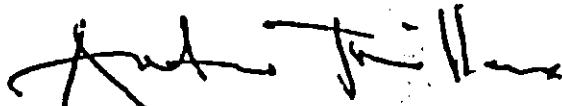
SERGIO R. OSMEÑA III



GRACE L. POE



PAOLO BENIGNO "BAM" AQUINO IV
with separate opinion



ANTONIO "SONNY" F. TRILLANES IV

CYNTHIA A. VILLAR

MIRIAM DEFENSOR SANTIAGO



MANUEL "LITO" M. LAPID



FRANCIS JOSEPH "CHIZ" G. ESCUDERO



PIA S. CAYETANO

FERDINAND "BONGBONG" R. MARCOS, JR.

LOREN B. LEGARDA

MARIA LOURDES NANCY S. BINAY

JOSEPH VICTOR G. EJERCITO

JINGGOY EJERCITO ESTRADA

COMMITTEE REPORT NO. _____ ON PROPOSED
SENATE RESOLUTION 826

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
77



TEOFISTO "TG" L. GUINGONA III
Chairman, Blue Ribbon Committee

JUAN PONCE ENRILE
Minority Leader



*w/ amendments and
separate comments/
opinion*
ALAN PETER "COMPAÑERO" S. CAYETANO
Majority Leader

RALPH G. RECTO
Senate President Pro-Tempore

SIXTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



Senate
Office of the Secretary

15 NOV -5 A8 59

SENATE

RECEIVED BY: 

COMMITTEE REPORT NO. _____

Submitted by the Subcommittee of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon) on May 25, 2015.

Re: Proposed Senate Resolution No. 826, introduced by Senator Antonio "Sonny" Trillanes IV, entitled:

"RESOLUTION DIRECTING THE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICIALS AND INVESTIGATIONS OF THE SENATE OF THE PHILIPPINES TO INVESTIGATE, IN AID OF LEGISLATION, THE ALLEGED P1.601 BILLION OVERPRICING OF THE 11-STOREY NEW MAKATI CITY HALL II PARKING BUILDING, THE REPORTED OVERPRICING OF THE 22-STOREY MAKATI CITY HALL BUILDING AT THE AVERAGE COST OF P240,000.00 PER SQUARE METER AND RELATED ANOMALIES PURPORTEDLY COMMITTED BY FORMER AND CURRENT LOCAL GOVERNMENT OFFICIALS AND FOR OTHER RELATED PURPOSES"

Recommending its approval.

Sponsor: Senator Aquilino "Koko" Pimentel III

MR. CHAIRMAN:

The Subcommittee of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), has conducted an inquiry, in aid of legislation, on the aforementioned referral.

On August 11, 2014, Senator Antonio "Sonny" F. Trillanes IV filed Proposed Senate Resolution No. 826 (hereinafter referred to as "PSR No. 826") entitled "*Resolution Directing the Committee on Accountability of Public Officials and Investigations of the Senate of the Philippines to Investigate, in Aid of Legislation, the Alleged P1.601 Billion Overpricing of the 11-Storey New Makati City Hall II Parking Building, the Reported Overpricing of the 22-Storey Makati City Hall Building at the Average Cost of P240,000.00 per Square Meter and Related Anomalies Purportedly Committed by Former and Current Local Government Officials and for Other Related Purposes*" and on the same day, PSR No. 826 was referred to the Committee on Accountability of Public Officers and Investigations (Blue Ribbon). Thereafter, this



Subcommittee was created to conduct an inquiry, in aid of legislation, on PSR No. 826.

PSR No. 826 calls for the investigation, in aid of legislation, of three subject matters:

- (1) The Alleged P1.601 Billion Overpricing of the 11-Storey New Makati City Hall II Parking Building (hereinafter referred to as "Makati City Hall II Parking Building");
- (2) The Reported Overpricing of the 22-Storey Makati City Hall Building at the Average Cost of P240,000.00 per Square Meter;
- (3) And Related Anomalies Purportedly Committed by Former and Current Local Government Officials.

On January 20, 2015, Senator Trillanes filed Proposed Senate Resolution No. 1114 (hereinafter referred to as "PSR No. 1114") entitled "*Resolution Directing the Committee on Accountability of Public Officials and Investigations of the Senate of the Philippines, with the request that it be referred to the Subcommittee, to Investigate, in Aid of Legislation, the Alleged Irregular Transactions Entered into by the Home Development Mutual Fund (HDMF)/Pag-IBIG Fund and the Boy Scouts of the Philippines (BSP), Under the Leadership of Vice President Jejomar Binay as Chair of the HDMF/Pag-IBIG Board of Trustees and as President of BSP, respectively, and Other Related Anomalies, With the End in View of Enacting Remedial Legislation and to Recommend Amendments to the Appropriate Procurement Laws and Laws Governing the Transactions of Government-Owned and Controlled Corporations (GOCCs), to Ensure the Proper Use of Public Funds*". PSR No. 1114 was referred to this Subcommittee on the same day.

The Chairman of the Subcommittee decided to hear PSR No. 826 and PSR No. 1114 jointly because of the "overlapping personalities" involved in both Proposed Senate Resolutions.

As of date hereof, the Senate Blue Ribbon Subcommittee on PSR No. 826 and PSR No. 1114 has conducted 20 public hearings on the following dates: August 20, 2014; August 26, 2014; September 4, 2014; September 1, 2014; September 11, 2014; September 25, 2014; October 2, 2014; October 8, 2014; October 22, 2014; October 30, 2014; November 6, 2014; November 18, 2014; January 22, 2015; January 29, 2015; February 18, 2015; March 12, 2015; April 13, 2015; April 16, 2015; May 5, 2015; and May 11, 2015. Three ocular inspections have also been conducted: of the Makati City Hall II Parking Building on September 1, 2014; of the Makati Science High School Building on November 15, 2014; and of the Property in Rosario, Batangas on October 23, 2014.

Because of the additional work given by PSR No. 1114, which is being heard jointly with PSR No. 826, the Subcommittee cannot yet issue a final report on these Proposed Senate Resolutions, but the Subcommittee has

decided to issue this Partial Committee Report on the subject matter of the Makati City Hall II Parking Building, a subject matter which the Subcommittee believes has been sufficiently heard and investigated so as to form an opinion and reach a conclusion on the essential issues raised about it.

Hence, pursuant to Rule XI, Section 24 of the Rules of the Senate and Article V, Section 2 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon), this Subcommittee has the honor to submit the following to the Committee for its appropriate action:

PARTIAL COMMITTEE REPORT
ON THE ALLEGED OVERPRICING OF THE
MAKATI CITY HALL II PARKING BUILDING

The Subject Matter

The Makati City Hall II Parking Building is an 11-storey building located at F. Zobel Street, Brgy. Poblacion, Makati City. (The official project name of the said building based on the bidding documents submitted by the City Government of Makati is "Proposed Makati City Hall Parking Building".)

The Makati City Hall II Parking Building has one (1) level basement and ten (10) floors above ground and a roof deck. The basement and the second up to the sixth floors are parking spaces. The ground floor and the seventh up to the tenth floors house various offices and storage rooms.

Based on the Memorandum (Annex 1 hereof) prepared by Ms. Cecilia E. Caga-anan, the Supervising Auditor of the Local Government Sector of the Commission On Audit (hereinafter referred to as "COA") in Makati City, for Director Carmelita O. Antasuda, the Makati City Hall II Parking Building was constructed from 2008 up to 2013 and was funded through nine (9) City Ordinances (Annexes 2-A to 2-I hereof) with a total budgeted amount of P2,768,591,097.50.

The said Memorandum likewise states that as of December 31, 2013, the total payments for the project already amounted to P2,367,679,633.95, with the following particulars:

Preliminary Services	P11,974,900.00
Phase I	P386,998,154.20
Phase II	P499,357,003.73
Phase III	P599,994,021.05
Phase IV	P649,934,440.96
Phase V	P143,806,161.00
Building Management System	P75,614,953.01

In the same Memorandum, it was stated that, based on records, the Makati City Hall II Parking Building project was constructed in five (5)

phases, all awarded to a single contractor, Hilmarc's Construction Corporation (hereinafter referred to as "Hilmarc's").

Jurisdictional Challenges

Jurisdictional Challenges against PSR No. 826 were filed by Mayor Jejomar Erwin S. Binay, Jr., Ms. Ebeng Baloloy, Atty. Pio Kenneth I. Dasal, Ms. Marjorie de Veyra, and Prof. Tomas B. Lopez with the Blue Ribbon Committee on various dates.

These Jurisdictional Challenges were all denied by the Subcommittee for lack of merit, ruling that this Subcommittee has jurisdiction to investigate and conduct hearings on PSR No. 826. Attached as Annex 3 hereof is the said ruling of this Subcommittee on the Jurisdictional Challenges.

Justifications For The Cost Of The Makati City Hall II Parking Building

On August 20, 2014, Mayor Binay appeared before the Subcommittee and justified the cost of the Makati City Hall II Parking Building by highlighting its alleged special features, as follows:

1. The building has features that are Makati City's version of a "green building."¹
2. The building has a landscaped roof deck, atrium at the 7th floor, LED lighting, glass wall and panels, granite flooring, centralized air-conditioning, two elevators, conference rooms, and a mini-function hall at different floors.²
3. The building has facilities with modern amenities that one can find in a modern office building, such as office tables, chairs, and computers, and other office equipment are complete.³
4. To ensure that the building is structurally safe considering that it is built on soft soil and there are floors allotted for parking, bored piles and steel sheet piling were used for the foundation of the building.⁴
5. The Makati City Hall II Parking Building is a world-class building. They want to show that Makati City can be globally competitive.⁵

1 TSN, August 20, 2014, p. 48.

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid, p. 49.

 4

Engr. Robert Henson, President of Hilmarc's, attributed the high construction cost to the cost of steel. He testified on August 26, 2014 that Hilmarc's contract for the Makati City Hall II Parking Building was worth P2,280,089,780.94 and there were change orders increasing the construction cost because during Phase I, which was the structural phase, the price of steel spiked to base price plus 205% due to the construction for the Beijing Olympics.⁶

Internal Contradictions

However, on August 26, 2014, Engr. Line Dela Peña of the Department of Engineering and Public Works of the City Government of Makati gave a contrary statement when she stated that the Makati City Hall II Parking Building is not a certified green building but only has materials that are related to a green building.⁷ The Makati City Hall II Parking Building has no LEED⁸ certification.

Engr. Dela Peña further testified that the Makati City Hall II Parking Building does not harvest rainwater,⁹ does not have a material recovery facility,¹⁰ and that the building's glass is low-solar heat gain coefficient.¹¹ The building, however, has daylight controlled lighting system, water efficient fittings, and "site sustainability".¹²

On September 4, 2014, Atty. Rogelio Peig II, Vice-President for Legal Affairs of Hilmarc's, testified that the company cannot claim that the building is "world-class".¹³ Atty. Peig also corrected Engr. Henson's statement by clarifying that Hilmarc's bid is "all-in" and it represents 100% of the total project cost. Therefore, all provisions for labor, materials, taxes, contingencies, all components of the project, and insurance are included in the contract amount¹⁴ and that there were no change orders or variation orders.¹⁵

No Such "COA Clearance"

In his appearance before the Subcommittee, Mayor Binay also repeatedly invoked the report of the COA Technical Audit Specialists as a "COA clearance" to the effect that there was no overpricing in the construction of the Makati City Hall II Parking Building. The clearance cited by Mayor Binay is allegedly contained in the earlier mentioned Memorandum (see Annex 1) prepared by Ms. Caga-anan.

6 TSN, August 26, 2014, pp. 202-204.

7 Ibid., pp. 142-143.

8 LEED or Leadership in Energy and Environmental Design is a green building certification program that recognizes best-in-class building strategies and practices. To receive LEED certification, building projects satisfy prerequisite and earn points to achieve different levels of certification. (www.usgbc.org)

9 TSN, August 26, 2014, pp. 143-145.

10 Ibid., p. 145.

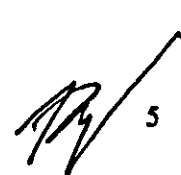
11 Ibid., p. 144.

12 Ibid., p. 145.

13 TSN, September 4, 2014, p. 195.

14 Ibid., p. 132.

15 Ibid., p. 142.



Then COA Chairperson Ma. Gracia M. Pulido-Tan categorically denied during the August 20, 2014 hearing that COA has officially issued such a clearance. She clarified that the COA does not issue any certification to the effect that a project is not overpriced. She further testified that the Memorandum of Ms. Caga-anan, invoked by Mayor Binay as a "clearance" from the COA, is only an internal communication between Ms. Caga-anan and her direct supervisor, Ms. Antasuda, which is supposed to be confidential and still subject to review.

