

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 SEP -8 A8 :44

SENATE

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COMMITTEE REPORT NO. 3

Submitted by the Committees on Accountability of Public Officers and Investigations (Blue Ribbon) and Agriculture, Food and Agrarian Reform on SEP - 8 2022.

Re: **PRIVILEGE SPEECH OF SENATE PRESIDENT JUAN MIGUEL "Migz" F. ZUBIRI ENTITLED "FIASCO BEHIND SUGAR ORDER NO. 4" DELIVERED ON AUGUST 15, 2022.**

Recommending its approval.

Sponsor: Senator Francis N. Tolentino

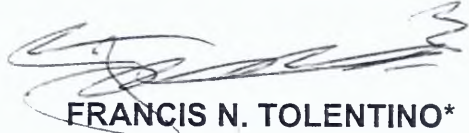
MR. PRESIDENT:

The Committees on Accountability of Public Officers and Investigations (Blue Ribbon) and Agriculture, Food and Agrarian Reform have conducted an inquiry, in aid of legislation, into the aforementioned referral.


The Senate Blue Ribbon Committee and the Committee on Agriculture, Food and Agrarian Reform have conducted three (3) public hearings on August 23, 2022, August 30, 2022 and September 6, 2022.

Respectfully Submitted:

Chairperson:



FRANCIS N. TOLENTINO*
Committee on Accountability of Public
Officers and Investigations
(Blue Ribbon)



CYNTHIA A. VILLAR
Committee on Agriculture, Food and
Agrarian Reform

Vice Chairperson:



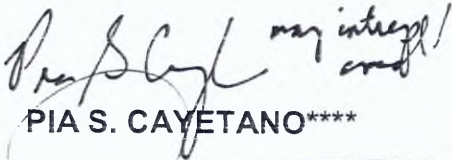
RONALD "Bato" M. DELA ROSA*



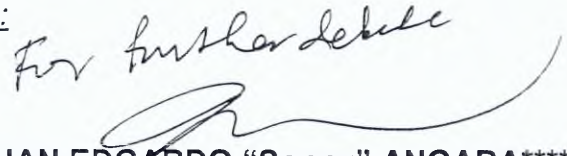
CHRISTOPHER LAWRENCE T. GO****

ALAN PETER S. CAYETANO**

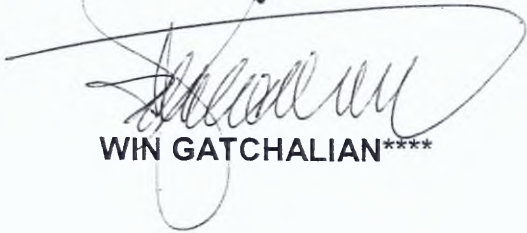
Members:

Proposed my interest!
and


PIA S. CAYETANO****

For further debate


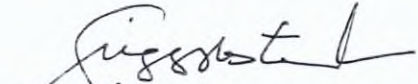
JUAN EDGARDO "Sonny" ANGARA****



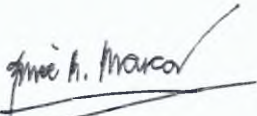
WIN GATCHALIAN****

RAMON BONG REVILLA Jr.****

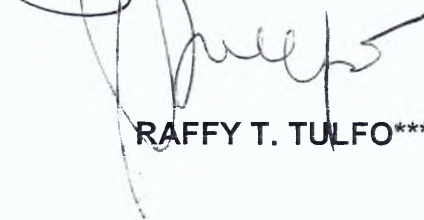
MARK A. VILLAR**



JINGGOY EJERCITO ESTRADA****



IMEE R. MARCOS*



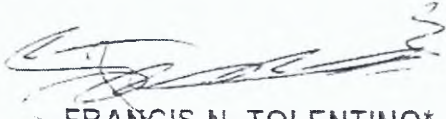
RAFFY T. TULFO****

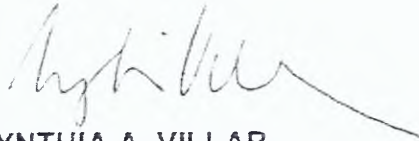
(SEE E-SIG IN PAGE 2-A)
JOSEPH VICTOR G. EJERCITO**

GRACE L. POE**

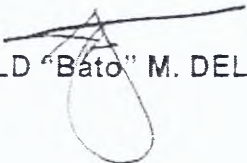
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Committee on Agriculture, Food and
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Vice Chairperson:

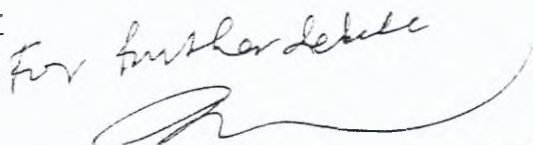

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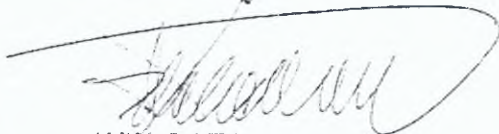

CHRISTOPHER LAWRENCE T. GO***

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Members:



PIA S. CAYETANO****

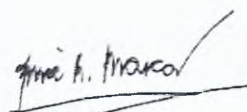
For further debate

JUAN EDGARDO "Sonny" ANGARA****


WIN GATCHALIAN****

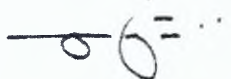
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RAFFY T. TULFO****


JOSEPH VICTOR G. EJERCITO**

GRACE L. POE**

MANUEL "Lito" M. LAPID****


ROBINHOOD C. PADILLA****

MARIA LOURDES NANCY S. BINAY***

FRANCIS "Chiz" G. ESCUDERO***

~~Alfonso~~ *Saraquel*
RISA HONTIVEROS****

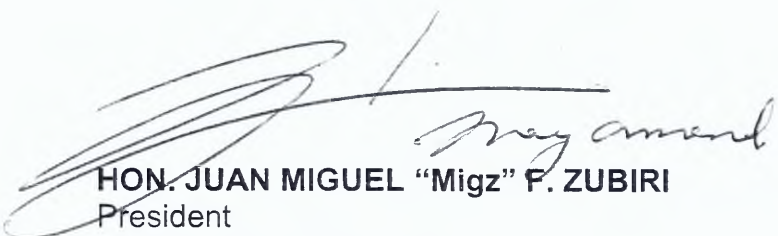
*I dissent. We will submit a
minority Report.*

Ex Officio:

AQUILINO "Koko" PIMENTEL III
Minority Leader

JOEL VILLANUEVA
Majority Leader

LOREN LEGARDA
President Pro-Tempore


HON. JUAN MIGUEL "Migz" F. ZUBIRI
President
Senate of the Philippines
Pasay City

- * Vice Chairperson, Committee on Agriculture, Food and Agrarian Reform & Member, Committee on Accountability of Public Officers and Investigation
- ** Member, Committee on Accountability of Public Officers and Investigations
- *** Member, Committee on Agriculture, Food and Agrarian Reform
- **** Member of both Committees

1 The power of the Senate and any of its Committees to
2 conduct inquiries in aid of legislation is constitutionally
3 enshrined. Article VI, Section 21 of the 1987 Constitution
4 reads:

5 *"The Senate or the House of*
6 *Representatives or any of its respective*
7 *committees may conduct inquiries in aid of*
8 *legislation in accordance with its duly*
9 *published rules of procedure. The rights of*
10 *persons appearing in or affected by such*
11 *inquiries shall be respected."*

12 As discussed in *Arnault vs Nazareno*,¹ the power of inquiry,
13 "with process to enforce it," is grounded on the necessity
14 of information in the legislative process. If the information
15 possessed by executive officials on the operation of their
16 offices is necessary for wise legislation on that subject, by
17 parity of reasoning, Congress has the right to that
18 information and the power to compel the disclosure
19 thereof.

21 I. OVERVIEW OF THE SUGAR INDUSTRY

22 Sixty-seven (67) years ago, the Supreme Court pronounced that:

23 *"This Court can take judicial notice of the fact that*
24 *sugar production in one of the great industries of our*
25 *nation, sugar occupying a leading position among*
26 *its export products; that it gives employment to*
27 *thousands of laborers in fields and factories; that it*
28 *is a great source of the state's wealth, is one of the*
29 *important sources of foreign exchange needed by*

¹ 87 Phil. 29 (1950)

1 *our government, and is thus pivotal in the plans of a*
2 *regime committed to a policy of currency stability.*
3 *Its promotion, protection and advancement,*
4 *therefore redounds greatly to the general welfare.”²*

5 However, in a 2020 study³ commissioned by the National Economic
6 Development Authority (NEDA), the Sugar industry was described in the
7 following manner:

8 *“Sugar’s prominent role in Philippine Economic*
9 *history traces back to at least the 19th century. But*
10 *starting at least two decades ago, some had begun*
11 *to see it, rightly or wrongly, as a sunset industry. In*
12 *recent years, the country has found itself importing*
13 *the commodity, in stark contrast to its history of*
14 *being a top export earner up until the 1970s, when*
15 *the bulk of total production was exported to the*
16 *United States. The days when the US Sugar Quota*
17 *was a prized privilege to sell at premium prices to a*
18 *highly subsidized market are long gone. So are the*
19 *days of the large and powerful sugar barons*
20 *drawing wealth from ownership of huge tracts of*
21 *sugar land, which had since been fragmented by*
22 *the Comprehensive Agrarian Reform Program*
23 *(CARP) and generational partitioning.”⁴*

24 Sugarcane is still one of the country’s major crops. Currently, there are
25 27 sugar mills⁵ and 12⁶ sugar refineries, most of which are in the
26 Visayas, accounting for approximately 73% of sugar production.

²*Lutz vs Araneta*, G.R. No. L-7859 December 22, 1955

³ Produced by BrainTrust Inc. (BTI) for the National Economic Development Authority

⁴ *An Assessment of Reform Directions for the Philippine Sugar Industry*, Discussion Note of NEDA, October 2020, page 2.