Questions To Be Answered

This Partial Report answers the following questions:

- (1) Is the Makati City Hall II Parking Building overpriced?
- (2) If yes, then what crime has been committed? (If no, then that should be the end of the issue.)
- (3) Who should be charged for the crime?
- (4) What lessons have we learned from the incident and what recommendations can we make so that a repeat of this incident can be prevented in the future?

Is The Makati City Hall II Parking Building Overpriced?

Is the Makati City Hall II Parking Building overpriced? The Subcommittee employed various approaches to resolve this issue.

Our conclusion is that, however we look at the numbers, however we approach the question, the Makati City Hall II Parking Building is very clearly overpriced.

For purposes of the following discussion, the Subcommittee will use Hilmarc's figure of P2,280,089,780.94 as the cost of the Makati City Hall II Parking Building. This amount is also reached if the costs of the preliminary services and the building management system are deducted from P2,367,679,633.95.

The Valuation Approach

The Valuation Approach takes into consideration the total construction cost of a completed infrastructure project and compares this to its current market value.

In its Cost of Reproduction Report dated November 27, 2014 (Annex 4

AB/6

hereof), Cuervo Valuers & Advisory Inc. (hereinafter referred to as "CV&A") appraised the quantity cost¹⁶ of the Makati City Hall II Parking Building (building only) at a value of P891,020,401.80 as of the 4th quarter of 2013. In arriving at their figure, CV&A stated that it used the

"reproduction cost of each replaceable asset in accordance with current market prices of materials, labor, manufactured equipment, contractor's overhead, profit and fees, and all other attendant costs associated with its acquisition and installation in place but without provision for overtime or bonuses for labor and premiums for materials."

Using the Valuation Approach, Makati City constituents paid P2,280,089,780.94 for a building with a market value of only P891,020,401.80 (as of the 4th quarter of 2013). In short, there was an overprice of P1,389,069,379.14.

The Benchmarking Against Industry Standard Approach

This approach looks at the construction cost per square meter.

What is the construction cost per square meter of the Makati City Hall II Parking Building? This will depend on the total area to be considered in the equation.

What is the total constructed area of the Makati City Hall II Parking Building?

A point of contention was the exact measurement of the total constructed area of the building owing to the different floor area figures given by Hilmarc's, the Department of Public Works and Highways (hereinafter referred to as "DPWH"), and CV&A.

Hilmarc's reported the Construction Floor Area or CFA to be 32,783.68 square meters.¹⁷ Hilmarc's included the sidewalk (at 453.02 sq. m.) as well as the roof deck (at 2,396.98 sq. m.).

The DPWH reported the CFA to be 27,738.03 sq. m. but that excluded the mezzanine and the roof deck (as well as the sidewalk). If we use Hilmarc's figure for the roof deck (at 2,396.98 sq. m.) and the figure presented to the Subcommittee by Engr. Encisa, the Building Administrator, during the ocular inspection of 500 sq. m. as the area for the mezzanine, then we can safely use 30,635.01 sq. m. as the DPWH's CFA.

CV&A reported the figure of 30,217.31 sq. m.. CV&A excluded the roof deck from CFA, arguing that the roof deck is not "load bearing" and that a building should always have a roof anyway. (Also excluded by CV&A was the

¹⁶ Quantity Cost Estimate – The mathematical process used in estimating the cost of a new building construction, improvement, or reproduction.

¹⁷ TSN, September 25, 2014, pp.134.

sidewalk.)

Because of this point of contention, the Subcommittee believes that COA can improve its audit procedure by conducting its own measurement of the CFA of infrastructure projects. COA should not simply rely on figures provided to it by the project proponent or the contractor. A bloated figure will lead to an artificially lower construction cost per square meter.

For purposes of the following discussion, the Subcommittee will use the largest figure, Hilmarc's total of 32,783.68 sq. m., as the CFA of the Makati City Hall II Parking Building.

Using Hilmarc's figure, we have computed the construction cost per square meter of the Makati City Hall II Parking Building to be P69,549.54 per sq. m..

This Subcommittee then referred to the *2012 Davis Langdon and Seah*¹⁸ *Construction Costs Handbook* (hereinafter referred to as "2012 Construction Handbook") for comparison purposes.

Based on the 2012 Construction Handbook, the average construction cost per square meter of an average standard high-rise office building is P35,260.00,¹⁹ while a high-rise prestige office's construction cost per square meter is P46,440.00.²⁰

Although there were attempts to label the Makati City Hall II Parking Building as a "green building" and even a "world-class building", in fairness to all concerned, no one has ever claimed that it is a "high-rise prestige office". At any rate, the ocular inspection of the said building revealed it to be an average standard office building.

According to Gregory Jackson, an independent quantity surveyor, the building materials used were standard. To quote him:

"Based on my observations, the building finishes and materials would appear to be quite standard. xxx I saw nothing unusual in the finishes and materials and the design details, so in summary, a standard building finish."²¹

Furthermore, Architect Danny Alano of the Philippine Institute of Architects, called the building "average".²² Architect Alano also pointed to the fact that most of the internal walls used gypsum boards,²³ which are lighter and

18 Founded in Singapore in 1934, Langdon & Seah is the longest established and largest cost/project management and quantity surveying consultancy in Asia.

(http://www.arcadis.com/press/ARCADIS__ANNOUNCES_NAME_CHANGE_FOR_DAVIS_LANGDON_SEAH.aspx)

19 USD 820.00 x P43.00.

20 USD1,080 x P43.00.

21 TSN, September 1, 2014, p. 45.

22 Ibid, p. 46.

23 Ibid, p. 16.

cheaper than concrete.

The ocular inspection also revealed many problems in the fixtures and finishes of the building, including but not limited to cracks in the walls, peeling paint, uncovered ceilings and exposed plumbing, and misspelled signages.

Hence, the use of the figure of P35,260.00 per sq. m. is justified for this approach. (The Subcommittee is aware that around 45% of the area of the Makati City Hall II Parking Building is dedicated to "above-ground parking space" which is concededly much cheaper to construct than an office space. Yet we will use the figure for "an average standard high-rise office building".)

Using the Benchmarking Against Industry Standard Approach, Makati City constituents paid P69,549.54 per sq. m. for a building which should have cost only around P35,260.00 per sq. m. to construct or an overprice of P34,289.54 per sq. m.. If we multiply this amount with Hilmarc's CFA of 32,783.68 sq. m., then we get the total overprice amount of P1,124,137,224.14.

The Comparison Approach

If we compare the Makati City Hall II Parking Building with other buildings of either comparative or even better design and technical specifications, then we can also see the overprice.

For instance, the Shang Grand Tower,²⁴ based on the September 4, 2014 letter sent by Shang Properties, Inc. to the Office of Senator Trillanes (Annex 5 hereof), has a CFA of 72,305 sq. m. with a total construction cost of P1.9 Billion. According to its website, its Grand Penthouses are bi-level 4-bedroom units located at the 45th floor of the building. It also has four parking levels at the basement and three parking levels at the podium.²⁵

Another construction project is the Zuellig Building, which is the first premium-grade office tower in the Philippines notable for its environmentally conscious design, distinctive façade, and superior finishes. It is the first office building in the Makati Central Business District that was pre-certified by the U. S. Green Building Council at the LEED Gold level which eventually became Platinum level. The tower has 33 above-ground floors, with 5 basement floors. It provides approximately 65,000 sq. m. of Class-A office space, and approximately 2,000 sq. m. of retail area.²⁶ Its construction cost per square meter is P42,712.00.²⁷

The Bill Of Quantities Approach

24 A high-end 46-storey luxurious residential condominium in Makati City developed by EDSA Properties Holdings, Inc., a member of The Kuok Group of Companies, the developer of the award-winning Shangri-La chain of hotels and resorts.

25 www.theshanggrandtower.com

26 http://www.som.com/projects/zuellig_building

27 Presentation of Sen. Alan Peter Cayetano during the Blue Ribbon Subcommittee hearing on September 4, 2014.

The bill of quantities (or bill of materials), when presented in tabular form and compared by phases, reveals an alarming pattern of overpricing.

One observation is that the toilet finishes and plumbing fixtures increased dramatically per phase, especially in Phases IV and V. The total amount of P1.716 Million was spent on the toilets found on the ground floor alone. Toilets on other floors amounted to P5.674 Million in Phase IV. In Phase V, another P823,953.00 was spent on toilets when the building was already found by the COA to be "habitable and ready for occupancy".

Also noticed were the following costs in the bill of materials:

- The building signage cost is P974,000.00 or P40,000.00 per letter and the total cost for signages is P4.20 Million;
- The total elevator cost is P12.35 Million;
- The total air-conditioning system cost is P21.80 Million;
- The total cost of the interior garden at the 7th floor is P2.98 Million, with landscaping and finishes at the roof deck amounting to P14.48 Million;
- The two generators amounted to P36.35 Million; and
- The labor cost for the Meralco application is P21.99 Million.

We also noticed that the prices of some of the fixtures increased by extraordinary amounts from one phase to another, to wit (amounts in Pesos):

Fixture	Phase III	Phase IV	Phase V
Lavatory wall hung, per unit	P3,600	P16,500	P24,800
Lavatory over the counter, per unit	P11,500	P22,500	P32,400
Hand Dryer, per unit	P17,500	P36,800	P62,700
Water Closet Flush Type, per unit	P13,400	P22,500	P32,400

The Opinion Of Experts

Expert resource persons invited by the Subcommittee found the total construction cost of the Makati City Hall II Parking Building to be too high and excessive given the building's design and specifications, to wit:

- (1) Architect Arnel Colcol of the Philippine Institute of Architects stated that the cost of the construction of the Makati City Hall II Parking Building is high;²⁸
- (2) Mr. Federico C. Cuervo, President and CEO of CV&A, submitted his Report dated November 27, 2014 (see Annex 4), which states that as of the 4th quarter of 2013, the market value of the building is P891 Million with first grade materials; and
- (3) Architect Carlo Mateo of MANA ARCHITECTURE & INTERIOR DESIGN CO., the firm that prepared the architectural and other plans of the Makati City Hall II Parking Building, averred that the building is not worth P70,000.00 per sq. m..²⁹

Conclusion On The Issue Of Overprice

The Makati City Hall II Parking Building is clearly overpriced and the amount of the overprice ranges from a low of P1,124,137,224.14 to a high of P1,389,069,379.14.

The Subcommittee observes that both amounts are way above the threshold amount of P50 Million for the crime of plunder.

There are other observations and findings regarding the Makati City Hall II Parking Building and related issues which should also be reported out.

"Red Flags" In The Commission On Audit's Initial Evaluation

Because of the Subcommittee's hearings on PSR No. 826, the COA conducted a special audit of the Makati City Hall II Parking Building infrastructure project.

On October 2, 2014, this Subcommittee received a copy of the COA Initial Evaluation Report dated October 1, 2014 (Annex 6 hereof).

The COA Initial Evaluation Report found some non-compliance with existing rules and regulations on public infrastructure procurement in the construction of the Makati City Hall II Parking Building.

The following are the "red flags" discovered by COA, as stated in the Initial Evaluation Report of its special audit of the Makati City Hall II Parking Building (with underscoring provided), to wit:

1. The Project was implemented with undue haste as there were no construction plans yet when it was bid out and awarded to Hillmarc's (sic) Construction Corporation.

28 TSN, August 26, 2014, p. 39.

29 TSN, October 8, 2014, p. 52.

A perusal of the records will show that Phase I was implemented with undue haste. Firstly, there was only a gap of one (1) month from the passage of the appropriation ordinance on November 8, 2007 when the IAEB for the project was advertised on December 6, 2007. While the swiftness of the action taken by the city government may be considered as efficiency, the same could be also considered as a red flag because this project with such a huge budget will surely require a careful conceptualization and planning. Under the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 prevailing when Phase I was implemented, the City is required to conduct a Detailed Engineering with so many activities, to wit:

- a. Survey
- b. Site Investigation
- c. Soils and Foundation Investigation
- d. Construction Materials Investigation
- e. Preparation of Design Plans
- f. Preparation of Technical Specifications
- g. Preparation of Quantity and Cost Estimates
- h. Preparation of Program of Work
- i. Preparation of Proposed Construction Schedule
- j. xxxx
- k. xxxx
- l. xxxx
- m. xxxx
- n. xxxx
- o. xxxx

The procurement process for the Contract of Architectural and Engineering Services for the Parking Building started on November 12, 2007 or four (4) days after the passage of Supplemental Budget No. 3 for CY 2007 which was the funding source for the project. On this date, City Engineer Nelson B. Morales requested for a Negotiated Contract with the Bids and Awards Committee (BAC) justifying that the negotiation should be based on the unique experience and expertise of the consultant and the time constraint in which to undergo the normal bidding procedure. On November 14, 2007, the BAC found merit and approved the request of Engr. Morales to have a negotiated procurement instead of public bidding. On November 15, 2007, BAC Chairman Marjorie A. De Veyra sent invitation to submit proposal to seven (7) firms. On November 22, 2007, the BAC opened and evaluated the submitted proposals and found that the highest rated bid was tendered by MANA ARCHITECTURE & INTERIOR DESIGN CO. (MANA). The following day, the BAC Chairman notified MANA that they were awarded the contract. On November 28, 2007, the Contract of Architectural and Engineering Services was executed between MANA and Makati City or just eight days before the Parking Building project was advertised in the newspaper on December 6, 2007.

It appears that the negotiated procurement adopted by the BAC on the Contract of Architectural and Engineering Services was improper because none of the conditions laid down under Section 53 of the Implementing Rules and Regulations (IRR) of RA No. 9184 was present such as two failed biddings, emergency cases,

take-over contracts, adjacent or contiguous projects, agency-to-agency, highly technical consultants and defense cooperation agreement.

The contract of Architectural and Engineering Services with MANA has three major components, to wit:

1. Preliminary Services (30%)
2. Contract Document Services (55%)
3. Supervisory Services (15%)

The Preliminary Services consist of seven undertakings as follows:

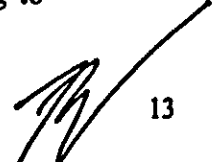
1. Conference with the City of Makati to outline the projects, discussion of purposes, general plan of construction and equipment discussion of the probable time to build, the approximate cost and the means of financing;
2. Visiting of the site and studies of project placement;
3. Studies of efficient methods of operating the project for its purpose;
4. Preparation of small scale preliminary drawings embodying all Architect's findings, analysis and studies;
5. xxx
6. xxx
7. xxx

On the other hand, the Contract Document Services consist of five undertakings, to wit:

1. Development and preparation of working drawings including all essential architectural, structural, plumbing, electrical, air conditioning and other required mechanical engineering works, presented in the form of plans, elevations, sections, sections, schedules and notes;
2. Preparation of specifications describing the types and quality of materials and finish and the manner of construction;
3. Preparation of General Conditions of the contract under which the project is to (sic) constructed;
4. The furnishing of complete sets of working drawings and specifications normally required for purpose of building, city government license, and the construction of the works;
5. Preparation of the contract forms.

Based on the first billing dated 31 March 2008 of MANA through Architect Orlando M. Mateo, the Preliminary Services was 100% completed while the Contract Document Services were only 20% completed as of billing date. The total billing of P4,909,709.00 was paid under Disbursement Voucher (DV) dated April 22, 2008 and the check payment was received by Architect Mateo on 24 April 2008.

The second billing dated February 27, 2009 with a net collectible amount of P3,951,717.00, stated that the Contract Document Services were only 80% completed. This was paid under a DV dated May 27, 2009. The third billing amounting to



P2,215,356.50 was paid under a DV dated November 28, 2011 while the fourth and final bidding amounting to P499,058.75 was paid on November 22, 2013.

It appears therefore that when the Parking Building project was awarded to Hillmarc's (sic) Construction Corporation on January 11, 2008, there were no completed plans yet as the Contract Document Services to be rendered by MANA was only 20% completed as of 31 March 2008.

There was also a substantial difference of P105,349,353.40 between the ABC of P387,846,020.00 as against the Approximate Cost of Project of P282,496,666.60 as stated in the Contract of Architectural and Engineering and various documents approved by the Mayor.

With regard to the Parking Building, the IRR requires that the Invitation to Apply and submit Eligibility to Bid (IAEB) shall be advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days in between publications, in a newspaper of general nationwide circulation. The IAEB shall also be posted continuously in the PGeps during the maximum period of fourteen (14) calendar days.

The bidding documents shall be issued within 30 calendar days from the last day of the period of advertising and posting of the IAEB. The opening of bids for infrastructure projects above P200 million shall be conducted within 60 to 90 days after the issuance of bidding documents.

There was only a gap of 22 days between the first day of publication of the IAEB made on December 6, 2007 and the opening of bids held on December 28, 2007. Further, there was only a gap of 15 days between the PGeps publication on December 13, 2007 and the day of opening of bids. This may have been the reason why the Makati City had only three bidders in such a huge project. Apparently, the City did not get the widest participation of prospective bidders and was unable to obtain the best possible price for the government as envisioned by the Government Procurement Reform Act. It also noted that the public bidding was held in time of the holiday season on the last working day (Friday) of the year.

2. The variances between the ABC and the bids tendered by Hilmarc's for the five phases were less than 1/4 of 1% of the ABC.

The table below shows the very minimal variance between the ABC and the amount of bids tendered by the HCC, to wit:

	Phase I	Phase II	Phase III	Phase IV	Phase V
ABC	387,846,020	499,944,622	599,933,565	649,981,803	141,911,177
Original Contract Cost	386,998,154	499,357,003	599,395,613	649,275,681	141,649,366
Variance	847,866	587,619	537,952	706,122	261,811
%	.0021	.0011	.0008	.0010	.0018

The bids tendered by winning bidder for the five (5) phases did

not even reach ¼ of one percent (1%) of the ABC.

Moreover, while there were three (3) bidders who participated in the first phase of the project, it was so unusual, especially when the mode of procurement was public bidding, that with respect to Phases II to V, there was no other bidder who tendered his bids except the lone and winning bidder who also got the award for Phase I.

3. There was no valid ABC for Phase III when the City started the procurement process.

For Phase III, it is noted that there was no appropriation yet when the City started the procurement process on November 27, 2009, the date of publication of the IAEB in the Balita newspaper. The covering appropriation ordinance (City Ordinance No. 2010-A-005, Supplemental Budget for CY 2010) was only enacted on September 14, 2010. It is also noteworthy that the BAC Resolution Recommending Approval of the Award to HCC was made as early as January 8, 2010, however, Notice of Award (NOA) was only served to winning bidder on September 21, 2010. Obviously, the Head of the Procuring Entity waited for the passage of the appropriation ordinance before he issued NOA to HCC.

Under the attendant circumstances, it appears that there was no valid ABC when the City started the procurement process. ABC is defined under RA No. 9184, thusly:

“Approved Budget for the Contract (ABC) – refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of the National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government-Owned and/or Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the Contract approved by the respective Sanggunian, in the case of Local Government Units.”

Since there was no appropriation yet for Phase III, the ABC prepared by the City had also no legal basis yet. Stated differently, it had no basis yet to start the procurement process in 2009 since the appropriation ordinance was enacted only in September 2010.

4. Per COA Inspection Report dated July 7, 2011 for Phase III, the Parking Building was already habitable and ready for use.

It is also noted that per COA Inspection Report dated July 7, 2011, the Parking Building was already habitable and ready for use upon completion of Phase III, thus it is highly questionable why the City had to disburse an aggregate amount of P793,740,601.96 for Phases IV and V.

5. The ABC and Contract Cost show very significant variances above COA Estimated Cost for Phases III and IV.

Tabulated below are the results of the Technical Inspection

Reports rendered by the COA engineers with respect to Phases I to IV:

ABC vs. COA Evaluated Cost

	Phase I	Phase II	Phase III	Phase IV	Total Variance
ABC	387,846,020	499,944,622	599,933,565	649,981,803	
COA Evaluated Cost	375,910,233	494,194,340	549,336,810	592,166,077	
Variance	11,935,787	5,750,282	50,596,755	57,815,726	126,098,550
%	3.17	1.16	9.21	9.76	

Contract Cost vs. COA Evaluated Cost

	Phase I	Phase II	Phase III	Phase IV	Total Variance
Contract Cost	386,998,154	499,357,003	599,994,021	649,934,440	
COA Evaluated Cost	375,910,233	494,194,340	549,336,810	592,166,077	
Variance	11,087,921	5,162,663	50,657,211	57,768,363	124,676,158
%	2.95	1.04	9.22	9.76	

From the tables above, it can be gleaned that for Phases I to IV alone, there was a total variance between the ABC and the COA Evaluated Cost amounting to P126,098,550 while the Contract Cost vis-à-vis the COA Evaluated Cost had a total variance of P124,676,158. These amounts are very significant. Further, the percentages of variance of Phases II and IV are within the borderline of the 10% allowable variance. The materiality of the variance (contract price is above COA evaluated cost) deserves a deeper analysis and evaluation.

6. Unnecessary expenditures for mobilization and demobilization.

Moreover, considering that only one contractor made all the five (5) phases of the project, the city government may have incurred unnecessary expenditures for mobilization and demobilization for Phases II to V of P14,490,856.24 which were included in the Agency Cost Estimate, to wit:

Phase II	P3,829,819.38
Phase III	P4,595,783.40
Phase IV	P4,978,144.70
Phase V	<u>P1,087,108.76</u>
Total	<u>P14,490,856.24</u>

It has not escaped the attention of this Subcommittee that the Resident Auditors assigned to the City of Makati and the Technical Audit Specialists of the COA assigned to the Makati City Hall II Parking Building infrastructure project (hereinafter collectively referred to as the "COA Auditors"), who examined and audited the accounts pertaining to expenditures or uses of funds of the Makati City government over the course of a number of years, miserably failed to discover the "red flags" immediately found by the COA Main Office during its special audit over the course of only a few weeks.

For the years 2008 to 2011, citing as basis COA Resolution No. 91-52, series of 1991,³⁰ the COA Auditors found as "reasonable" the amounts appropriated and spent for the Makati City Hall II Parking Building.

The COA Technical Audit Specialists involved are the following:

Phase I:

1. Engr. Cecilio J. Pineda
2. Engr. Allan S. Florentino
3. Engr. Zaldy B. Lavarro

Phase II:

1. Engr. Cecilio J. Pineda
2. Engr. Allan S. Florentino
3. Engr. Zaldy B. Lavarro

Phase III:

1. Engr. Roldan L. Menciano
2. Engr. Roberto G. Ferrer
3. Engr. Nemesio A. Avestruz

Phase IV:

1. Engr. Roldan L. Menciano
2. Engr. Roberto G. Ferrer
3. Engr. Nemesio A. Avestruz

Phase V:

1. Engr. Rosalina H. Prestoza
2. Engr. Ricardo R. Custodio
3. Engr. Winiefredo L. Paquera
4. Engr. Flora M. Ruiz

The COA Resident Auditors involved are the following:

Phases I and II – Gabriel J. Espina

Phases III and IV – Danilo Rodriguez and Merla C. Bagsit

Phase V – Cecilia E. Caga-anan

Excessive Expenses In Structural Work

On August 26, 2014, then COA Chairperson Pulido-Tan testified that the purpose of each phase was not clearly defined. Particularly, while the Phase II

30 COMMISSION ON AUDIT RESOLUTION NO. 91-52 September 17, 1991

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7. The total contract price should be equal to or less than the total COA estimate plus ten percent (10%) in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive.

8. The contract price, however, should not only be reasonable as hereinabove determined but should also be within the ceiling provided for by law, rules and regulations.

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inspection report indicated that Phase II was dedicated to structural work, all five phases also had dedicated components for structural work, suggesting that the same "structural work" may have been budgeted multiple times.

"MS. PULIDO-TAN: At this juncture, Your Honors, if I may, I would just like to point out some. Ito galing sa kanila but they did not mention. Iyong observation po na iyong phases. One of the difficulties really why we don't even can get sense of this thing at all is that the phases are not defined. Ano ba iyang Phase 1 na iyan? Structural ba iyan? Ano iyang Phase 2 na iyan? Outfitting ba iyan? Ano ang Phase 3 na iyan? Iyan ba finishing ba iyan? We don't know and I don't know kung ano iyong kanilang mga in-evaluate na mga specs for each of these phases. But let me just point some examples. Doon sa Phase 2, ito po ay inspection report ng aming technical people. Ang sinabi nila dito sa report: "It includes structural works from ground floor to 11 floor." Sa Phase 2 pa lang po iyon. But then, we also note that in all of the five phases, mayroong component na structural work. So ilang ulit ba tayong nag-structural work? You know, pwede po nating itanong iyon."³¹

Then COA Chairperson Pulido-Tan also said that the division of the Makati City Hall II Parking Building into several phases already constitutes a red flag.