⁵ 5 in Luzon, 13 in Negros, 3 in Panay, 2 in Eastern Visayas and 4 in Mindanao - see: <https://www.sra.gov.ph/wp-content/uploads/2021/10/DIRECTORY-SUGAR-MILLS-2021-2022.pdf>

⁶ 3 in Luzon, 6 in Negros, 1 in Eastern Visayas and 2 in Mindanao see: <https://www.sra.gov.ph/wp-content/uploads/2021/10/DIRECTORY-SUGAR-REFINERIES-2021-2022.pdf>

1 Mindanao and Luzon account for about 17% and 10% of production,
2 respectively.⁷

3 Nevertheless, almost all of the sugar production in the Philippines is
4 locally consumed; the rest is exported, mainly to the United States.

5 Households account for only 32% of domestic consumption, and about
6 18% is purchased by institutional users (i.e., restaurants, bakeries,
7 hospitals), while half of the domestic production can be attributed to
8 industrial users, namely food and beverage manufacturers.⁸ Based on
9 previous studies (1993, 2001, 2008) by the University of Asia and the
10 Pacific-Center for Food and Agri-Business (UA&P-CFA), Philippine
11 consumers preferred refined sugar (60%) over washed (25%) and brown
12 sugar (15%).⁹

13 The Sugar Regulatory Administration (SRA) currently estimates that
14 there are around 99,420 sugarcane farmers, 87.75 percent of whom
15 farm less than five (5) hectares. Total landholdings are about 399,166
16 hectares, 35.06 percent of which are less than five (5) hectares.¹⁰

⁷ Dr. Roehlano Briones, *PCC Issues Paper on the Sugar Industry of the Philippines*, Philippine Competition Commission, 2020; changed the 8 sugar refineries mentioned in the paper to 12; see <https://www.sra.gov.ph/wp-content/uploads/2021/10/DIRECTORY-SUGAR-REFINERIES-2021-2022.pdf> for the updated figure on the number of Sugar refineries.

⁸ Ang, P. A. (2019). *Philippines Sugar Annual Situation and Outlook*. Washington, DC: Global Agricultural Information Network - USDA, as cited in Dr. Roehlano Briones, *PCC Issues Paper on the Sugar Industry of the Philippines*, Philippine Competition Commission, 2020, pages 1 and 2. See also Philippine Statistics Authority. (2018). *Selected Statistics on Agriculture*. Quezon City. Retrieved from <http://www.psa.gov.ph/content/selected-statistics-agriculture>.

⁹ Florence Mojica-Sevilla, *USDA Foreign Agricultural Service, Sugar Annual*, April 18, 2022, https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Sugar%20Annual_Manila_Philippines_RP2022-0022.pdf

¹⁰ Sugar Regulatory Administration Memo- PPSPD-2022-June-83, dated June 30, 2022 issued by FOI Receiving Officer Max Edward Isada

Number of Farms and Farmers by Farm Size, PHILIPPINES, CY 2020-2021

Farm Size	No. of Farmers	Percent No. of Farmers	No. of Farms	Percent No. of Farms	Area (has)	Percent Area
Below 5.00 Has.	87,237	87.75	89,560	84.85	139,936	35.06
5.01 - 10.00	6,365	6.40	7,882	7.47	43,405	10.87
10.01 - 25.00	3,313	3.33	4,532	4.29	53,165	13.32
25.01 - 50.00	1,444	1.45	1,948	1.85	52,149	13.06
50.01 - 100.00	713	0.72	915	0.87	51,437	12.89
100.01 & Above	348	0.35	712	0.67	59,074	14.80
TOTAL	99,420	100.00	105,549	100.00	399,166	100.00

1
2 On an optimistic note, the study commissioned by NEDA puts forward
3 the position that:

4 *Yet "sunset," in the sense of heading towards*
5 *extinction, may not be an apt description for an*
6 *industry that continues to employ well over half a*
7 *million workers, spans an aggregate area (around*
8 *410,000 hectares) actually larger than it did 25*
9 *years ago, and still directly contributes P86 billion to*
10 *the economy. It is also an industry finding new*
11 *business opportunities in alternative products like*
12 *bioethanol, muscovado, biomass-based electric*
13 *power, and more.*

14 *Still, the industry's competitiveness had*
15 *considerably declined over time. Domestic sugar*
16 *prices have diverged from international trading*
17 *prices especially within the past decade, reaching*
18 *up to twice the world market price and Thai export*
19 *prices.¹¹*

20 **II. THE CONTROVERSY**

21 **PRESS BRIEFING OF THE PRESS SECRETARY**

¹¹ *Supra*, note 3.

1 On August 11, 2022, Press Secretary Trixie Cruz-Angeles announced
2 that Resolution No. 4, purportedly coming from the Sugar Regulatory
3 Board, was uploaded on the website of the Sugar Regulatory
4 Administration authorizing the importation of 300,000 metric tons of
5 sugar on top of what had already been imported in May of this year. In
6 the press briefing, Secretary Cruz-Angeles asserted the illegality of the
7 resolution.

8 *“The Chairman of the Sugar Regulatory Board is*
9 *President Ferdinand Marcos, Jr. As such chairman,*
10 *he sets the date of any meetings or convening of*
11 *the Sugar Regulatory Board and its agenda. No*
12 *such meeting was authorized by the President nor*
13 *such a resolution likewise, was not authorized.”*

14 Further, she averred that:

15 *“It appears that the Resolution was signed for and*
16 *on behalf of the President by Undersecretary*
17 *Leocadio Sebastian. He was not authorized to sign*
18 *such a resolution because the President did not*
19 *authorize the importation.”*

20
21 Elaborating further, the Secretary forcefully declared:

22 *“You don’t convene the Sugar Regulatory Board in*
23 *the absence of the President and in the absence of*
24 *any such approval on his part. He did not approve*
25 *the convening. You can only convene the board*
26 *with the assent, explicit assent of the President; and*
27 *he did not make such an agreement.”*
28

29 **PRIVILEGE SPEECH OF SENATE PRESIDENT JUAN MIGUEL F.**
30 **ZUBIRI**

31 Immediately after that, on August 15, 2022, Senate President Juan
32 Miguel Zubiri delivered a privilege speech deploring the issuance of

1 Sugar Order No. 4, which would have allowed the importation of 300,000
2 Metric Tons of sugar. The Senate President, in his remarks, profusely
3 thanked President Ferdinand R. Marcos Jr. for stopping the importation.

4 *"It was released without the authority of the*
5 *President who concurrently heads the Department*
6 *of Agriculture, the Chairman of the SRA is the*
7 *President. It was immediately caught by*
8 *Malacañang on the same day that it was uploaded*
9 *on the SRA website and has since been deleted*
10 *and also condemned by Malacañang. The*
11 *unauthorized release of Sugar Order No. 4 is*
12 *absolutely reprehensible and must be investigated."*
13

14
15 Senate President Zubiri disclosed that he received information that had
16 the importation materialized, bribes, or the so-called "patong" or "tong-
17 pats," ranging from 50 pesos per bag to as high as 100 pesos per bag,
18 would have been paid:

19 *"Let me put it in the proper context. 300,000 MT of*
20 *sugar is six million bags at 50 pesos, which is 300*
21 *million pesos. At 100 pesos, that is an income of*
22 *600M pesos, which is possible tongpats na*
23 *matatanggap. Iyan ang ibinalita sa akin ng isang*
24 *insider; diyan daw nagaganap, di ko sinasabing*
25 *may nakatanggap, hindi ko sinasabi, kung meron*
26 *mang gumawa nitong scheme na ito, but it is*
27 *possible. Why are they pushing? The question begs*
28 *to be answered. Why are they pushing for*
29 *importation kahit na mayroon pa tayo, mga kapatid,*
30 *na asukal sa ating bansa? Hindi pa nga nilalabas sa*
31 *mga bodega. Bakit po ini-insist nila?"*
32

33 Considering the foregoing, the Senate President requested that:

34 *"Let us help the president get to the bottom of this.*
35 *Let us investigate and find ways to build a better,*
36 *more responsive, more inclusive SRA, hindi lamang*
37 *para sa sugarcane sector kundi para sa bawat Pilipino,*
38 *na araw-araw gumagamit ng asukal."*

1
2
3 The Privilege Speech of the Senate President was then referred to the
4 Committee on Accountability of Public Officers and Investigations (Blue
5 Ribbon), which under Rule VIII, Section 10 (2) of the Rules of the Senate
6 shall have jurisdiction over "All matters relating to, including investigation
7 of, malfeasance, misfeasance and nonfeasance in office by officers and
8 employees of the government, its branches, agencies, subdivisions and
9 instrumentalities; implementation of the provision of the Constitution on
10 nepotism; and investigation of any matter of public interest on its own
11 initiative or brought to its attention by any member of the Senate."

12 In its organizational meeting, the Chairperson explained that the Blue
13 Ribbon Committee shall be guided by the following principles in its
14 investigations:

- 15 1. At the onset, a Road Map will be prepared to ensure that
16 proceedings will have a defined direction and that hearings
17 will have a known duration. Unending hearings will not be
18 allowed.
- 19 2. Investigation will not evolve into a political circus. It will not
20 be a witch hunt or a fishing expedition;
- 21 3. The constitutional rights of resource persons shall be
22 respected;
- 23 4. Moral certitude not necessarily proof beyond reasonable
24 doubt will be the standard of proof; in this regard, the
25 Committee will make recommendations to the appropriate
26 agencies of government based on its findings.
- 27 5. The Committee will protect the people at the foremost and
28 their right to the truth and an accountable government.

29 Considering the urgency of the issue related to what has been labeled
30 in the media as the so-called Sugar Fiasco, the Blue Ribbon Committee

1 limited its investigation to marathon hearings on the following dates:
2 August 23, 2022, August 30, 2022, and September 6, 2022.