Atty. Renato L. Bondal, one of the complainants in the Plunder Case filed against Vice President Jejomar C. Binay and others before the Office of the Ombudsman, went further and charged that the Makati City Government splits its projects into several phases in order to hide the overpricing.

It appears that the apprehensions of then COA Chairperson Pulido-Tan and Atty. Bondal regarding the division of this infrastructure project into several phases have basis. This phasing scheme has made it possible for the Makati City Government to incur the unnecessary expenditures for the mobilization and demobilization for Phases II to V in the amount of P14,490,856.24 discussed in the COA Initial Evaluation Report (see Annex 6), as well as the excessive expenses for structural work pointed out above.

Maybe because this infrastructure project was divided into phases, which were submitted to audit separately, it did not become apparent to the COA Auditors that these expenditures were unnecessary, redundant, and excessive.

Excessive Structural Design

The total amount spent on the foundation of the Makati City Hall II Parking Building reached P310,727,628.61.³² There was no soil investigation report submitted to the Subcommittee to support the allegation that there was a need to put additional foundation reinforcement due to the soil condition. In

³¹ TSN, August 26, 2014, pp. 156-157.

³² Ibid, p. 67.

fact, in the Appraisal Report of CV&A dated October 21, 2014 (Annex 7 hereof), the team of quantity surveyors and cost estimators who studied the As-Built Plans of the Makati City Hall II Parking Building found, among others, that there was excessive structural design in both the structure and the foundation, as well as an absence of a Soil Bore Test to show the bearing capacity of the soil as basis for the design of the building's foundation.

It is worth emphasizing at this point that the Makati City Hall II Parking Building project was bid out in December 2007 and then awarded to Hilmarc's in January 2008 without any completed plans yet, as the Contract Document Services to be rendered by MANA ARCHITECTURE & INTERIOR DESIGN CO. was only 20% completed as of March 31, 2008.

Given the observations under the headings "Excessive Expenses In Structural Work" and "Excessive Structural Design", the Subcommittee recommends that the COA should start paying close attention to the expenses for the structure and for the foundation in its audit of infrastructure projects as the possibility of "bloating" the project cost is very real in these aspects of the construction.

Unnecessary Expenses Of P793 Million

Then COA Chairperson Pulido-Tan also emphasized that the inspection report for Phase III indicated that the Makati City Hall II Parking Building was already "habitable and ready for use" and that the City of Makati had already appropriated funds for general cleaning of the building after Phase III. Yet, the City of Makati still spent an additional P793,740,601.96 for Phases IV and V, which was unnecessary for the functioning of the Makati City Hall II Parking Building, given that it was already reported "ready for use" after Phase III.

"MR. JULIANO:

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No. 4. Per COA Inspection report dated July 7, 2011 for Phase 3, the parking building was already habitable and ready for use. It is also noted that per COA inspection report dated July 7, 2011, the parking building was already habitable and ready for use upon completion of Phase 3. Thus, it is highly questionable why the city had to disburse an aggregate amount of P793,740,601.96 for Phases 4 and 5."³³

No Over-All Plan, No Idea As To Total Cost

When the City Government of Makati decided to construct the Makati City Hall II Parking Building in 2007, no one in the local government unit had any idea how much it would finally cost.

"SEN. A. CAYETANO. Ano ang total cost noong project na iyon?

33 TSN, October 2, 2014, p. 58.

MR. BADILLO. Kasi ang total cost ng structural is 1.929, then almost 134 million, I think.

SEN. A. CAYETANO. So wala na tayong aasahan diyan, Engineer, na biglang magkaka-phase 3, phase 4, phase 5.

MR. BADILLO. So far mayroon pa rin sigurong phases kasi structural lang po itong phase 2. It's 1.929 billion.

SEN. A. CAYETANO. So ang ibig sabihin po natin, Engineer, sa Makati moving target iyong construction ninyo. Hindi ninyo masabi at this point in time magkano iyong isang building, hindi ba? Ibang-iba ito sa private sector. Sa private sector, hindi papayag iyong may-ari ng building na mag-umpisa nang hindi niya malalaman kung ano ang total cost.

MR. BADILLO. Oho, totoo po iyon.

SEN. A. CAYETANO. Hindi ba bad accounting practice ito, Engineer?

MR. BADILLO. Hindi ho. Mayroon ho akong example dito, itong Building II namin, itong tinatawag na Parking Building, mayroon kaming kontrata rito. Base ho ito sa phase-by-phase ng projects.

SEN. A. CAYETANO. Tama iyon, Engineer. Hindi iyon ang pinupunto ko. Ang pinupunto ko, ke pera ng bayan iyan at lalo kung pera ng bayan o pera ng individual, gusto kong malaman ko kung magkano ang bibilhin ko at kung ano ang makukuha ko. Hindi ba iyon ang raket sa Hong Kong? Sabihin nila, "Mas mura sa amin, boss, iyong camera." Pagbili mo, hindi pala kasama iyong case at iyong baterya. So babalikan mo, babayaran mo iyon. So iyon ang pinupunto nila Atty. Bondal kanina na, "Eh paano namin malalaman kung overpriced o hindi? Hindi namin malaman kung hanggang phase 53 iyan o phase..." So, babalikan ko po, Engineer. You can pick any project na over 100 million sa Makati. At the start, wala kayong idea kung magkano aabutin iyong project na iyon?

MR. BADILLO. May approximate ho kami na appropriation budget kami roon. Pero hindi kami lumalagpas ng appropriation budget."³⁴

Engr. Dela Peña further confirmed that before the groundbreaking of the project there was no overall plan. There was only a structural plan in place. According to her, their consultant prepares a plan for each phase, and then the engineering department makes estimates according to the budget appropriated. That was how they reached ₱2.28 billion for the Parking Building.³⁵

The Sangguniang Panlungsod of Makati promulgated the pertinent city ordinances without exhaustively discussing, or even studying, the details and

³⁴ TSN, August 20, 2014, pp. 175-176.

³⁵ TSN, August 26, 2014, pp.88-89.

various aspects connected with the construction of such a big-ticket item as the Makati City Hall II Parking Building.

Former Makati City Vice-Mayor Ernesto S. Mercado testified that there is no specific city ordinance for the construction of the Makati City Hall II Parking Building. He also pointed out inconsistencies such as in Ordinance No. 2007-015 where there was an allocation of P400 Million for the Makati City Hall II Parking Building. However, in Ordinance No. 2008-035, there was only a list of projects but the amount allotted for Makati City Hall II Parking Building was left blank. The pertinent city ordinances generally only indicated the lump sum amounts allocated for different programs and infrastructure projects.

Furthermore, the Building Permit (Annex 8 hereof) of the Makati City Hall II Parking Building did not indicate the estimated cost of the project.

Violation Of The National Building Code

The fact that the Building Permit (see Annex 8) of the Makati City Hall II Parking Building did not contain a declaration of the estimated cost of the project, is a violation of Section 302 of the National Building Code of the Philippines, Republic Act No. 6541, as amended by Presidential Decree No. 1096, which provides:

“Section 302. Application for permits.

In order to obtain a building permit, the applicant shall file an application therefor in writing and on the prescribed form from the office of the Building Official. Every application shall provide at least the following information:

- (1) A description of the work to be covered by the permit applied for;
- (2) Certified true copy of the TCT covering the lot on which the proposed work is to be done. If the applicant is not the registered owner, in addition to the TCT, a copy of the contract of lease shall be submitted;
- (3) The use or occupancy for which the proposed work is intended;
- (4) Estimated cost of the proposed work.

To be submitted together with such application are at least five sets of corresponding plans and specifications prepared, signed and sealed by a duly licensed mechanical engineer in case of mechanical plans, and by a registered electrical engineer in case of electrical plans, except in those cases exempted or not required by the Building Official under this Code.”

Lack Of Annual Procurement Plans

Despite several subpoenas duces tecum issued to them, the Makati City officials failed to submit the certified true copies of the duly approved Annual Procurement Plans (hereinafter referred to as “APP”) covering the five (5) phases of the Makati City Hall II Parking Building’s construction.

Under our procurement laws, a bidding cannot commence or may be

considered invalid if the same is conducted without an APP. Specifically, Article II, Section 7 of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act" states that:

"No government procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The APP shall bear the approval of the Head of the Procuring Entity or second-ranking official designated by the Head of the Procuring Entity to act on his behalf, and must be consistent with its duly approved yearly budget."

Bid Rigging

Based on the bidding documents for Phase I (Annex 9 hereof) submitted by the City Government of Makati, three (3) bidders purportedly participated in the first phase, namely:

1. Hilmarc's;
2. J-Bros Construction; and
3. ITP Construction, Inc.

However, on September 4, 2014, Engr. Mario U. Hechanova, former head of the General Services Department of Makati City and Vice-Chairman of the BAC, testified that the bidding for the Makati City Hall II Parking Building was rigged, as with other infrastructure projects during the tenure of then City Mayor Jejomar C. Binay.³⁶

Engr. Hechanova testified on this alleged institutionalized bid rigging in the City of Makati in this manner –

"SEN. TRILLANES. Okay. Mabalik tayo dito sa sinasabi ninyong niluluto yung bidding. Papaano ninyo ito ginagawa?"

MR. HECHANOVA. Halimbawa po, iyong dito sa Hilmarc's Construction, ang ginawa ho namin, pinag-submit na ho namin ng bidding documents iyong Hilmarc's. Tapos tsinek (check) ho namin iyong completeness ng papel nila kung talagang responsive bago namin pinaselyuhan sa kanila. Tapos nun, kami na ho ang kumuha ng magiging kalaban nila. Kami ang nag-prepare ng documents ng kalaban nilang kumpanya. Sinigurado namin na mas mataas lang iyong bid nila kesa sa bid ng Hilmarc's Construction.

SEN. TRILLANES. So ginagawa iyan ng opisina mo in particular?

MR. HECHANOVA. Opo, Senador.

SEN. TRILLANES. In your capacity as head ng general services department or as vice chairman ng bids and awards committee?

MR. HECHANOVA. Bilang vice chairman, sir, ng bids and awards committee.

36 TSN, September 4, 2014, pp. 29-32.

SEN. TRILLANES. So sa iyong paniniwala, alam ito ng buong bids and awards committee?

MR. HECHANOVA. Opo, sir, alam lahat iyan kasi pag nag-utos naman si Engineer Morales, lahat naman ho kami sumusunod.

SEN. TRILLANES. Okay. Hindi ba pina-publish niyo itong notice to bid?

MR. HECHANOVA. Opo, Senador.

SEN. TRILLANES. So puwede kahit sino mag-join, right?

MR. HECHANOVA. Opo, totoo po iyon.³⁷

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SEN. A. CAYETANO. So last set of questions just on this bidding. So let's say, October 30 may bidding tayo for 10 projects. Are you saying one or two of those projects luto na or you are saying that lahat nung projects na iyon alam niyo na kung sino ang mananalo?

MR. HECHANOVA. Iyong infra projects namin, Senador, pagkagawa pa lang ng plano niyan, pagkapirma pa lang ng mayor doon sa plano, may naka-assign na pong mga contractors diyan.

SEN. A. CAYETANO. Paano po ina-assign iyon?

MR. HECHANOVA. Ibinibigay na po sa kanila na sila na po iyong mananalo sa bidding.

SEN. A. CAYETANO. Sino po ang namimili noon?

MR. HECHANOVA. Ibinibigay na po ng mayor doon sa city engineer namin tapos iyong city engineer ibibigay iyong listahan sa amin.

SEN. A. CAYETANO. Is there any possibility do you think, in your mind, that Mayor Binay was just too kind? Na the Vice President mabait, hindi niya alam. Kasi nga pagtingin niya, "Oy, 2.2 billion. O, sige." "Uy, Hilmarc's ulit, sige, magaling naman iyan, okay."

MR. HECHANOVA. Hindi po ako naniniwala doon, Senador. Alam niya po iyan.³⁸

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THE CHAIRMAN (SEN. PIMENTEL). Maalala ninyo ba iyong mga pangalan? Mayroon akong ditong mga—J-Bros Construction. Iyon ba iyon? Maalala mo?

MR. HECHANOVA. Opo.

37 Ibid, pp. 28-30.

38 Ibid, pp. 44-45.

THE CHAIRMAN (SEN. PIMENTEL). ITP Construction. Iyan po ba?

MR. HECHANOVA. Opo.

THE CHAIRMAN (SEN. PIMENTEL). Ito ba'y mga tunay na kompanya, tunay?

MR. HECHANOVA. Tunay naman po.

THE CHAIRMAN (SEN. PIMENTEL). Paano ninyo ito nakukuha?