3 III. THE SRA AND THE SRA MANAGEMENT STRUCTURE

4 Before discussing the conflicting narratives, testimonies, and positions
5 of the parties involved, the Committee finds it proper to provide an
6 overview of the agency subject of the controversy, the Sugar Regulatory
7 Administration (SRA). The SRA was created on **May 28, 1986, thru**
8 **Executive Order No. 18** and granted the following powers and
9 functions:

10 "(A) To recommend the establishment of a sugar production
11 coefficient and a production quota which shall be attached to the
12 land for each planter;

13 "(B) To institute regulations for implementation, controlling and
14 monitoring the production quotas;

15 "(C) To establish domestic, export and reserve allocations;

16 "(D) **To explore and expand the domestic market and foreign**
17 **markets for sugar and by-products, to assure mutual**
18 **benefits to consumers and producers, and to promote and**
19 **maintain a proper balance of production of sugar and its by-**
20 **products;**

21 "(E) **To institute, implement and regulate an orderly system**
22 **of que-danning, disposition and withdrawals of various forms**
23 **of sugar from warehouse;**

24 "(F) To evaluate and recommend to the President new projects
25 involving the production of sugar and its by-products and other
26 products derived from sugarcane and sugar;

27 "(G) To issue permits and licenses and collect corresponding fees
28 and levies on the processing and manufacture of sugar and its
29 by-products and other products derived from sugarcane and
30 sugar;

1 "(H) To enter, make and execute routinary contracts as may be
2 necessary for or incidental to the attainment of its purposes
3 between any persons, firm, public or private, and the Government
4 of the Philippines;

5 "(I) To do all such other things, transact such other business and
6 perform necessary, incidental or conducive to the attainment of
7 the purposes of the Sugar Regulatory Administration."
8 (underscoring supplied)

9 In essence, the SRA is a Government-Owned and Controlled
10 Corporation (GOCC) and an attached agency of the Department of
11 Agriculture (DA), with the mandate to exercise supervision over the
12 growth and development of the sugar industry through greater and
13 significant participation of the private sector and the improvement of the
14 working conditions of the sugar workers.¹² To carry out such policy of
15 the State, SRA is mandated to establish and maintain such balanced
16 relation between production and requirement of sugar and such
17 marketing conditions as will insure stabilized prices at a level reasonably
18 profitable to the producers and fair to consumers and to enable SRA to
19 realize its mandate, it is vested with powers to establish domestic, export
20 and reserve allocations and to institute, implement, and regulate an
21 orderly system of que-danning, disposition, and withdrawal of various
22 forms of sugar from warehouses.¹³

23 In addition, *Section 9 of Republic Act No. 10659*, otherwise known as
24 the "*Sugarcane Industry Development Act of 2015 (SIDA)*"¹⁴ grants the

¹² COA Executive Summary -SRA

¹³ SRA Resolution No. 2019-22 (dated 30 January 2019) citing Section 3 of EO NO. 18, s1986

¹⁴ <https://www.officialgazette.gov.ph/downloads/2015/03mar/20150327-RA-10659-BSA.pdf>,

1 SRA the important power to re-classify sugar imports depending on
2 domestic supply and demand, thus:

3 *“Section 9. Classification and Regulation of Supply*
4 *of Sugar. – The SRA, in the exercise of its*
5 *regulatory authority, shall classify imported sugar*
6 *according to its appropriate classification **when***
7 ***imported at a time that domestic production is***
8 ***sufficient to meet domestic sugar requirements.***

9 *The Bureau of Customs (BOC) shall require*
10 *importers or consignees to secure from the SRA the*
11 *classification of the imported sugar prior to its*
12 *release.”(Emphasis and underscoring supplied)*

13 The *Sugar Industry Development Act (SIDA) of 2015* was enacted to
14 promote the competitiveness of the sugarcane industry and maximize
15 the utilization of sugarcane resources and improve the incomes of
16 farmers and farm workers through enhanced productivity, product
17 diversification, job generation, and increased efficiency of sugar mills.

18 The Department of Budget and Management (DBM) is mandated to
19 allocate P2 billion annually to the Sugar Regulatory Administration
20 (SRA) for the development of the sugar industry. Actual yearly
21 appropriations, however, were below the mandated amount, and the
22 level of appropriations has been on the downtrend apparently due to
23 under-utilization.¹⁵

24 SIDA’s implementation has been hampered by several issues, notably
25 procurement bottlenecks, resulting in underutilized allocations and
26 underperformance. For instance, the banner Block Farm Program

¹⁵ *Facts and Figures*, Congressional Policy and Budget Research Department, House of Representatives, March 2020, https://cpbrd.congress.gov.ph/images/FnF_07_SIDA_1_031820.pdf, March 2020

1 organized and assisted 216 block farms from 2016 to 2019, covering
2 about 8,523 hectares. While significant given many organizing
3 challenges, this is far too small compared to the estimated 140,000
4 hectares held by small farmers. The Socialized Credit Program was
5 supposed to have a total allocation of PhP1.2 billion from 2016-2019, but
6 only PhP624 million was approved for release, of which only PhP111.5
7 million was actually released to borrowers. The utilization rate was thus
8 only 17.8 percent of approved funds and 9.3 percent of the SIDA-
9 prescribed allocation.¹⁶

10 The SRA is governed by a Board which, under Section 4 of Executive
11 Order No. 18 creating a Sugar Regulatory Administration, provides:

12 *"All corporate powers of the SRA shall be*
13 *vested in and exercised by the **Sugar Board**.*
14 *The Board shall be composed of an*
15 *Administrator, who shall act as its chairman,*
16 *to be appointed by the President of the*
17 *Philippines, and two (2) members. The two*
18 *members of the Board shall likewise be*
19 *appointed by the President of the Philippines*
20 *upon the recommendation of the sugar*
21 *industry, with one member representing the*
22 *millers and the other representing the*
23 *planters.*

24 ***The Sugar Board shall meet in regular***
25 ***session once a month. The Board may be***
26 ***called by the Chairman or both private***
27 ***sector's representatives to a special***
28 ***session as the need arises.*** (Emphasis and
29 *underscoring supplied)*

30
31 *The Administrator shall be the Chief*
32 *Executive Officer of the Sugar Regulatory*
33 *Administration." (underscoring supplied)*

¹⁶ An Assessment of Reform Directions for the Philippine Sugar Industry, NEDA, October 2020. p. 11

1 The Administrative Code of 1987 added to the SRA Board, the Secretary
2 of Agriculture who under said law shall serve as *ex-officio* Chairman of
3 the governing boards of all attached units or agencies of the Department
4 of Agriculture.¹⁷

5 Under Section 5 of EO 18, the Administrator shall hold office at the
6 pleasure of the President of the Philippines. The two members from the
7 private sector shall hold office for a period of three (3) years unless
8 sooner removed for cause. No reappointment of the Members shall be
9 made immediately upon termination of their respective terms of office.
10 Any Member appointed to a vacancy shall serve only for the unexpired
11 term of the Member whom he succeeds. However, the aforementioned
12 provisions were superseded/amended by Sections 15 and 17 of RA No.
13 10149. Section 15 of RA No. 10149 states in part that “(A)n appointive
14 Director shall be appointed by the President of the Philippines from a
15 shortlist prepared by the Governance Commission for GOCCs (GSG).”
16 On the other hand, Section 17 limited the term of office of Board
17 members of GOCCs as it now provides that, “the term of each
18 appointive Sugar Board Member and Administrator shall be for one (1)
19 year, unless sooner removed for cause: Provided, however, that each
20 appointive Sugar Board Member and Administrator shall continue to hold
21 office until the successor is appointed and qualified. An appointive Sugar
22 Board Member who has fully served his/her term of one (1) year may be

¹⁷ Sec. 49 of Book IV, Title IV, Chapter 6 of EO 292

.1 nominated by the GCG for reappointment by the President only if he/she
2 obtains a performance score of above average or its equivalent or higher
3 in the immediately preceding year of tenure based on the performance
4 criteria laid down by the GCG for SRA.¹⁸ The Manual for Corporate
5 Governance of SRA also provides that “the ex-officio chairman may
6 designate his ex-officio alternate, whose acts shall be considered as his
7 acts, xxx.”¹⁹

8 The Board shall have the following powers and functions:²⁰

- 9 1. To prescribe, amend, modify, or repeal rules and
10 regulations, governing the manner in which the general
11 business of the Board shall be exercised subject to the
12 approval of the President;

- 13 2. **To establish policies pertaining to the sugar and**
14 **sugarcane production control, quedanning of sugar**
15 **produced; withdrawals from sugar warehouses;**
16 **issuance of permits and licenses in the processing**
17 **and manufacture of raw sugar, refined and other**
18 **classes of sugar; issuance of permits and licenses**
19 **and other related issues pertaining to the specific and**
20 **general powers prescribed in this Executive Order.**

- 21 3. To enter into contracts, transactions, or undertakings of
22 whatever nature which are necessary or incidental to its
23 functions and objectives with any natural or juridical
24 persons and with any foreign government institutions,
25 private corporations, partnership or private individuals;

- 26 4. To fix the compensation of the Administrator and the other
27 officers and employees of the Sugar Regulatory

¹⁸ Sec. 9 of the SRA Manual of Corporate Governance.

¹⁹ Sec. 10 of SRA Manual of Corporate Governance.

²⁰ Sec. 6 of EO 118, s.1986

1 Administration, subject to the approval of the Office of the
2 President of the Philippines;

3 5. To approve the annual and/or such supplemental budgets
4 of the Sugar Regulatory Administration as may be
5 submitted to it by the Administrator from time to time; and

6 6. To perform such other duties, like the preparation of a
7 study on particular issues regarding the sugar industry, as
8 may be assigned to it by the President of the Philippines.
9 (Emphasis supplied)

10 IV. NARRATIONS AND EVIDENCE ON RECORD

11 **As Narrated by Executive Secretary Victor Rodriguez**

12 On August 23, 2022, the Honorable Executive Secretary Victor
13 Rodriguez (hereinafter, Executive Secretary Rodriguez) faced the Blue
14 Ribbon Committee and laid down his version of the events that
15 transpired as far as his personal knowledge and participation are
16 concerned regarding the issuance of Sugar Order No. 4 (SO4).

17 His narration of relevant dates started on August 1, 2022, wherein he,
18 together with President Ferdinand "Bongbong" Marcos, Jr. (BBM), had a
19 meeting at Malacanang with Department of Agriculture officials. The
20 said hearing was presided by President BBM himself and it revolved
21 around discussions concerning "bringing down costs of fertilizer, rice and
22 sugar, and how to get a system in place whenever we import agri
23 products and other farm inputs at the least possible cost to the
24 government, and at the least possible cost to the farmers and the

1 consumers". He likewise mentioned that the reclassification of 62,000
2 kilos [sic] of sugar from C to B was discussed in the said meeting.

3 They had a subsequent meeting in Malacanang on August 4, 2022, and
4 it was in that meeting that Undersecretary Leocadio Sebastian
5 (hereinafter, Usec. Sebastian) informed him that as of August 3, 2022,
6 the SRA has already approved the classification of a certain volume of
7 sugar from category C to category B, which was discussed during their
8 August 1 meeting. The August 4 meeting concluded with an instruction
9 for Administrator Serafica to submit an import plan, and "if we may be
10 given a draft sugar order for their proposed 300,000 metric tons new
11 round of importation."