MR. HECHANOVA. Galing na rin po sa kanila iyan. Tapos, kinuha namin.

THE CHAIRMAN (SEN. PIMENTEL). Sino iyong kanila? Sino iyon?

MR. HECHANOVA. Sa Hilmarc's po.

THE CHAIRMAN (SEN. PIMENTEL). So sila iyong nagbigay ng pangalan na ito?

MR. HECHANOVA. Oho.

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THE CHAIRMAN (SEN. PIMENTEL). Para ano? Para exciting?

MR. HECHANOVA. Oho. Para lang mas mataas sila. Para lang talagang mas mababa lang po iyong Hilmarc's.

THE CHAIRMAN (SEN. PIMENTEL). Oo nga. Pero dikit.

MR. HECHANOVA. Opo.

THE CHAIRMAN (SEN. PIMENTEL). Pwede ninyo ginawang milyon ang diprensya. Anyway, napansin ko lang po iyan. So ito pong mga J-Bros Construction and ITP Construction, siyempre nag-submit din iyan ng mga dokumento na pirmado ng kanilang tunay na mga board or officers?

MR. HECHANOVA. Opo.

THE CHAIRMAN (SEN. PIMENTEL). So alam nilang kasali sila sa palabas na bidding? Alam nila?

MR. HECHANOVA. Opo. Ipi-prepare lang namin iyong papel nila, tapos saka nila pipirmahan.

THE CHAIRMAN (SEN. PIMENTEL). Okay. Anyway, kukunin na lang natin sa SEC iyong mga identity nitong mga incorporators and officers ng two companies.

Senator Trillanes.

SEN. TRILLANES. Thank you, Mr. Chairman. Uulitin ko lang ulit ano. Lahat ng biddings sa Makati ay niluluto sa favored contractors o favored bidder?

MR. HECHANOVA. Opo, Senador.

SEN. TRILLANES. Sa inyong paniniwala, mayroon bang nangyayari diyan sa Makati City Hall na mga ganyang transaksyon (transaction) na hindi nalalaman ni Vice President Binay?

MR. HECHANOVA. Hindi po. Alam niya po lahat iyan. Being the mayor, alam niya po ang nangyayari sa gobyerno niya."³⁹

xxx

"SEN. A. CAYETANO. We will give you copies of this for your own legal protection and for your legal to look [out] later on. But let me clarify some issues muna. Engineer Hechanova, isa ka sa nakapirma dito bilang chief general services department at vice chairman?

MR. HECHANOVA. Yes, Your Honor.

SEN. A. CAYETANO. Eto ba iyong sinasabi mong naka-prepare na, pipirmahan ninyo na lang?

MR. HECHANOVA. Opo, Your Honor.

SEN. A. CAYETANO. So, hindi ninyo na nakausap na hindi pala sila sumali or anything?

MR. HECHANOVA. Hindi na po, Your Honor, basta pinrepeyr (prepare) na lang po namin iyong mga papel, Your Honor.

SEN. A. CAYETANO. So, iyong testimony mo last time—basta't alam ninyo na kung sino ang mananalo.

MR. HECHANOVA. Opo, ganoon nga po, Your Honor."⁴⁰

To support this allegation of institutionalized bid rigging in the City of Makati, another witness, Mr. Marcial Lichauco, testified that he was trapped inside an elevator in the Makati City Hall and had suspected that it was deliberately made in order to prevent him from bidding for the firefighting equipment of the Makati City government.⁴¹

During the September 25, 2014 hearing, Mr. Alejandro Tengco, the Chief Operating Officer of J-Bros Construction, categorically denied that his firm participated in the bidding for the Makati City Hall II Parking Building.⁴²

When told that his company was one of the bidders in 2007 for the

39 TSN, September 4, 2014, pp. 49-52.

40 TSN, September 25, 2014, pp. 31-32.

41 TSN, September 11, 2014, pp. 37-40.

42 TSN, September 25, 2014, pp. 28-31, 133-134.

Makati City Hall II Parking Building, this is what Mr. Tengco stated under oath before the Subcommittee:

"SEN. A. CAYETANO. Okay. So, may I go now to Mr. Tengco? Mr. Tengco, can you elaborate whether you would like to read your letter or—can you elaborate? Basically, the issue is that J-Bros appeared to have been included or to have joined. Sumali daw po kayo sa bidding para sa Makati City Parking Building. Can you clarify that? Sumali po ba kayo, hindi? Then can you elaborate on your answer?"

MR. TENGCO. Good morning, Your Honor. First of all, I would like to apologize because on the 8th of September, I received an invitation from the Senate Blue Ribbon Committee in relation to the ongoing hearing of the Makati City Hall II Parking Building. Unfortunately, at that time we received the invitation, I was out of the country that is why in lieu of my attendance in that hearing, I sent a letter informing—well, pinakamaganda ho siguro ay basahin ko na lang iyong sulat.

SEN. A. CAYETANO. Yes, sir. With your permission, Mr. Chair.

MR. TENGCO. With your permission po.

THE CHAIRMAN (SEN. PIMENTEL). Go ahead, please.

MR. TENGCO. The letter was dated September 10 at ito po ang naging kasagutan ng J-Bros. Construction noong natanggap namin ang paanyaya sa amin ng Senate Blue Ribbon Committee.

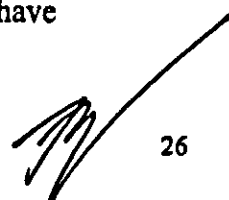
'Senate Blue Ribbon Committee
Committee on Accountability of Public Officers
and Investigations

Dear Gentlemen:

This refers to the invitation letter issued on September 8, 2014 which was sent to my office via fax transmission on the same day requesting that the undersigned be present before the Senate Blue Ribbon Committee in relation to the ongoing investigations of the alleged overpricing of the new Makati City Hall 2 Parking Building. In line with this, I would like to extend my sincerest apologies to the Honorable Committee as I would not be able to appear on the provided date considering that I have been out of the country even prior to the issuance of the said letter.

I executed an affidavit to be submitted in lieu of my personal appearance before the Committee. However, considering the time constraints for consularization of the document and the subsequent delivery thereof through courier, it would not be possible to file the same in time for the mandated date of the said hearing.

As such, I have requested my executive assistant and the head of administration and human resources of J-Bros. Construction, Ms. Florence Sibal, to appear on my behalf and to read before the Honorable Committee the following statements that I have



prepared in response to the ongoing investigation to which I am willing to testify/certify under oath should the same be required by the Committee:

1. I am the chief operating officer of J-Bros. Construction, a sole proprietorship established under Philippine law;
2. J-Bros. Construction is indeed a legitimate construction firm with a validly existing Philippine Contractors Accreditation Board (PCAB) licensed with Triple A category for general engineering, general building and painting works;
3. On September 8, 2004, J-Bros. Construction received an invitation letter from the Senate Blue Ribbon Committee or the Committee on Accountability of Public Officers and Investigations requesting that J-Bros. Construction appear before the said body in relation to the investigations on the alleged overpricing of the new Makati City Hall 2 Parking Building;
4. I would like to certify that from the time J-Bros. Construction was established in October 1999 until present, J-Bros. Construction never participated in, submitted a bid for or purchased any bidding documents for any of the public biddings conducted by the local government unit of Makati City for all its infrastructure projects including the new Makati City Hall 2 Parking Building;
5. Neither have I nor has J-Bros. Construction ever given any form of consent whether expressly or tacitly to any person or entity to use the firm's name, license or other information, qualifications or particulars in any manner whatsoever so as to participate in the conduct of any and all public biddings undertaken by the local government unit of Makati City for its infrastructure projects including the new Makati City Hall 2 Parking Building;
6. At the time of the public bidding for the subject new Makati City Hall 2 Parking Building project, J-Bros. Construction has not been qualified to participate therein as it has not yet completed any project similar to the amount to the contract to be bid that is worth at least 50 percent of the approved budget for the contract as required under Section 223 of the then existing version of the implementing rules and regulations of Republic Act 9184 otherwise known as the Government Procurement Reform Act. (Underscoring and emphasis supplied.)

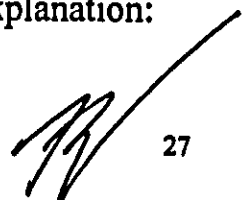
I am executing this statement to attest to the truth of the foregoing. I pray that the foregoing substantially address this Honorable Committee's concerns as regards the above issues with deepest appreciation for the consideration and time afforded the above.

Very truly yours,
Alejandro Tengco
Chief Operating Officer"

(Mr. Tengco's Statement dated September 10, 2014 is attached as Annex 10 hereof.)

Payoffs To The Members Of The BAC

Why would the members of the BAC participate in such a fraudulent system? Engr. Hechanova gave the Subcommittee the following explanation:



"MR. HECHANOVA. Ni singkong duling ho, Senador, wala akong kinita diyan. Pero kami naman ho bilang bids and awards committee, may natatanggap ho kami kay mayor na allowance buwanbuan.

SEN. TRILLANES. Magkano iyang allowance na iyan?

MR. HECHANOVA. Halos dalawang daang libo kada buwan po.

SEN. TRILLANES. Dalawang daang libo. Okay. So bilang miyembro ng bids and awards committee, iyan ang tinatanggap niyong allowance mula kay former mayor now Vice President Jojo Binay, ganoon po ba?

MR. HECHANOVA. Opo, Senador.

SEN. TRILLANES. Sa paniniwala mo, para saan itong allowance na ito?

MR. HECHANOVA. Siguro po, Senador, para gawin lang namin kung ano po iyong dapat naming gawin?

SEN. TRILLANES. Which is?

MR. HECHANOVA. Which is, ako, on my part, ayusin naming iyong lahat ng bidding namin.

SEN. TRILLANES. Ayusin. Meaning, lutuin?

MR. HECHANOVA. Opo."⁴³

Hilmarc's Is A Favored Contractor In The City of Makati

It must be emphasized that the law on public bidding is not a mere formality. That law has a purpose. It aims to secure the lowest possible price and obtain the best bargain for the government through real competition. It is based on the principle that under ordinary circumstances, fair competition in the market tends to lower prices and eliminate favoritism.⁴⁴

Given the circumstances revealed in this investigation, this Subcommittee cannot help but conclude that Hilmarc's is a favored contractor in the City of Makati. Not only did Hilmarc's corner the contracts for all five (5) Phases of the Makati City Hall II Parking Building, Engr. Hechanova further testified that Hilmarc's was also awarded the construction contracts for the Ospital ng Makati, the Nursing Building (or the so-called Health and Physical Sciences Building), the Makati Science High School Building, and the 22-storey Makati City Hall, to wit:

"SEN. A. CAYETANO. I asked you that because it maybe common knowledge to politicians and to some engineers or some

⁴³ TSN, September 4, 2014, pp. 31-32

⁴⁴ *Nava vs. Palatiao*, G.R. No. 160211, August 28, 2006.

people dealing with the government but it's not common knowledge sa tao. Lastly, Engineer, maraming buildings po ang napunta po sa Hilmarc's, hindi lang po ang parking. Sa kanila din po ang Ospital ng Makati, sa kanila din po ang Nursing Building, sa kanila din po ang Makati Science.

MR. HECHANOVA. Opo. At saka iyong Makati City Hall po, iyong 22 storey."⁴⁵

Given the numerous (and lucrative) infrastructure contracts awarded to Hilmarc's in the City of Makati plus the allegation of institutionalized bid rigging in the said City, this Subcommittee requests COA to subject to special audit all of Hilmarc's construction projects in the City of Makati.

The 3-Bag Kickback System

In the course of our investigation, former Makati City Vice-Mayor Mercado revealed that Vice-President Binay was receiving kickbacks, during his tenure as Mayor of the City of Makati, from the construction of various infrastructure projects of the City Government of Makati, including the Makati City Hall II Parking Building.

In the testimony of former Vice-Mayor Mercado, he stated that the Head of Procurement Entity (HOPE), then City Mayor Jejomar C. Binay, was getting 13% of the total project cost, to wit:

"MR. MERCADO. Kaya po kung doon sa 400 million kukunin natin iyong 13 percent, lalabas po diyan 52 million. Ipakikita ko po sa slide presentation kung paano hinahati-hati ang paghahatid ng pera base po sa instruction ng aming mayor. Paki ano lang iyong ano, please? Ayan po. [Referring to the slide presentation.] May makikita po kayo diyan, "Mayor Jejomar C. Binay, 13 percent kickback distribution." Mayroon pong tatlong bag doon sa ibaba. Nagdala rin po ako rito ng bag, Senador. Kung mamarapatin po ninyo, ilalagay ko ho dito sa ibabaw ng table para mas maunawaan po ninyo.