12 On August 5, 2022, his office received a draft sugar order from
13 Administrator Serafica at around 2:55 p.m. A few hours later, his office
14 also received a memorandum from Usec. Sebastian, containing the
15 recommendation to import 300,000 metric tons of sugar.

16 On August 7, 2022, at around 2:57 p.m, Executive Secretary Rodriguez
17 received a text message from Usec. Sebastian asking if there were any
18 instructions from the President regarding the sugar issue, which
19 Executive Secretary Rodriguez purposely did not answer.

20 On August 10, 2022, after a meeting in Malacañang, he learned that the
21 SRA Board, led by Usec. Sebastian and SRA Administrator Serafica,
22 passed a resolution approving Sugar Order No. 4 without submitting an
23 import plan, without the knowledge of the President, and without even

1 convening the SRA Board. The President, according to the Executive
2 Secretary, gave specific instructions to make sure that SO No. 4 will not
3 come out and it is of no force and effect. Immediately thereafter,
4 Executive Secretary Rodriguez confronted Usec. Sebastian, in person,
5 as well as SRA Administrator Serafica and Board Member Beltran, both
6 via phone call, all separately said that, "*(A)kala ko po kasi okay na.*"

7 On September 6, 2022, the members of the Committee voted to
8 subpoena the Executive Secretary.²¹ The Committee took this action in
9 view of the letter of the Executive Secretary dated August 30, 2022,
10 informing the Committee that he would not attend the scheduled hearing
11 as well as the succeeding hearings of the Blue Ribbon Committee due
12 to work demands. Fortunately, after an hour, the Honorable Executive
13 Secretary, heeding the call of the Committee, voluntary appeared and
14 reiterated his previous statements and at the same time added the
15 following clarifications:

- 16 1. There is no issue regarding the need to import, the debate is how
17 much to import;
- 18 2. In the August 4, 2022 meeting, the Executive Secretary
19 categorically denied that the President suggested the importation
20 of 600,000 MT of sugar;
- 21 3. Usec. Sebastian, who has been appointed to rank as a CESO I
22 level official, did not resign but merely asked to be relieved of his

²¹ 11 voted in favor, 3 voted in the negative, 3 abstained.

1 duties. He can only be removed for cause and after being
2 accorded due process of law.

3 **As Narrated by Usec. Sebastian**

4 In his Sworn Affidavit dated August 22, 2022, Usec. Sebastian had this
5 to say in relation to the issuance of the aborted Sugar Order No. 4.

6 That he was issued a Memorandum on July 15, 2022, by the Executive
7 Secretary by authority of the President designating him as
8 Undersecretary for Operations of the Department of Agriculture and
9 granted him additional authorities and functions specifically the authority
10 to *(b) to sign contracts, memoranda of agreement, administrative*
11 *issuances, administrative issuances, instruments, and administrative*
12 *and financial documents necessary to carry out department objectives,*
13 *policies, functions, plans, programs, and projects, for the efficient and*
14 *effective operations of the DA and (c) sit as ex officio Chairman or*
15 *Member of all duly constituted committees, councils, boards or bodies*
16 *where the Secretary of the DA is a member or designate other DA*
17 *officials to the same.*

18 On July 18, 2022, he attended a presidential briefing where one of the
19 agenda items to be discussed with the President as Secretary of
20 Agriculture was the sugar situation which however was not tackled due
21 to lack of time. The briefer and accompanying PowerPoint Presentation
22 were however submitted to the PMS on the same day.

1 On July 22, 2022, the SRA Board submitted to the President a
2 revised/updated briefer for August 1, 2022, 3rd Presidential Briefing on
3 DA Matters where they highlighted the fact that “the country is running
4 out of sugar for household consumption and for industrial use. The
5 physical supply of sugar is 188,468.72 metric tons (MT) and the supply
6 of refined sugar is 72,725.55 MT. The average monthly demand for raw
7 sugar is 169,000 MT and 83,000 MT for refined sugar. It is projected
8 that by August 31, 2022, the end of the crop year 2021-2022, the
9 Philippines will have a deficit of approximately -35,231 MT of raw sugar
10 and -20,748.65 MT of refined sugar.

11 On July 29, 2022, he sent a memorandum to the President seeking
12 guidance on the request of the SRA to reclassify reserve sugar to
13 domestic sugar (B) so that these stocks can augment the dwindling
14 stock. Usec. Sebastian also cited in the said memorandum the July 15,
15 2022 memorandum of the Executive Secretary authorizing him to sit as
16 ex-officio Chair in the SRA Board but which could not convene at that
17 time due to lack of quorum.

18 On August 1, 2022, during the meeting with the President as Secretary
19 of Agriculture, the SRA provided a briefing to the former on the country's
20 sugar situation. The President recognized the tight sugar supply in the
21 country and that many industry stakeholders have been clamoring for
22 more supply and the need to import. SRA was then instructed to act fast
23 on the following:(1) reclassification of sugar reserve (C) to domestic
24 market sugar (B), and, (2) the need to import. In that meeting, SRA

1 Administrator Serafica was instructed to prepare and submit an
2 importation program.

3 After being informed that the Board could not meet because of
4 insufficient membership, the President immediately gave instructions to
5 contact the non-responding member and nominate a new member.
6 Thus, on August 2, 2022, after Board Member Atty. Roland Beltran
7 (hereinafter, Atty. Beltran) responded, the Board through a referendum
8 voted to reclassify from "C" to "B" 62,826.6 MT sugar which Usec.
9 Sebastian signed as *ex officio* SRA Chairman. Another referendum was
10 conducted on August 5, 2022, to convert from "C" to "B" 7,450 MT of
11 sugar.

12 The sense of urgency to import sugar to augment the supply was
13 manifested during the meeting with various stockholders held last July
14 29 and August 2, 2022. The July 29 stakeholder's consultation, in
15 particular, was participated in by sugarcane growers, millers, and
16 refiners, and based on the documents submitted after this consultation
17 the attendees were unanimous in supporting the importation of 300,000
18 MT of sugar with the exception of DELMAX Corporation which
19 recommended only 250,000 MT and PSRI which recommended 200,000
20 MT.

21 In the August 2, 2022 consultation meeting with the carbonated drinks
22 and food industries, the attendees of said meeting expressed the
23 urgency of having a new sugar order issued for importation because they
24 are running out of sugar supply and are starting to slow down in their

1 production. They actually expressed that the 300,000 MT would be
2 enough for them, but not for all of the other users.

3
4 On August 4, 2022, Executive Secretary Rodriguez phoned him (Usec.
5 Sebastian) to inform Administrator Serafica to go to Malacanang. He
6 was told later that day by Administrator Serafica that he and the
7 Executive Secretary discussed via Zoom, together with Acting Board
8 member Aurelio Valderrama and the President of the Philippines, the
9 sugar supply and the need to import. It appears that the said meeting
10 was conducted via a hybrid arrangement, a mix of physical and virtual
11 online attendance.

12 On August 5, 2022, Administrator Serafica informed him thru email that
13 'he was called to Malacanang yesterday and was directed by the
14 President to submit the draft sugar importation program ASAP. On the
15 same day, Administrator Serafica came to his office to follow up,
16 emphasizing the matter's urgency in response to which he immediately
17 drafted a memorandum for the President transmitting the draft sugar
18 order prominently marked as, "urgent". In the said memorandum, he
19 intimated that the SRA Board will meet as soon as possible to approve
20 the recommended sugar importation volume of 300,000 MT. Said
21 memorandum was sent to the email address of the Office of the
22 Executive Secretary/President. The same was also forwarded to the
23 personal email of the Executive Secretary.

24 On the morning of August 8, 2022, Administrator Serafica came to his
25 office to verify if they had received any response from Malacanang to

1 which he replied in the negative. Administrator Serafica reiterated the
2 urgency of the matter, thus Usec. Sebastian asked him to discuss the
3 proposal with the new SRA board member so that he would be well
4 informed. In the afternoon of the same day, Administrator Serafica again
5 visited his office to report that he had already briefed the new member
6 of the SRA Board and further asked him if they can proceed with the
7 referendum for Sugar Order No. 4 to which he agreed.

8 On August 9, 2022, before 5:00 pm, Administrator Serafica came to his
9 office to ask for his vote. Considering the urgency of the matter, with
10 three (3) votes from each of the three Board Members acting as a
11 collegial body in favor of importation and based on the SRA data and
12 consultations with the stakeholders where it was reasonably determined
13 that a shortfall of 300,000 MT had to be addressed, he signed Sugar
14 Order No. 4 in good faith for the Secretary of Agriculture who happens
15 to be the President of the Republic of the Philippines. He claims that he
16 signed on account of the authority provided under the July 15
17 Memorandum, and the fact that the same can still be disapproved or
18 reprobated by the DA Secretary/President if he so disagrees.

19 On August 10, 2022, after meeting with fertilizer companies in
20 Malacanang, he personally informed the President that the SRA Board
21 had approved the 300,000 MT sugar importation via referendum, and to
22 his surprise, the President disapproved of his action, and the Board's
23 approval of Sugar Order No. 4 and informed me that we should recall
24 the order. He immediately informed Administrator Serafica of the

1 President's decision at 3:51 pm. He was informed later that day that
2 Administrator Serafica had stopped the publication of Sugar Order No.
3 4 with the Philippine Daily Inquirer and the UP Law Center. Hence,
4 according to him, Sugar Order No. 4 was never officially published and
5 did not take effect. Unfortunately, the media got hold of the much-
6 anticipated importation order before it was taken down from the SRA
7 Website.

8 On August 11, 2022, during the first office hour, he sent a copy of his
9 resignation letter by email to the Office of the Executive Secretary, which
10 was acknowledged in the afternoon.

11 During the August 23, 2022 Blue Ribbon hearing, Usec. Sebastian tried
12 to put context in his sworn affidavit and gave an opening statement
13 narrating that Sugar Order No. 4 went through a process of consultation
14 and discussion with many stakeholders and was also based on data,
15 which are all documented. He said that as early as mid-July or even
16 earlier than that they have already been seeing the rise in the price of
17 sugar and the diminishing supply of domestic sugar. He stated that the
18 private sector was pushing for more supply of sugar and their
19 consultation with millers, refiners, and planters yielded a unanimous
20 proposal of importing 300,000 MT of sugar.

21 **As Narrated by Administrator Serafica**

22

1 In his Sworn Affidavit dated August 22, 2022, former SRA Administrator
2 Serafica stated that the following in relation to the approval and adoption
3 of SO No. 4:

4 That as early as August 1, 2022, the Department of Agriculture had a
5 meeting with the President in Malacanang where they already informed
6 the latter of the current and impending sugar crisis and where the
7 President instructed him to prepare the importation plan to avert the
8 same. The said meeting was attended by the Department of Agriculture
9 with the former Chief of Staff and Undersecretary for Operations,
10 Leocadio S. Sebastian, and other DA personnel. This instruction to
11 prepare the sugar importation plan was reiterated during the August 4,
12 2022 meeting where one of the attendees was Aurelio Gerardo
13 Valderrama Jr., former Board Member of the Sugar Regulatory
14 Commission.

15 Following the instructions of the President, on August 5, 2022, the sugar
16 importation plan was drafted upon consideration of the data and
17 stakeholders' recommendations of even date. The draft sugar plan was
18 endorsed to the Department of Agriculture Office of the Secretary (DA
19 OSEC) through Undersecretary Leocadio Sebastian and the same draft
20 was sent to, through email, to Mr. Brian Paolo Castillo, staff of Executive
21 Secretary Victor Rodriguez. At around 4:15 of the same date, then Usec
22 Sebastian issued a Memorandum stamped as URGENT indicating the
23 Recommendations for the Sugar Industry for the President dated August

1 5, 2022, a copy of which was sent through email to the Office of the
2 Executive Secretary at oes@malacanang.gov.ph.

3 On the morning of August 8, 2022, after his consultation with Usec.
4 Sebastian about the instructions for the Draft Sugar Order No. 4, he
5 received an instruction from Usec. Sebastian to initiate the board
6 referendum of the draft Sugar Order No. 4. On the same day, the draft
7 of Sugar Order No. 4 s.2021-2022 for the importation of 300,000 MT of
8 sugar was endorsed to the board for approval through a referendum.

9 On August 9, 2022, the draft Sugar Order No. 4 was approved by the
10 Board with three affirmative votes of Atty. Roland Beltran, Millers'
11 Representative, Mr. Aurelio Gerardo Valderrama Jr., Planters'
12 Representative and Hermenegildo Serafica as then SRA Administrator
13 and Vice Chairman of the Board. The approved draft sugar order no. 4
14 was then brought to Usec Sebastian for his signature.

15 The following day or on the morning of August 10, 2022, to comply with
16 the requisite publication, the signed sugar order was brought to the UP
17 Law Center, Office of the National Administrative Register, for listing and
18 to the Inquirer. The supposed publication was scheduled on August 11,
19 2022. However, at around 3:51 pm of the same day, he received a call
20 from Usec. Sebastian informing the former to hold the implementation of
21 the sugar order by order of the President.

22 Complying with the instruction, he immediately put a halt on the
23 supposed publication by informing the Inquirer to stop the publication of

1 SO No. 4 at around 5:48 pm and also took down from the SRA website
2 SO No. 4 and likewise had it withdrawn from the office of the National
3 Archive/UP Law Center.

4 On the same day, August 10, 2022, he tendered his resignation to His
5 Excellency President Ferdinand R. Marcos Jr., through Executive
6 Secretary Victor Rodriguez which was accepted on 15 August 2022.

7 During the August 23 Blue Ribbon hearing, Administrator Serafica
8 admitted that Sugar Order No. 4 was drafted by himself and his staff and
9 that the SRA management was not consulted. He explained that since
10 it was a directive to craft an importation plan, they did not want to let
11 others know about it until such time that it reaches the Office of the
12 President.²² However, he was not able to properly answer in the hearing
13 the question of why there is a need to keep the crafting of SO No. 4 a
14 secret from SRA management.

15 **As Narrated by Atty. Beltran**

16 Atty. Roland Beltran, who was the board member representing the
17 miller's sector and was under holdover capacity at that time, had this
18 version of the events as narrated in his sworn affidavit:²³

19 On August 4, 2022, he received a text message from Atty. Anj Medina
20 of the Office of the Senior Deputy Executive Secretary, informing him

²² TSN, August 23, 2022, page 116

²³ Dated August 18, 2022

1 that he should attend an urgent meeting with Executive Secretary
2 Rodriguez and the President at the Presidential Guest House, Gate 4 at
3 12:00 noon of that day. Thus, he rushed to Malacanang where he saw
4 Administrator Serafica, also waiting in the holding area. However, only
5 Administrator Serafica was called in to join the meeting with the
6 President.

7 At about 5:00 PM of August 8, 2022, Atty. Beltran received an email from
8 Mr. John Paul Antes, a staff member of the SRA Board Secretary,
9 seeking approval of a draft Sugar Order 4. The approval was sought
10 through a referendum via email, and the draft sugar order was endorsed
11 and recommended by SRA management headed by Administrator
12 Serafica.

13 Atty. Beltran claims that since the email was addressed to "His
14 Excellency President Ferdinand Marcos, Jr. and Distinguished Members
15 of the Sugar Board" and that the draft sugar order includes the name of
16 "His Excellency President Ferdinand R. Marcos, Jr." as a signatory, he
17 believed that the President will be participating in the said referendum.

18 He decided to vote in favor of the approval of the proposed Sugar No.4
19 with a condition that "it is subject to compliance of the provisions of laws,
20 rules and regulations and the internal processes of SRA." Atty. Beltran
21 stated that it is his honest belief, based on consideration and review of
22 pertinent data from SRA reports, that the current sugar supply situation
23 is already critical and the skyrocketing prices warrant importation
24 otherwise there would no longer be enough supply by the month of

1 August. According to his narration, Administrator Serafica was the first
2 to vote, while the last to vote was Board Member Valderrama.

3 On August 9, 2022, Atty. Beltran again received an email from Mr. Antes
4 requesting permission to use his e-signature for the resolution and Sugar
5 Order and asking him to instruct his office staff to scan the documents
6 and send them back to Mr. Antes after the signatures of Atty. Beltran
7 and Board Member Valderrama have been affixed so that Administrator
8 Serafica and His Excellency President Marcos can also sign them.
9 According to Atty. Beltran, this gave the impression that the President
10 has also approved Sugar Order No.4.

11 When asked during the August 30, 2022 Blue Ribbon hearing, if he
12 reviewed the document thoroughly, Atty. Beltran admitted that he only
13 read the first and the last page and that it only took him less than an
14 hour²⁴ from receipt of the email to decide and send his affirmative vote.
15 He also acknowledged that he did not notice that there were several
16 provisions in SO No. 4 that were not present in previous sugar orders,
17 like the removal of the performance bond, the assignor-assignee
18 provision, and the authority to reclassify by a single individual.²⁵

19 **As Narrated by Mr. Valderrama**

20 Mr. Valderrama, who has only taken his oath as a member of the SRA
21 Board on 6 August 2022, represents the planters' sector. In his

²⁴ Email was received at 4:59 PM of August 8. His affirmative vote was emailed back at 5:43 PM of the same day.

²⁵ TSN, August 30, 2022, pages 150-154

1 affidavit,²⁶ he asserts that he signed the draft sugar order based on
2 official SRA data and the joint board resolution of LUZONFED, UNIFED,
3 CONFED, PANAYFEED. NFSP, PASRI, PSMA, and Delmax
4 Corporation, recommending the importation of 200,000 to 300,000
5 metric tons of sugar. After he affixed his signature, SO No. 4 was
6 forwarded to SRA Administrator Serafica, after which it would be
7 forwarded to Usec. Sebastian.

8 According to Mr. Valderrama, Administrator Serafica told him that it was
9 the Office of the Executive Secretary that instructed them to prepare as
10 soon as possible a "sugar importation plan". Thus, the office of the
11 Administrator drafted the proposed SO No. 4 and emailed the same to
12 the Office of the President and members of the Sugar Board for a
13 referendum.

14 Mr. Valderrama takes confidence in the "inherent security feature" of SO
15 No.4 which states that all importations under SO No.4 shall be classified
16 as "C" or Reserved Sugar and cannot be released to the domestic
17 market. This, according to him, is what prompted him to sign the order
18 since all stakeholders will be protected.

19 V. ISSUES

²⁶ Dated August 21, 2022

1 Based on the narrations of the primary actors of this controversy as well
2 as the testimonies of other officials of SRA, various stakeholders, and
3 the voluminous documents submitted, the Committee decided to limit its
4 determination to the following issues:

- 5 1) Whether or not there was an actual sugar shortage or anticipated
6 supply shortfalls immediately prior to the issuance of Sugar Order
7 No. 4 which would have justified its urgent issuance?
- 8 2) Whether or not Usec. Sebastian had the legal authority to sign
9 Sugar Order No. 4 "for and on behalf" of the Secretary of
10 Agriculture who was also then up to now, the President of the
11 Republic of the Philippines?
- 12 3) Whether or not the principal actors in the Sugar Fiasco, namely
13 Usec. Sebastian, Administrator Serafica, Atty. Beltran and Board
14 Member Valderrama had the legal authority to issue Sugar Order
15 No. 4 when they did so?.
- 16 4) Whether or not the issuance of Sugar Order No. 4 was issued
17 with undue haste and without regard for its potential damaging
18 impact and effect on sugarcane farmers and other vulnerable
19 sectors of the sugar producing industry?

20 The answers to these questions will determine whether or not there is
21 factual and legal basis to recommend the investigation of the said
22 officials for possible criminal and administrative offenses.

23 VI. OBSERVATIONS, FINDINGS AND DISCUSSION

24 **The SRA Supply Data and the**
25 **preponderance of the evidence**
26 **presented to the Committee**
27 **indicate that there may have been**

1 an actual sugar shortage or at the
2 very least anticipated sugar supply
3 shortfalls prior to the issuance of
4 Sugar Order No. 4.