[At this point, three bags, 1 colored black and 2 colored gray, marked respectively with letters "J", "E" and "G" in front were placed on the table near Mr. Mercado.] Ang nasa bandang kaliwa po ay nakikita niyo, iyon po ay dinedeliver ko kay Konsehal Junjun Binay noong panahong iyon. Iyan po ay para sa kanilang pamilya. Ang nasa gitna po ng slide ay dine-deliver ko kay Ate Ebeng para sa personal na pangangailangan ni Mayor Jojo Binay. Para po sa kaalaman ng lahat, si Ate Ebeng po ang kanyang matapat na secretary simula pa noong siya ay maging abogado. Ang pangatlo po ay kay Kuya Gerry Limlingan, ang finance officer ni Mayor Binay hanggang sa kasalukuyan. At ito rin po ang nakikipag-usap sa mga pribadong sektor sa kanyang--At ang pondo pong iba diyan, inilalaan para sa kanyang pagkampanya bilang bise presidente. Ito pong bag na ito, katulad ng nandirito, dito po nakalagay iyong pera.

45 TSN, September 4, 2014, p. 43.

Bawat koleksyon po ay mayroong idine-deliver si Engineer Morales sa aking opisina na tatlong bag kagaya po ng bag na nasaibabaw na ito. Ang mga bag po ay may mga letrang "J", "E" at "G" natumutukoy kung kanino mapupunta ang bawat bag. Ang letter "J" po ay para kay Konsehal Junjun na kung minsan ay dine-deliver sakanyang opisina sa 18th floor dahil nandoon din po ang aking opisina.

At kung minsan naman po ay naide-deliver din kadalasan sa kanilang bahay, sa Kaong Street. Kung minsan naman po na siya ay nasa opisina ng kanyang Dad, ay doon po niya ipinadadala.

Ang isang bag po na may letter "E" ay para sa personal na pangangailangan ni Mayor Jojo Binay na idine-deliver ko po ng personal kay Ate Ebeng sa Robelle Mansion sa J. P. Rizal.

Ang isang bag na may letter "G" na para sa kampanya ni Mayor Jojo Binay ay dini-deliver ko po sa 2nd Floor, Vistamar Building, sa Mayapis Street corner St. Pauls, sa San Antonio Village, Makati. Pero minsan po, naide-deliver ko rin sa opisina ng ating mayor pag nagkakataon na nandoon po si Mr. Gerry Limlingan.

Ang bawat bag po ay may lock na kagaya po nito [showing a lock]. Ang lock po na ito ay di-numero, itini-text po ni Engineer Morales ang kumbinasyon sa bawat tatanggap nito. Kasi po noong araw na walang lock, wala pong tamang bilang, lagi pong may kulang at ako ay natatawagan, "Kulang ito, kulang ito." Mas minabuti na po namin ni Engineer na lagyan na ng lock para sila na ang magbubukas. Pero kapag unang linggo po o pangalawang linggo, medyo maraming laman po iyong unang bag na ipinakita ko kanina na napupunta kay Konsehal Junjun dahil kasama na po doon ang halagang 2.4 million kada buwan na para kay Doktora Elenita Binay na galing po sa kontrata ng basura. Iyon pong sistema na ipinaliliwanag ko ay hindi lang po sa Makati Parking Building. Ito po ay nangyayari din sa Makati Nursing Building at sa Makati Science High School"⁴⁶

The foregoing system of kickbacks in the City of Makati allegedly bankrolled the construction of the vast property in Rosario, Batangas, which former Vice-Mayor Mercado further alleged is owned by then Makati City Mayor, now Vice-President Binay.

In the October 8, 2014 hearing, former Vice-Mayor Mercado stated the following:

"MR. MERCADO.

xxx xxx xxx

Hindi po ako nagmamaliit pero kaya ko lang ho inilalantad ito, Senador, ay dapat hong malaman na natin kung ano talaga ang nangyari. Alam po ninyo, ako ho ay awang-awa, Senador, kay

46 TSN, September 11, 2014, pp. 137-140.

Engineer Efren Canlas na may-ari po ng Hilmarc's. Hindi po siya makapagsalita. Umid po ang kanyang dila. Pero lahat ho ng nakikita niyong development niya, si Engineer Canlas po ang gumawa. Kaya lang, ang malaking problema po ni Engineer Canlas at ni Engineer Morales noong siya ay nabubuhay pa, kapagka po ang halaga ng pautang diyan na nagawa ay mga 30 million na to 50 million, bukod pa po lahat ng equipment po diyan, libre—bulldozer, grader, backhoe, loader—lahat ng construction equipment. Kung papupuntahan ho natin diyan, ang makikita natin tatak Hilmarc.

Ang problema lang ho, kaya awang-awa na ako kay Engineer Canlas, kaya ho ako ay maglalakas na ng loob na magsalita dito at baka sakaling siya ay magkalakas na rin ng loob na magsalita sa mga susunod na pagdinig. Kapag ho mga 30 million na ang koleksiyon, may problema na si Engineer Morales at si Engineer Canlas. Pupunta na po sa akin iyong dalawa.

"Sir, may problema po kami."

"Ano iyon?"

"Thirty million na ho ang utang ni Doktora. Hindi naman ho nagbabayad pero tuloy po ang pagawa."

Ang sasabihin ko ho sa dalawa ay simple lang, "O, di bawasin niyo doon sa SOP. Tatal mayroon silang 13 percent na SOP."

So babawasan po iyon, Senador. Iyon hong bag na idine-deliver ko kay Konsehal Junjun, mababawasan po iyon para mabayaran unti-unti si Engineer Canlas. Pero ang problema ko po kinabukasan, minumura na ako noong ninang ko.

'Bakit kulang ang laman ng bag; listahan lang ang nakalagay?'

'Eh ibinayad po namin kay Engineer Canlas e.'

'Eh hindi nga pwedeng bawasan iyan. Kaya gumawa kayo ng paraan kung paano mabayaran si Engineer Canlas.'

At ang akin pong nababasa kaya nagkaganoon ang sobrang overprice sa bawat building na ginagawa ni Hilmarc's sa Makati, naoobliga ho na akapin ni Engineer Morales at ni Engineer Canlas na i-add on iyong walang tigil na pagpapagawa ni Doktora Binay diyan sa lugar na iyan maski ayaw ho ni Engineer Canlas sana.

So kaya ho ano ang nangyari? Kaya lahat ho ng ginagawa ni Engineer Canlas sa Makati nagiging overpriced dahil lagi nang naka-add on iyong naaabono diyan. Kawawa naman po iyong tao kung naghahanap-buhay iyong tao, napupunta naman sa ipinagagagawa sa proyekto nila. Papaano na po si Engineer Canlas? In addition pa ho doon sa hiningi na one billion noong eleksiyon noon 2010. Kawawa naman ho si Engineer Canlas. Mabuting tao ho si Engineer Canlas, ako ho ang nagpapatunay sa inyo. Mabuting tao, mabait, madaling kausap. Pero alam po ninyo, kung minsan, kahit anong bait mo at anong tino mo, napapakapit ka sa patalim kung ikaw ay nagigipit talaga. Hindi ko ho alam sa

ibang ginawa ni Engineer Canlas sa ibang siyudad. Ang akin lang hong sinasabi iyong sa Makati.

Kaya ho ako awang-awa, baka ho sakaling sa susunod na hearing magsalita na nang totoo si Engineer Canlas, Senador. Pero iyan hong ipinakita ko sa inyo ngayon, sa mga media."⁴⁷ (Underscoring supplied.)

Who Owns The Rosario, Batangas Property?

The property in Rosario, Batangas is allegedly around 350 hectares in area and has a piggery, a flower farm, a rare bird sanctuary, a man-made lagoon, and a breeding area for fighting cocks, as well as a maze garden patterned after the Kew Gardens in London.

To dispute former Vice-Mayor Mercado's claims that Vice-President Binay owns the Rosario, Batangas Property, Mr. Antonio Tiu, Chairman and Chief Executive Officer of Sunchamp Real Estate Development Corporation (hereinafter referred to as "Sunchamp"), came forward and claimed that his company is the owner of the said property. However, when asked for the basis of his claim of ownership, Mr. Tiu could only present a one-page unnotarized Agreement between him and one Laureano R. Gregorio, Jr. (Annex 11 hereof).

According to the testimony of Department of Agrarian Reform (hereinafter referred to as "DAR") Secretary Virgilio de Los Reyes, he had a conversation with Mr. Tiu wherein Mr. Tiu disclosed that he is only leasing the Rosario, Batangas Property.⁴⁸

Aside from the one-page unnotarized Agreement presented by Mr. Tiu, his testimony on October 22, 2014 on Sunchamp's rights on the subject property was also very revealing:

"MR. TIU. Well, as far as doon sa kontrata namin, after I paid the deposit, mayroon po kaming agreement na iyong usufruct of the land ay nasa Sunchamp na.

SEN. A. CAYETANO. Sige. So iba na naman. So hindi ownership, use lang, so usufruct.

MR. TIU. Ownership would be turned over to us upon completion of the transaction.

SEN. A. CAYETANO. Okay. So it's a conditional sale. So ownership does not go to you until they deliver everything and you pay everything, so usufruct pa lang.

MR. TIU. As I have told you, Your Honor, I cannot debate all these legal terms with you."⁴⁹

47 TSN, October 8, 2014, pp. 112-115.

48 TSN, October 20, 2014, pp. 123-124.

49 TSN, October 22, 2014, p. 161.

Hence, one thing is clear - at the time Mr. Tiu appeared before the Subcommittee, neither he nor his company, Sunchamp Real Estate Development Corporation, was the owner of the Rosario, Batangas Property.

Who Is Mr. Antonio Tiu?

Who is this Mr. Antonio Tiu who presented and volunteered himself as the owner of the Rosario, Batangas Property?

Mr. Tiu set up Mabuhay 2000 Enterprises, Inc., which was involved in the "controversial" (because it was allegedly graft-ridden) supply of hospital beds to the Ospital ng Makati in 2001. It was later renamed Agrinurture, Inc., a company which is now listed in the Philippine Stock Exchange. Mr. Tiu's close friend and lawyer, Atty. Martin Subido, happens to be the law office partner of Makati Representative Abigail Binay, Vice-President Binay's daughter. It was allegedly Atty. Subido who brokered the one-page unnotarized Agreement between Mr. Tiu and Laureano Gregorio, Jr. involving the Rosario, Batangas Property. Mr. Tiu's younger brother James and his wife Anne Lorraine Buencamino were also donors in the amount of P15 Million to Vice-President Binay's 2010 campaign.⁵⁰

The extensive and deep connection of Mr. Antonio Tiu with Vice-President Binay cannot be denied, and hence, cannot just be ignored, and should be taken into account in the assessment of Mr. Tiu's testimony.

Vice-President Binay Is The True Owner Of The Rosario, Batangas Property

The attempt of Mr. Antonio Tiu to muddle the issue as to the true ownership of the Rosario, Batangas Property did not work.

The Subcommittee believes that the vast Rosario, Batangas Property brought up in our hearings by former Vice-Mayor Mercado is owned by Vice-President Binay.

Based on documents submitted to the Subcommittee,⁵¹ some parcels of land within or adjacent to the Rosario, Batangas Property are under the names of the following:

1. Renato Comia, who is Vice-President Binay's former driver-bodyguard⁵²;
2. Fernando Baloloy, who is the husband of Vice-President Binay's trusted secretary Ms. Eduviges "Ebeng" Baloloy⁵³;
3. Romeo and Rodelio Duenas, who are siblings of Ms. Baloloy⁵⁴;
4. Makati City Councilor Ferdinand Eusebio⁵⁵; and

⁵⁰ Statement of Election Contributions and Expenditures of Jejomar C. Binay for the 2010 National and Local Elections.

⁵¹ Contained in Folder Nos. 110-114 that are in the custody of the Blue Ribbon Secretariat.

⁵² TSN, October 30, 2014, pp. 226 and 255.

⁵³ Ibid, page 166.

⁵⁴ Ibid, page 256.

5. Edgardo Lacson, Treasurer of JCB Foundation, Inc. (JCB Foundation, Inc. is Vice-President Binay's foundation, which has been named after his initials.)⁵⁶

According to the Letter dated April 20, 2015 of DAR Assistant Secretary Justin Vincent J. La Chica (Annex 12 hereof), the following people were awarded with Certificates of Land Ownership Award ("CLOA") embracing parcels of land that were identified to be within the metes and bounds of the alleged Sunchamp property:

1. Cresencio C. Dueñas – TCT No. CT-1026/CLOA No. 001451454;
2. Rodelio C. Dueñas – TCT No. CT-1025/CLOA No. 001451453;
3. Romeo C. Dueñas – TCT No. CT-1023/CLOA No. 00145451;
4. Francisco Baloloy – TCT No. CT-1024/CLOA No. 00145452;
5. Domingo Comia – OCT No. CT-12/CLOA No. 00012685; and
6. Narciso Comia – OCT No. CT-14/CLOA No. 0012687.

Atty. Martin C. Subido manifested that "he thought he saw some" tax declarations or titles in the name of Mr. Gerardo "Gerry" Limlingan, a close associate of Vice-President Binay who is the President of the JCB Foundation.⁵⁷

Former Vice-Mayor Mercado admitted in a Deed of Undertaking (Annex 13 hereof) that another parcel of land within the Rosario, Batangas Property is registered under his name.

Former Vice-Mayor Mercado also testified that he is very familiar with the said property having been in and out of the property "more than a hundred times", to wit:

"SEN. TRILLANES. So mga ilang beses kang nagbisita rito?

MR. MERCADO. Baka po hindi lang isandaang beses, Senador. 1992 po ako pumunta diyan. Ako po ay, katulad nang sinabi ko sa inyo kanina, utusan nila ako ni Engineer Erasca. Tagapagdala po ako doon ng pangsweldo; tagapagdala po ako doon ng feeds. Iyon po ang aking buhay noon. Ako ay bata-bata po noong dalawang boss ko. Hindi ko naman po ikinahihiya iyon. Talagang ganoon ang buhay. Ako ay bata-bata nila noong panahong iyon. Kaya hindi lang po siguro isangdaan, Senador."⁵⁸

What is the common denominator of all these people? Vice-President Binay.

Also presented in our hearings were social media postings, pictures, and a magazine article showing the actual possession and enjoyment of the property by Vice-President Binay and/or his family members in the concept of an owner.

⁵⁵ Ibid, page 226.

⁵⁶ Ibid, page 257.

⁵⁷ TSN, October 30, 2014, p. 166.

⁵⁸ TSN, October 8, 2014; pp. 118-119.

In addition to the above, the piggery business and the flower farm located in the said property belong to or used to belong to the Binays or to corporations which involved the Binays. Even the corporation (Agrifortuna, Inc.) alleged to be the original owner of the Rosario, Batangas property was formed with Vice-President Binay and his wife Dra. Elenita Binay as incorporators.⁵⁹ It must also be noted that the Treasurer-in-Trust of Agrifortuna, Inc. at the time of its incorporation was Eduviges "Ebeng" D. Baloloy.⁶⁰

Media researches and man-on-the-street interviews also point to the same reasonable conclusion that the Rosario, Batangas Property, the so-called "Hacienda Binay", is indeed, in reality, owned by Vice-President Binay. There have also been media interviews of the registered/declared owners of parcels of land included in the said property who said that it was Vice-President Binay who bought the land from them. In a media report, one Maria Guico alleged that she sold her land to Vice-President Binay in 2004 for P1.3 million while the latter was still the mayor of Makati City.⁶¹

Given the above circumstances, what other conclusion could this Subcommittee possibly reach?

Other Agencies Act As A Result Of Our Investigation

As a result of the Subcommittee's hearings, other government agencies have acted in accordance with what has been revealed in the said hearings.

The Bureau of Internal Revenue has filed on January 22, 2015, a P73.34-million tax evasion complaint against Mr. Antonio Tiu, the same person who claimed ownership of the Rosario, Batangas Property.⁶²

On March 5, 2015, the Office of the Ombudsman-Special Panel of Investigators filed a Complaint charging Vice-President Binay, Mayor Binay, and other Makati officials and private respondents with Malversation, Falsification, violations of Section 3(e) of the Anti-Graft and Corrupt Practices Act, and violation of the Government Procurement Reform Act, in connection with several alleged irregularities in the procurement and award of the contracts for the design/architectural services and the construction of the Makati City Hall II Parking Building.

As a result of our investigation, the DAR has investigated possible violations of Republic Act No. 6657, otherwise known as the "Comprehensive

⁵⁹ The incorporators of Agrifortuna, Inc. are Vice-President Jejomar C. Binay, Elenita Binay, Victor Gella, Ruben F. Balane, and Nestor D. Alampay, Jr. based on its Articles of Incorporation. Agrifortuna, Inc. was registered with the Securities and Exchange Commission on July 24, 1992.

⁶⁰ Treasurer's Affidavit dated July 6, 1992, which is attached to the Articles of Incorporation of Agrifortuna, Inc.

⁶¹ <http://www.abs-cbnnews.com/focus/10/21/14/landowner-binay-bought-my-property-2004>.

⁶² <http://www.gmanetwork.com/news/story/413504/economy/finance/businessman-antonio-tiu-faces-tax-evasion-raps>; <http://www.manilatimes.net/bir-files-p73-m-tax-case-vs-antonio-tiu/157497/>.

Agrarian Reform Law” in the “Hacienda Binay”. According to the DAR, Sunchamp’s DAR clearance only allowed it to purchase two parcels of land with a total area of 4.8 hectares and that other parcels of land in Sunchamp’s claimed area of 145 hectares were either not cleared by the DAR or were under certificates of land transfer award (CLOAs) only. The DAR Secretary has committed to pursue the investigation of this property.

Recent media reports divulged that the Anti-Money Laundering Council had conducted discreet investigations of the bank accounts and transactions, insurance policies, and other investments of the personalities who have been mentioned prominently in our hearings and had secured a freeze order over these accounts from the Court of Appeals.

The Crime Committed Is Plunder

The Subcommittee believes that its investigation on the alleged overprice in the construction of Makati City Hall II Parking Building has revealed the commission of a crime and that crime is Plunder.

As already stated earlier, the amount of the overprice is from a low of P1,124,137,224.14 to a high of P1,389,069,379.14. Such massive accumulation or acquisition of ill-gotten wealth, carried out from 2008 to 2013, could only be plunder.

Under Section 2 of Republic Act No. 7080, otherwise known as “An Act Defining and Penalizing the Crime of Plunder” (hereinafter referred to as “RA 7080”), plunder is committed when a 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 or criminal acts as described in Section 1 (d) of RA 7080 in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00). And any person who participated with the said public officer in the commission of plunder shall likewise be punished.

As discussed in *Estrada vs. Sandiganbayan*,⁶³ the elements of the crime of plunder are:

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;

⁶³ *Estrada vs. Sandiganbayan and People*, G.R. No. 148560, November 19, 2001.

- 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.

In the opinion of the Subcommittee, all the elements of the crime of plunder have been clearly alleged and substantiated through the unequivocal and straightforward assertions, under oath, of the witnesses who have appeared before us during the hearings as well as from the documents already in the possession of the Subcommittee.

There Was A Conspiracy

In a conspiracy, the act of one is the act of all.

The elements of conspiracy are the following: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a felony, and (3) the execution of the felony was decided upon. Proof of the conspiracy need not be based on direct evidence, because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime. Neither is it necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or objective to be carried out. The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the

accused evincing a joint or common purpose and design, concerted action and community of interest.⁶⁴

To be a conspirator, one need not participate in every detail of the execution; he need not even take part in every act or need not even know the exact part to be performed by the others in the execution of the conspiracy. Each conspirator may be assigned separate and different tasks, which may appear unrelated to one another but, in fact, constitute a whole collective effort to achieve their common criminal objective. Once conspiracy is shown, the act of one is the act of all the conspirators. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.⁶⁵

The Subcommittee believes that there was a grand conspiracy to milk the construction of the Makati City Hall II Parking Building for every peso that it could yield, through massive unmitigated overpricing.

Persons Liable

It is the position of the Subcommittee that the following personalities should be investigated for and, after proper proceedings, ultimately be charged with the crime of Plunder, by the proper government agency, to wit:

1. **Vice-President (former City Mayor) Jejomar C. Binay:** He signed as the Agency Head⁶⁶ for the Preliminary Services and for Phases I to III of the Makati City Hall II Parking Building, and for his involvement in the kickback system discussed earlier;
2. **Makati City Mayor Jejomar Erwin S. Binay, Jr.:** He signed as the Agency Head for Phases IV and V;
3. The following persons who served as members of the BAC for the

⁶⁴ *People vs. Lago*, G.R. No. 121272, June 6, 2001.

⁶⁵ *People vs. Anticamara*, G.R. No. 178771, June 8, 2011.

⁶⁶ The mayor, being the local chief executive, is the head of the procuring entity for LGUs (*Art. I, Sec. 5(j), RA 9184*). The following are the roles of the mayor in the procurement of infrastructure projects:

1. Approves the Annual Procurement Plan (APP) (*Art. II, Sec. 7, RA 9184*); the APP should clearly indicate, among other information, the funding source of the projects, specifically appropriated or funded from lump-sum appropriations;
2. Approves the plan to resort to alternative methods of Procurement (*Art. XVI, Sec. 48, RA 9184*);
3. Approves the Approved Budget for the Contract (ABC) (*Art. I, Sec. 5(a), RA 9184*);
4. Approves the preliminary design and construction studies (*Annex "G", Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects, Sec. 7, Revised IRR, RA 9184*);
5. Approves/Disapproves the recommendation/resolution of the Bids and Awards Committee (BAC) for the issuance of the Notice of Award (*Art. XI, Sec. 37, RA 9184*);
6. In case of Approval, Issues the Notice of Award (*Art. XI, Sec. 37, RA 9184*);
7. Decides on Protests on Decisions of the BAC (*Art. XVII, Sec. 55, RA 9184*);
8. Approves the Procurement Monitoring Report prepared by the BAC and submits the same to the GPPB on a semestral basis (*Art. V, Sec. 12, RA 9184*);
9. Approves Variation Orders beyond 10% but not more than 20% of the original contract price in exceptional cases (*Annex "E", Contract Implementation Guidelines for the Procurement of Infrastructure Projects, Sec. 1.4, Revised IRR, RA 9184*);
10. Approves Change Order or Extra Work Order (*Annex "E", Contract Implementation Guidelines for the Procurement of Infrastructure Projects, Sec. 1.5, Revised IRR, RA 9184*); and
11. Signs the Disbursement Voucher.

five phases of the Makati City Hall II Parking Building:

- (1) **Marjorie De Veyra⁶⁷**: She signed the Notice of Post-Qualification Evaluation Report, Notice of Bidding Conference, Notice of Pre-bidding Conference as BAC Chairman for Phases I, II, III, Abstract of Bid as Calculated for Phase II, Notice of Post Qualification for Phase III, Minutes of Bidding Conference for Phase III, Notice of Bidding Conference for Phase III, Notice of Pre-bidding Conference for Phase III, BAC Resolution (Lowest Calculated Responsive Bid) for Phase IV, Notice of Post Qualification for Phase IV, Minutes of Bidding Conference for Phase IV, Abstract of Bids as Read for Phase IV, Notice of Bidding Conference for Phase IV, Notice of Bid Evaluation and Post Qualification for Phase IV, Notice of Pre-bidding for Phase IV, Pre-procurement Conference Notice for Phase IV, Abstract of Bids as Read for Phase V, BAC Resolution (Lowest Calculated Responsive Bid) for Phase V, Notice of Post-qualification Evaluation Report, Notice of Bid Evaluation and Post-qualification for Phase V, Notice of Pre-bidding Conference for Phase V, and Pre-procurement Conference Notice for Phase V;
 - (2) **Lorenza P. Amores**: She signed Disbursement Vouchers and Certificates of Completed Staff Work as City Budget Officer for Phases I to V, Abstract of Bid as Calculated for Phase II, Abstract of Bids as Read Phase IV, BAC Resolution (Lowest Calculated Responsive Bid) for Phase IV, and Abstract of Bids as Read for Phase V;
 - (3) **Gerardo K. San Gabriel**: He signed the Certificates of Completed Staff Work and Accomplishment Reports as officer-in-charge of the General Services Department for Phases I to V, Abstract of Bids as Read Phase IV, BAC Resolution (Lowest Calculated Responsive Bid) for Phase IV, Abstract of Bids as Read for Phase V;
 - (4) **Pio Kenneth Dasal**: He signed the Notice of Post-qualification, Notice of Bidding Conference, Notice of Pre-bidding Conference as BAC Member for Phase II, Abstract of Bid as Calculated for Phase II, Abstract of Bids as Read for Phase IV, BAC Resolution (Lowest Calculated Responsive Bid) for Phase IV, Abstract of Bids as Read for Phase V, and BAC Resolution (Lowest Calculated Responsive Bid) for Phase V;
 - (5) **Ulysses E. Orienza**: He signed as the BAC Vice-Chairman in the Abstract of Bid as Calculated and the BAC Resolution declaring (Lowest Calculated Responsive Bid) and Recommending Approval for Phase III;
4. The following persons who conspired with the above-named public officers:
- (1) **Efren M. Canlas**: Chairman of Hilmarc's Construction

⁶⁷ Chairperson of the Bids and Awards Committee.