5 **SO No. 3, issued on 2 February 2022**, allowed the importation of a total
6 volume of 200,000 MT of refined sugar (100,000 MT shall be standard grade
7 refined sugar while another 100,000 MT shall be bottlers' grade refined sugar).
8 The SRA issued said Sugar Order on the ground that Typhoon Odette, which
9 made landfall in the sugar regions of Negros, Panay, and Eastern Visayas, and
10 damaged sugarcane crops, sugar stocks in warehouses, and facilities and
11 equipment of sugar mills and refineries in key sugar milling districts caused the
12 prices of sugar to shoot up. **By January 23, 2022, the SRA Monitoring Unit**
13 **reported that the wholesale price in NCR of raw sugar is P2,000/LKg and**
14 **of refined sugar is P2,900/LKg, both historic highs. Further, the January**
15 **2022 SRA Pre-Final Crop Estimate for Crop Year 2021-2022 lowered raw**
16 **sugar production estimate to 2.072 million metric tons (from 2.099 million**
17 **MT). While the sugar refineries association revised its refined sugar**
18 **production forecast for Crop Year 2021-2022 to 16.748 million LKg, down**
19 **from the initial production estimate of 17.572 million LKg prior to Typhoon**
20 **Odette. (Emphasis supplied)**

21 However, the RTC Branch 73 in Sagay City, Negros Occidental²⁷ and RTC
22 Branch 55 in Himamaylan City²⁸ separately issued an injunction against the

²⁷ <https://business.inquirer.net/342160/sagay-rtc-stops-sugar-importation>

²⁸ <https://newsinfo.inquirer.net/1557098/2nd-court-stops-sugar-imports>

1 implementation of SO No. 3. Nevertheless, on May 2, 2022, despite the TRO,
2 Administrator Serafica issued Memorandum Circular No. 11, resuming the
3 implementation of SO No. 3. According to him, "SRA received a legal opinion
4 from OGCC that SO No. 3 may still be implemented in other regions except
5 region 6. So SRA went ahead and implemented SO No. 3."²⁹

6 **Sugar Order No. 4.** One of the reasons cited for the drafting of Sugar Order
7 No. 4 was because the SRA projects that raw sugar production at **1.800 million**
8 **metric tons is lower by 16% from production last season of 2,143,018**
9 **metric tons.** Even including the volume imported through Sugar Order No. 3,
10 SRA estimates that by August 31, 2022, **raw sugar balance will be around -**
11 **35,231 metric tons,** and refined sugar balance will be around **-20,748.65**
12 **metric tons** significantly lower than the **228,690 metric tons "B"** raw sugar
13 balance and **195,000 metric tons** refined sugar balance from last crop year.
14 Because of tightening supply, prevailing wholesale prices of sugar, as of July
15 31, 2022, have gone up to **P3,250.00 per LKg raw and 4,400.00 per LKg for**
16 **refined,** with prevailing retail prices in public wet markets at **P90.00 per**
17 **kilogram for raw and P90.00 per kilogram for refined,** both much higher than
18 their Suggested Retail Prices. Sugar retailers and businesses producing sugar-
19 containing products have complained to the Department of Agriculture, SRA,
20 and even to the media about the unavailability of sugar in the market.
21 (Emphasis supplied)

²⁹ <http://metronewscentral.net/in-and-around-the-metro/sra-denies-midnight-deal>

1 **The Need to Import.** In his testimony, Usec. Sebastian defended SO No. 4
2 arguing that our monthly consumption for raw sugar is 170,000 metric tons per
3 month, and approximately 85,000 metric tons per month for refined sugar.

4 *xxx we will have a deficit of 212,000 metric tons for*
5 *raw sugar, Your Honor. Even if the milling has*
6 *started in September and October, it is only in*
7 *November that we will be able to produce enough*
8 *raw sugar to meet our demand.*

9 *For refined sugar, Your Honor, we have a deficit*
10 *including - for example, including SO No. 3, Your*
11 *Honor, because of the demand that we have, we*
12 *have a deficit of about 319,000 metric tons, Your*
13 *Honor, up to December because we do not produce*
14 *enough refined sugar.*

15 *So, Your Honor, if you see these data, it is very*
16 *compelling, Your Honor, that - and if you look at the*
17 *prices, Your Honor, prices do not just go up*
18 *because of hoarding. There is hoarding when there*
19 *is a tight supply, Your Honor. And there is*
20 *smuggling also, Your Honor, if there is tight supply.*
21 ³⁰

22 On the other hand, according to Usec. Serafica, the sugar shortage, supply
23 shortage is greatly manifested by the rising prices of sugar in the market.³¹ He
24 further stated that almost all the stakeholders recommended the importation of
25 300,000 metric tons of sugar. ³² In an affidavit, Board Member Valderrama
26 forwarded the argument that based on the official SRA data, there is a shortage
27 of sugar and that various stakeholders recommended the importation of
28 200,000 metric tons to 300,000 metric tons of sugar. ³³

³⁰ TSN, August 23, 2022, page 63

³¹ TSN, August 30, 2022, page 20

³² TSN, August 30, 2022, page 34

³³ Affidavit of Aurelio Gerardo J. Valderrama, no. 6-8

1 Despite the rejection of the President of SO. No. 4, it appears that he is not
2 closing his doors to the importation of sugar. The Executive Secretary was
3 emphatic when he stated as part of his testimony before the Committee that:

4 *“And kahapon po, August 22, Monday, His*
5 *Excellency President Ferdinand Marcos*
6 *administered oath to the new SRA Board. He also*
7 *had his first meeting with the new board. At ang mga*
8 *naresolba po ay muli nilang pag-uusapan iyong*
9 *pagpasa ng SO 1, iyong classification of sugar for*
10 *the incoming year, at pagpasa po ng SO 2 for the*
11 *importation of, more or less, 150,000 metric tons of*
12 *sugar. Ang hatian po dito, 75,000 metric tons for*
13 *industrial at 75, 000 metric tons for home*
14 *consumption.”*³⁴

15 The sugar situation is further explained in the exchange between Senator
16 Hontiveros and Mr. Pablo Lobregat, the President of the Philippine Sugar
17 Millers Association, Inc. during the August 30, 2022 hearing. On the question
18 by the former on whether sugar hoarding is happening now, the answer of Mr.
19 Lobragat, while indirect, explained the issue of sugar shortage and detailed its
20 dynamics:

21 *“Sen. Hontiveros. Salamat, Mr. Chair.*
22 *So, una po kay Mr. Lobragat. Sir, mayroon po bang*
23 *sugar hoarding ngayon?*

24 *Mr. Lobregat. I cannot say none, maybe there*
25 *might be some.*

26 *Sen. Hontiveros. But in the magnitude that is*
27 *surrounding this sugar fiasco?*

28 *Mr. Lobregat. Mrs. Senator, in my statement during*
29 *the congressional hearing, I have made a statement*
30 *that said, “Hoarding and smuggling are*
31 *symptoms of a supply deficit, they are not*
32 *causes.”*

³⁴ TSN, August 23, 2022, page 19

1 **Sen. Hontiveros.** *Uh-huh. So, speaking of the*
2 *supply deficit, artificial ba iyong sugar shortage?*

3 **Mr. Lobregat.** *I do not believe that it is artificial.*

4 **Sen. Hontiveros.** *So, do you believe that the sugar*
5 *shortage is a reality?*

6 **Mr. Lobregat.** *I believe so.*³⁵

7 xxx

8 **Mr. Lobregat.** *Sure. Okay. Sugar Order No. 3 was*
9 *crafted early on in January after Odette because we*
10 *saw prices starting to rise, especially refined. One*
11 *of the causes of the prices dropping-sorry, going up,*
12 *was the delay caused by the TROs issued in*
13 *Negros. As that refined that was supposed to come*
14 *in March, only came in practically May. The other*
15 *thing that happened was the elections caused*
16 *paralysis in most government agencies until the*
17 *new administration came on life. This is what I said*
18 *in Congress. And all these delays added up. And*
19 *now, they are still crafting the Sugar Order No. 2, I*
20 *think, for this year. And this has led to these prices*
21 *to remain high.*

22 **Sen. Hontiveros.** *And iyong 150,000 metric tons*
23 *proposed sa ngayon, ibababa ba niyan iyong*
24 *presyo ng asukal sa P70 per kilo? I mean, how long*
25 *would it take, if at all, it would bring it down to that*
26 *price level?*

27 **Mr. Lobregat.** *When it was being proposed during*
28 *that meeting I attended in Malacanang, what was*
29 *being pushed was 150, and I said, "Anything is*
30 *better than nothing."*³⁶

31 Mr. Lobregat also had an informative discussion with Senator dela Rosa on the
32 issue of sugar shortage:³⁷

33 **"Sen. Dela Rosa.** *Yes, sir.*

³⁵ TSN, August 30, 2022, pages 160-161

³⁶ TSN, August 30, 2022, pages 164-165

³⁷ TSN, August 30, 2022, pages 217-219

1 So, iyon nga, the reason why, according to
2 Administrator Serafica, parang lumalabas na
3 minadali nila iyong Sugar Order No. 4 dahil nakita
4 na nila iyong looming situation na talagang
5 magkakaroon na—nagkakaroon na nga shortage
6 sa supply kaya minadali niya iyong pag-draft at
7 saka pagpapapirma ng Sugar Order No. 4.

8 So, granting—ito lang, just your opinion, kung hindi
9 ito— halimbawa, nakita ni President Marcos, “Ah,
10 ito naman pala, in-assume na lang ni Serafica at ni
11 Usec. Sebastian iyong responsibilidad kasi nakita
12 nila malaking problema talaga.” Iyon nga, may
13 problema na tayo sa Sugar Order No. 3, na-delay
14 kaya nagkakaroon ng shortage. In order to remedy
15 the situation, according to Serafica, minadali nila
16 itong SO No. 4. So, nakita ni Presidente na, “Ito very
17 laudable itong ginawa nila ni Serafica at ni Usec.
18 Sebastian, i-go na ito para ma- remedy ang
19 situation.”

20 Do you think bababa ang presyo ng sugar kung,
21 halimbawa, smooth sailing ang SO No. 4? Hindi
22 tayo ganito ngayon kahirap; walang Coca-Cola
23 plant na mag-shut down, do you think mag-
24 normalize ang situation kung nakalusot iyong SO
25 No. 4?

26 **Mr. Lobregat.** Number one, it would have given a
27 different perception to market forces. It would have
28 given—in other words, “Uy, may papasok na.” So,
29 makakahinga, makaka-relax na, hindi ba? Okay
30 lang, hindi ba?

31 And then, of course, it depends on how fast that
32 sugar could have come in. At that point, probably, it
33 was still cheaper or it was still available. Because
34 today, it is difficult to get sugar because Thailand is
35 not milling. They will start milling in January or
36 December, right? If you are going to have to get
37 sugar, if you can get 150,000 tons in, you are going
38 to have to scrape from Thailand, from Indonesia,
39 and probably, Malaysia. And if you cannot get it
40 there, then you are going to have to go all the way
41 across the Pacific—to Brazil and, maybe, some
42 South American country which is already out quota,
43 which carries a 45 percent tariff instead of a 5
44 percent tariff within ASEAN.

45 But, yes, if it was signed, I think it would have
46 calmed down the market. Okay. You know, the guys

1 that had sugar, if you are saying that people were
2 hoarding sugar, at this point in time, if you have
3 sugar, you are selling your sugar. This is a jackpot.
4 These prices show that—Last year, the price of
5 refined was 53. Today, we are only marking it at 95,
6 but sometimes it is lower. All these groceries that
7 they are saying that you can buy sugar at ₱70, you
8 go to the grocery. If you buy more than one kilo, they
9 would say, “No, hindi puwede.” You cannot buy
10 more than one kilo. What does that show you?
11 There is a shortage.”

12 In his answer to the query of Sen. Pimentel on the question of whether the P70
13 per kilo is an artificial price and who is absorbing the loss when it sells at P70
14 per kilo, Mr. Lobregat gave the following statement:

15 **Sen. Pimentel.** So for my education, if our resource
16 person can comment on my question?

17 **Mr. Lobregat.** Mr. Senator, I just want to make a
18 statement that the sugar industry is the most
19 organized agricultural product in the country. We
20 did not want these high prices. And this is why we
21 were pushing for importation when we saw that
22 there was a need to balance the supply and
23 demand requirement. But there were many things
24 that prevented this. That was explained very clearly
25 in my congressional presentation, which I think we
26 gave-it's on YouTube, but we also gave this to the
27 Senate. It is a very short explanation, very simple
28 to understand. And I called it the perfect storm. We
29 got hit by a storm which paralyzed Negros
30 momentarily but it did have lingering effects on
31 refined sugar production. Then an importation
32 program was delayed. Sugar Order No. 3 was
33 delayed by a TRO. The elections happened, there
34 was paralysis in the government for a while-I mean,
35 “paralysis”, in quotation, until the new administration
36 took over. And this is why prices were alarmingly
37 high. And we were trying to stop this by bringing in
38 an importation program. We were saying from the
39 very beginning, there is going to be a big deficit.
40 And if it is not corrected, then prices are just going
41 to go up because when there is a big demand and
42 there is a very small supply-if I gave five pieces of
43 sugar to sell, and once one starts bidding, a buyer

1 *starts outbidding the other, what am I going to do?*
2 *Right. I will sell it to the highest bidder. Here, I have*
3 *one. Who wants it?"³⁸*

4 From the statements made by Usec. Sebastian, Administrator Serafica, and the
5 exchanges between the members of this committee and Mr. Lobregat of the
6 Philippine Sugar Millers Association, one of the key players in the sugar
7 industry, we could easily deduce that due to production issues supply sugar
8 shortfalls or shortages are anticipated for future months which may require a
9 certain level of importation. There is indeed tightness in the sugar supply, and
10 this situation may have been exploited and exacerbated by the practice of some
11 unscrupulous individuals or groups of "hoarding" or delaying the release of
12 whatever sugar supply is available, and this has affected, and will continue to
13 adversely affect the prices and the availability of sugar in the market. As
14 established in the hearing, among the factors that contributed to the shortage
15 were the onslaught of Typhoon Odette last December 2021, delay in the
16 release of the sugar imports under Sugar Order No. 3, the TRO issued by a
17 Regional Trial Court Branch 73 in Sagay, Negros Occidental and Regional Trial
18 Court Branch 55 in Himamaylan City enjoining the implementation of SRO 3
19 and the Presidential election held last year.

20 **On the other hand, Usec. Leocadio**
21 **Sebastian is not legally authorized**
22 **to sign for and on behalf of the**
23 **President of the Philippines, then**
24 **acting as Secretary of Agriculture,**

³⁸ TSN, August 30, 2022, pages 223, 225

1 in the absence of specific legal
2 authority to do so.

3 Notwithstanding said findings of the Committee, the actions of the members of
4 the SRA Board cannot be countenanced. Considerations of expediency cannot
5 justify a resort to procedural shortcuts. The end does not justify the means as
6 admonished by the Supreme Court in several cases.³⁹

7 On July 15, 2022, Executive Secretary Rodriguez issued a Memorandum to
8 Undersecretary Leocadio S. Sebastian where the latter was designated as the
9 Undersecretary for Operations of the Department of Agriculture (DA) and
10 granted him additional authority and functions. Under the said Memorandum,
11 Usec. Sebastian was also authorized to exercise the following functions:

- 12
13 1. Serve as the Chief-of-Staff of the Office of the Secretary of the DA;
- 14
15 2. Sign contracts, memoranda of agreement, administrative issuances,
16 instruments, and administrative and financial documents necessary
17 to carry out department objectives, policies, functions, plans,
18 programs, and projects, for the efficient and effective operations of
19 the DA, including those enumerated in DA General Memorandum
20 Order (GMO) No. 03 (s. 2016), as amended by DA GMO No. 01 (s.
2018);
- 21
22 3. Sit as ex-officio Chairman or Member of all duly constituted
23 committees, councils, boards, or bodies where the Secretary of the
DA is a member, or designate other DA officials to the same;
- 24
25 4. Act as the designated Head of Procuring Entity, and reconstitute the
Bids and Awards Committee;
- 26
27 5. Appoint, reassign, and/or designate officials and employees of the
28 Department, except those whose appointments are vested in the
President or in some other appointing authority, as may be deemed

³⁹ *Orpiano vs Tomas*, G.R. No. 178611, January 14, 2013; *Biraogo v Philippine Truth Commission*, GR No. 192935, December 7, 2010; *Francisco vs Permskul*, GR. No. 81006, May 12, 1989.

1 necessary to ensure continuity and normalcy of operations, in
2 accordance with relevant civil service laws, rules and regulations;

3 6. Exercise disciplinary powers over officers and employees under the
4 Secretary, including their investigation and the designation of a
5 committee or officer to conduct such investigation, in accordance
6 with relevant laws, rules and regulations;

7 7. Implement policies and standards for the efficient and effective
8 operations of the DA, in accordance with the directives and priority
9 programs of the President; and

10 8. Perform such other powers as may hereinafter be so delegated.

11 The Memorandum further expressly stipulates that “all acts of the
12 Undersecretary for Operations that are performed pursuant to the
13 abovementioned authorities and in accordance with existing laws, rules, and
14 regulations, shall be **considered valid, unless subsequently disapproved or**
15 **reprobated by the President.**” (Emphasis supplied)

16 In his statement before the Committee on August 23, 2022, the Executive
17 Secretary detailed what transpired prior to and after the issuance of Sugar
18 Order No. 4. Unfortunately, because he was scheduled to attend a cabinet
19 meeting, the members of the Committee could not thoroughly ask him
20 questions about the Memorandum he issued on July 15, 2022, and the
21 surrounding circumstances prior to the issuance of the controversial Sugar
22 Order No. 4. The Executive Secretary also failed to cover the details of said
23 Memorandum in his initial statement on August 23, 2022.

24 Subsequently, the Executive Secretary in a letter dated August 30, 2022,
25 informed this Committee that “upon the instructions of President Ferdinand R.
26 Marcos, Jr., I will not be able to attend the above-mentioned hearing on August
27 30, 2022, and **its succeeding hearings.**” He explained that the Sugar Order

1 was; issued without the approval of the President in his capacity as the
2 Secretary of the Department of Agriculture. Moreover, the Executive Secretary
3 denied giving clearance to its issuance since he lacks the authority to do so.
4 Further, Executive Secretary Rodriguez emphasized that the proposed Sugar
5 Order received by his office was merely a draft and was still for study and
6 evaluation. To placate the Senate, the Executive Secretary suggested that
7 rather than attending the investigation, he is willing to answer written inquiries.

8 With this in mind, the Senate proceeded as previously mentioned to compel the
9 attendance of the Executive Secretary by issuing a subpoena. To the credit of
10 the Executive Secretary and the Senate President, the Executive Secretary
11 voluntarily appeared before the Committee on September 6, 2022, and
12 categorically testified under oath that Usec. Sebastian was not authorized to
13 sign "for" the President.

14 Countering the position taken by the Executive Secretary, Usec. Sebastian
15 categorically stated in number 20 of his affidavit that he signed the order
16 pursuant to his authority under the July 15 Memorandum.

17 *20. xxx. "I signed it fully aware that I am authorized*
18 *to sign pursuant to the July 15, 2022 Memorandum,*
19 *and have taken comfort that the DA*
20 *Secretary/President can still disapprove or*
21 *reprobate said order if he so disagrees."⁴⁰*

22 Usec. Sebastian's position on the matter was supported by former SRA
23 Administrator Hermenegildo R. Serafica, who stated in his affidavit that:

⁴⁰ Affidavit of Usec. Leocadio S. Sebastian dated August 22, 2022, no. 20.

1 “16. As such and as regards the SO No. 4, the same was signed
2 by Usec. Sebastian by virtue of the authority granted to him per
3 Memorandum from the Executive Secretary dated July 15, 2022.”

4 Board Member Valderrama, who was appointed as Board Member of the SRA
5 representing the planters on August 2 also emphasized that in his humble
6 opinion, Usec. Sebastian is legally authorized to sign SO No. 4 in the absence
7 of the Secretary of Agriculture or the President.⁴¹

8 To this Committee, a careful reading of the Memorandum would show that
9 Usec. Sebastian’s understanding of his authority to sign is misplaced. Although
10 he was given the authority to sit on the Board of SRA and sign administrative
11 issuances as well as to implement policies and standards for the efficient and
12 effective operations of the Department of Agriculture, ***the same should be in***
13 ***accordance with the directives and priority programs of the President.***⁴²

14 In other words, the July 15 Memorandum itself limits Usec Sebastian’s
15 authority, it cannot be interpreted to provide blanket authority to perform any
16 and all acts as he pleases. It is also important to note the context of the issuance
17 of the July 15 Memorandum, as well as similar memorandums for other
18 government departments and offices, and that is to ensure that government
19 programs are implemented with minimal disruption during the transition from
20 the previous administration to the new one. A perusal of the said Memorandum
21 would readily give an impression that it covers mostly administrative, finance
22 and human resources-related matters. Moreover, the prefatory note of the July

⁴¹ Affidavit of Mr. Aurelio Gerardo J. Valderrama Jr., dated August 4, 2022, no. 4.