Corporation;

(2) **Robert B. Henson:** President of Hilmarc's Construction Corporation;

(3) **Orlando M. Mateo:** Owner of MANA ARCHITECTURE & INTERIOR DESIGN CO.;

(4) **Gerardo "Gerry" S. Limlingan and Eduviges "Ebeng" D. Baloloy:** For their involvement in the kickback system discussed earlier;

While Former Makati City Vice-Mayor Ernesto S. Mercado and Engr. Mario U. Hechanova admitted to committing acts which could make them liable, they are not included in the list above because, as recommended by the Subcommittee itself, they have already been placed under and are covered by the Witness Protection Program under Republic Act No. 6981, otherwise known as "The Witness Protection, Security and Benefit Act", on September 12, 2014 and November 13, 2014, respectively. In this regard, they have given their testimonies, which were indispensable and necessary for the Subcommittee to discover the facts and make conclusions as to the commission of Plunder by the aforementioned officials of the City of Makati and their co-conspirators. Thus, they are entitled to immunity from criminal prosecution for the offense or offenses in which their testimonies were given or used. Further, the testimonies they have given before the Subcommittee cannot be used as evidence against them in any prosecution or case against them.

It is the position of the Subcommittee that the possible involvement of the COA Auditors named below in the grand conspiracy unearthed in our hearings should be further investigated by the proper government agency, to wit:

1. **Cecilia E. Caga-anan**
2. **Merla C. Bagsit**
3. **Gabriel J. Espina**
4. **Flora M. Ruiz**
5. **Cecilio J. Pineda**
6. **Roldan L. Mencionano**
7. **Roberto G. Ferrer**
8. **Nemesio A. Avestruz**
9. **Ricardo R. Custodio**
10. **Allan S. Florentino**
11. **Zaldy B. Lavarro**
12. **Winiefredo L. Paquera**
13. **Rosalina H. Prestoza**

The possible involvement of the following personalities in the grand conspiracy mentioned above should also be further investigated by the proper government agency, to wit:

1. **Antonio Tiu**
2. **Laureano R. Gregorio, Jr.**

It would be appropriate to mention at this juncture that the passage of an Appropriation Ordinance, no matter how incomplete or imperfect, is not *per se* already a criminal act. Hence, whether the members of the Makati City Council who participated in the passage of the Ordinances appropriating funds for the Makati City Hall II Parking Building (see Annexes 2-A to 2-I hereof), were part of the grand conspiracy mentioned above, or not, should be further investigated by the proper government agency.

The Makati City BAC Secretariat Members and the Technical Working Group Members as well as all those who signed and/or approved various documents connected with the Makati City Hall II Parking Building infrastructure project, especially those who signed vouchers and checks which facilitated the release of the funds in payment of MANA ARCHITECTURE & INTERIOR DESIGN CO. and Hilmarc's Construction Corporation, should also be included in the investigation to determine their possible involvement in the grand conspiracy mentioned earlier.

Former Makati City Engr. Nelson Morales has been murdered and COA Auditor Danilo Rodriguez is deceased, and hence have not been mentioned in any of the lists above.

For those whose participation and/or acts do not amount to the crime of Plunder, this Subcommittee recommends the filing of criminal charges for violations of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019).

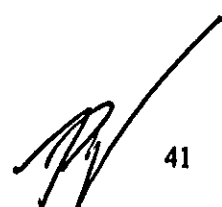
Also, the proper government agency should investigate and, after proper proceedings, charge those who violated the Government Procurement Reform Act (Republic Act No. 9184) and the National Building Code (Republic Act No. 6541, as amended by Presidential Decree No. 1096).

Further, administrative charges should also be filed against the concerned Makati City officials.

Vice-President Binay should also be investigated and, after proper proceedings, be charged for violation of Republic Act No. 6713, otherwise known as "The Code of Conduct and Ethical Standards for Public Officials and Employees", for the non-disclosure in his Statement of Assets, Liabilities, and Net Worth ("SALN") of the "Hacienda Binay" located in Rosario, Batangas.

It should be made of record that Vice-President Binay was afforded all the opportunities to give this Subcommittee his side or present any countervailing evidence in his favor, which he did not take advantage of. In fact, he was formally invited to the hearing of November 6, 2014 and he did not appear. Vice-President Binay has summarily dismissed all of your Subcommittee's proceedings as "*politika lang*".

ADDITIONAL RECOMMENDATIONS



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In addition to the above disquisition, your Subcommittee most respectfully submits to the Senate the following ideas, proposals, and recommendations:

1. That a copy of this Report be given to the Office of the President, the Commission on Audit, the Office of the Ombudsman, the Department of Justice, the Department of Agrarian Reform, the Department of Public Works and Highways, and the Government Procurement Policy Board for their information and proper action;
2. For the Senate to consider granting Subcommittees of the Blue Ribbon Committee the power to cite and punish for contempt, as the lack of this power may have emboldened quite a significant number of people to completely disregard the subpoenas issued by your Subcommittee in relation to this investigation. Attached as Annex 14 hereof is the list of the people who disregarded the subpoenas issued by your Subcommittee or who evaded service thereof;
3. For the COA and the Office of the Ombudsman to review and investigate, with a fine-toothed comb:
 - A. All of the contracts of Hilmarc's with the City of Makati, given Hilmarc's status as a favored contractor in the City of Makati;
 - B. The allegation that all the contracts for security services in the City of Makati have been cornered by one security agency, the Omni Security Investigation, Inc. ("Omni Security");⁶⁸
 - C. The allegations that the bid for the contract to supply cakes for Makati City's senior citizens has been rigged, that the said cakes are overpriced, and that the number of senior citizen beneficiaries in Makati City has been bloated;⁶⁹
 - D. The allegation that the Comembo, Makati City property which was formerly intended as a housing project for military personnel and their dependents was illegally transferred to Meriras Realty Development Corporation ("Meriras Realty");⁷⁰
 - E. The kickback system illustrated in the testimony of former Makati City Vice-Mayor Mercado before this Subcommittee;
 - F. The garbage contract(s) of the City of Makati, as former Vice-Mayor Mercado, in his testimony before this Subcommittee, hinted of another anomaly therein;⁷¹

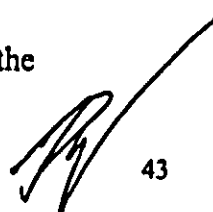
68 As disclosed during the Blue Ribbon Subcommittee hearing of September 25, 2014.

69 As disclosed during the Blue Ribbon Subcommittee hearing of August 20, 2014.

70 As disclosed during the Blue Ribbon Subcommittee hearing of September 25, 2014.

71 As disclosed during the Blue Ribbon Subcommittee hearing of September 11, 2014.

4. For the COA to immediately investigate the P350,000,000.00 allocation made in 2011 and covered by City Ordinance No. 2011-038 for the transfer of the Makati City Government's Urban Development Department to the Makati City Hall II Parking Building to prevent new opportunities to commit acts constituting graft and corruption;
5. For the COA to review its current policy of periodic rotation of its auditors and other personnel to determine the optimum period of time which allows them to develop expertise and efficiency in their work but which at the same time prevents too much familiarization and camaraderie with the personalities being audited, or the enactment of a law to achieve the same results;
6. Towards the same end as the immediately preceding recommendation, for COA to consider the removal or abolition of the resident auditor system in the national government and local government units, to be replaced with the adoption of a raffle system for the periodic rotation or reshuffling of auditors;
7. For the DAR to pursue its investigation on the possible violations of Republic Act No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988" in the property in Rosario, Batangas and to submit to the Senate the results of its investigation. This Subcommittee likewise requests the DAR to study whether there is a need to enact a law providing for heavier penalties for violations of the CARP like covert transfers of beneficial use of land awarded under a CLOA;
8. For the Government Procurement Policy Board to amend the rules and require the public announcement through a publication, whether in print or online, of the names and identities of all the participants in a bidding, as the current rules only require the publication of the identity of the winning bidder;
9. For the Office of the Ombudsman to study whether or not the so-called "Hacienda Binay" and all other ill-gotten wealth of the persons liable are proper subjects of forfeiture proceedings;
10. For the COA to revisit COA Resolution No. 91-52, which provides:
 5. For purposes of determining the reasonableness of the contract price as a technical aspect of the review and evaluation process, the Approved Agency Estimate (AAE) shall serve as a reference value for the formulation of the COA cost estimate.
 6. Should defects or errors in the AAE be discovered in the



course of the review, the same together with the pertinent reasons, especially those that would adversely affect the contract price, shall be communicated to the auditee in writing by the auditor.

7. The total contract price should be equal to or less than the total COA estimate plus ten percent (10%) in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive.

8. The contract price, however, should not only be reasonable as hereinabove determined but should also be within the ceiling provided for by law, rules and regulations."

In this era of multi-billion peso contracts, the allowance of ten percent (10%) from the COA estimate before a contract may be deemed excessive, may already prove to be too liberal and lenient, and may be the loophole making possible overpricing in the amount of hundreds of millions of pesos.

11. For the Securities and Exchange Commission to conduct an investigation and impose penalties as warranted, on the companies allegedly used as dummies by public officials such as, but not limited to, Sunchamp, Omni Security, Meriras Realty, etc.;
12. Amend Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, to provide heavy fines, in addition to the penalty of imprisonment, for violations of said Act;
13. The enactment of a law providing for a presumption of overpricing in a government infrastructure project;
14. The enactment of a law requiring the use of "acceptable industry standards" approved by the COA and the DPWH, like the Langdon and Seah (formerly, Davis Langdon and Seah) Construction Cost Handbook, as the basis for agency estimates and as standard reference material for all government infrastructure projects;
15. The enactment of a law enhancing the transparency of government procurement processes by the mandatory video recording of all government procurement procedures and/or activities, like Senate Bill No. 477 ("An Act Enhancing the Transparency of the Procurement Process by Mandating the Video Recording of all Procurement Related Conferences, thereby Amending Republic Act Numbered 9184, otherwise known as Government Procurement Reform Act of 2003, Prescribing Penalties for Violations thereof, and for other Related Purposes");
16. The enactment of a law that would require the inspection by COA of

government construction or infrastructure projects to be undertaken together with an independent special inspection company (Independent Third Party);

17. Enactment of a law which would require the periodic rotation of the chairperson and members of the Bids and Awards Committee of local government units in order to prevent the same evil of too much familiarization and camaraderie with those transacting with the LGU;
18. Enactment of a law which will give "the opposition and dissenters" in a local government unit access to official records as a matter of right, like the Freedom of Information (FOI) law;
19. "One Project, One Ordinance", that is, the enactment of a law requiring local government units to pass one specific ordinance authorizing and governing the construction of each big-ticket infrastructure project, complete with costs estimates and sources of budget allocation, as well as descriptions, plans, and drawings which give an idea as to the final look, outcome, and duration of the project;
20. Enactment of an "Anti-Dummy of Public Officials Law" and make acting as a dummy of a public official, for corrupt purposes, a specific crime with stiff penalties; and
21. Amend Republic Act No. 1379, otherwise known as "An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor," by strengthening the Ombudsman's powers in cases of forfeiture of unlawfully acquired properties of public officials or employees, similar to Senate Bill No. 2347 ("An Act Strengthening the Forfeiture Powers of the State, Amending for the Purpose Certain Provisions of Republic Act No. 1379, Otherwise Known as an Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor"); and
22. Amend the National Building Code of the Philippines (Republic Act No. 6541, as amended by Presidential Decree No. 1096) by providing for penalties of imprisonment and/or fine for violations thereof.

Since the first part of Proposed Senate Resolution No. 826, the alleged overpricing of the Makati City Hall II Parking Building, has been proven, the investigation that your Subcommittee has done cannot be said to be "*politika*

lang". Hence, your Subcommittee will carry on with its duty and will continue with its investigation of and hearings on Proposed Senate Resolution No. 826 as well as Proposed Senate Resolution No. 1114, in aid of legislation, until their logical conclusion.

RESPECTFULLY SUBMITTED.


AQUILINO "KOKO" PIMENTEL III

Chairman, Blue Ribbon Subcommittee on PSR Nos. 826 and 1114