⁴² July 15, 2022 Memorandum (g) Implement policies and standards for the efficient and effective operations of the DA, in accordance with the directives and priority programs of the President.

1 15 Memorandum is indicative of its transitional nature, thus: "(I)n the exigency
2 of the service and to ensure the continuous and effective delivery of
3 government services to the public, x x x". Clearly, Usec. Sebastian's reliance
4 on the said July 15 Memorandum falls and cannot be given due weight
5 considering that the author and signatory of the said Memorandum, the
6 Executive Secretary himself, had clearly stated that said Memorandum did not
7 include the authority to sign for and in behalf of the Secretary of Agriculture, or
8 the President of the Republic for that matter.

9 Moreover, all of the said powers provided under the July 15 Memorandum,
10 however, are constrained by the provision stating that "all acts of the
11 Undersecretary for Operations that are performed pursuant to the
12 abovementioned authorities and in accordance with existing laws, rules, and
13 regulations, shall be considered valid, unless subsequently disapproved or
14 reprobated by the President."

15 What is clear from all these was the fact that although Usec. Sebastian was
16 given the authority to sign, his authority to do so was limited. He must first
17 establish that he is doing it in accordance with existing laws, rules and
18 regulations and the directives and priority programs of the President and that
19 he is properly authorized. Otherwise stated, if any one of such requisites is
20 absent, his act will not be considered valid.

21 Even Usec. Sebastian, by his contemporaneous actions, recognizes that he is
22 not authorized to perform acts for the Secretary of Agriculture beyond
23 administrative, finance, and human resources-related functions. On at least

1 two occasions relating to two Memoranda, i.e July 29, 2022, on the conversion
2 of "C" sugar to "B" sugar and August 5, 2022, regarding the approval of the draft
3 sugar order, Usec. Sebastian sought the approval of the President and the
4 Executive Secretary. He even admitted his mistake in signing Sugar Order No.
5 4 in his request to be relieved of his delegated authority where he said, "(I
6 sincerely offer my apologies, Your Excellency, for my having approved Sugar
7 Order No. 4 on your behalf, through the authority you had vested in me. It has
8 become clear that the same was not in keeping with your administration's
9 desired direction for the sugar industry. I take accountability and responsibility
10 for its consequences."⁴³ It is quite clear from the evidence on record, that there
11 is no specific legal authority or basis for Usec. Sebastian to sign for and on
12 behalf of the Secretary of Agriculture, a position held then and up to now by the
13 President of the Philippines, and to sign and issue Sugar Order No. 4.

14 The principle of estoppel also works against Usec. Sebastian. It is on record
15 that Usec. Sebastian, on August 5, 2022, sent a memorandum to the President
16 and the Executive Secretary with the subject - "RECOMMENDATIONS FOR
17 THE SUGAR INDUSTRY" and stamped it URGENT. The August 5
18 memorandum recommends to the President "another round of the sugar import
19 program for a total volume of 300,000 MT." Usec. Sebastian was also
20 unequivocal with his statement that the SRA Board will meet to approve the
21 recommended volume as soon as possible and attached for reference and

⁴³ Letter of USec Leocadio S. Sebastian to His Excellency President Ferdinand Romualdez Marcos Jr. dated 11 August 2022

1 review of the President was the draft Sugar Order. (Emphasis and
2 underscoring supplied)

3 On August 7, 2022, Usec. Sebastian inquired from Executive Secretary
4 Rodriguez on the said subject but received no reply from the latter. According
5 to Executive Secretary Rodriguez, he purposely did not answer Usec.
6 Sebastian as the President has yet to decide on the matter. Said answer was
7 repeated by the Executive Secretary during his appearance in the Blue Ribbon
8 Committee hearing on September 6, 2022.

9 However, for reasons known only to him, Usec. Sebastian agreed on August 8,
10 2022, with the suggestion of then SRA Administrator Serafica to conduct a
11 referendum on Sugar Order No. 4.⁴⁴ Per testimony received by the Committee,
12 Usec. Sebastian was the last to sign Sugar Order No. 4.⁴⁵

13 It is the considered opinion of this Committee, that when Usec. Sebastian
14 submitted his recommendation on Sugar Order No. 4 to no less than the
15 President of the Republic of the Philippines who is concurrently the Secretary
16 of Agriculture, his authority to sign the said Sugar Order was dependent on
17 whether the President approves or disapproves his recommendation. Because
18 of the limitations placed upon his authority, Usec. Sebastian cannot upon
19 seeking a review subsequently dispense with it and then claim the full authority
20 to sign subject only to disapproval afterward.

⁴⁴ Affidavit of Usec. Sebastian, no. 19

⁴⁵ Affidavit of Usec. Sebastian, no. 20; See also: TSN, August 23, 2022, page 127.

1 During the August 30, 2022 hearing, Usec. Sebastian defended his action by
2 stating that after the August 4 meeting “the feedback was that there is a, more
3 or less, agreement that the importation program is a go.” Yet, when the
4 Chairperson of the Committee asked for elucidation of the words “is a go”, the
5 Undersecretary merely answered that it is just a perception.⁴⁶

6 ***“The Chairperson (Sen. Tolentino). Usec., can i***
7 ***just butt in?***

8 *Is the word “is a go” a verbal instruction or written*
9 *instruction or your own perception.*

10 ***Mr. Sebastian. No, Your Honor. That is just***
11 ***perception, Your Honor.***

12 ***The Chairperson (Sen. Tolentino). Your***
13 ***perception. So, let the records reflect that the***
14 ***answer of Usec. Sebastian was his mere***
15 ***perception. His mere mental perception of the***
16 ***answers given by the President and the executive***
17 ***secretary.”***

18 While the July 15 Memorandum granted Usec. Sebastian's authority to sign
19 under paragraph 2 thereof, he still cannot escape accountability and liability for
20 signing “for” the President on Sugar Order No. 4. By signing “for” the President,
21 Usec. Sebastian was making it appear that it was the President himself actually
22 participating in such activity when in truth and in fact, the latter was not. The
23 consistent and vehement position of the Executive Secretary in his
24 appearances before the Committee is that neither the President, nor him (the
25 Executive Secretary), gave Usec. Sebastian such authority.

⁴⁶ TSN, August 30, 2022, pages 74-75

1 Further, Usec. Sebastian also anchors his signing SO No. 4 on the proviso of
2 the Memorandum of July 15, 2022, which states that “all acts of the
3 Undersecretary for Operations that are performed pursuant to the
4 abovementioned authorities and in accordance with existing laws, rules, and
5 regulations, shall be **considered valid, unless subsequently disapproved or**
6 **reprobated by the President.**” As previously stated, the implementation of all
7 policies and standards for the efficient and effective operations of the
8 Department of Agriculture should be in accordance with the directives and
9 priority programs of the President. Usec. Sebastian did this in relation to SRA’s
10 request to reclassify 62,826.60 MT of “C” sugar to “B” sugar last July 29, 2022.
11 The reclassification took place only after the same was approved by the
12 President. Thus, Usec. Sebastian cannot now legally claim that he is
13 authorized to sign SO No. 4. If he believed that he had that authority, he would
14 not have submitted a Memorandum dated August 5, 2022 to the President
15 seeking the latter’s approval of the proposed Sugar Order No. 4.

16 **The SRA Board Composed Of**
17 **Usec. Sebastian, Administrator**
18 **Serafica, Atty. Beltran and Mr.**
19 **Valderrama Clearly Did Not Have**
20 **Legal Authority To Sign and Issue**
21 **Sugar Order No. 4.**

22 It is an established fact that SO No. 4 was already uploaded on the website of
23 the SRA but was subsequently deleted when it was disapproved by the

1 President. On his August 23, 2022 appearance before the Committee,
2 Executive Secretary Rodriguez recalled said disapproval stating that:

3 *“President Bongbong Marcos gave specific*
4 *instructions for me to make sure that this SO4 will*
5 *not come out and it is of no force and*
6 *effect.”⁴⁷(Emphasis and underscoring supplied)*

7 On the part of Usec. Sebastian, he testified that:

8 *“xxx when I reported to him that we have approved*
9 *the 300,000 metric tons importation for sugar. And*
10 *he disapproved my action, Your Honor, and also the*
11 *importation. So I immediately conveyed that to*
12 *Administrator Serafica. And Administrator Serafica*
13 *rebooked or removed the publication of that special*
14 *order - Sugar Order No. 4, Your Honor.”*⁴⁸

15 On top of that, Mr. Serafica in his affidavit stated that:

16 *“The signed Sugar Order was brought to UP Law*
17 *Center, Office of the National Administrative*
18 *Register, for listing and to Inquirer. The supposed*
19 *publication was scheduled on 11 August 2022.”*⁴⁹

20 In the order for preventive suspension against Usec. Sebastian which was
21 submitted to the Committee, it was alleged that upon verification, three (3)
22 certified copies of SO No. 4 were filed with the Office of the National
23 Administrative Register (ONAR) in the University of the Philippines, but all such
24 copies were withdrawn by the SRA on August 11 at around 9 AM.

25 This fact was confirmed by the Supplemental affidavit of Mr. Serafica, dated
26 September 2, 2022, where he stated the following:

⁴⁷ TSN, August 23, 2022, page 15

⁴⁸ TSN, August 23, 2022, page 56

⁴⁹ Number 4.9

1 “12. In the morning of **August 10, 2022**, to comply
2 with the requisite publication, the signed sugar
3 order was brought to UP Law Center, Office of the
4 National Administrative Register, for listing and to
5 Inquirer for publication. The supposed publication of
6 SO No. 4 was scheduled on 11 August 2022.
7 However, at 3:51 PM of the same day, I received a
8 call from USEC. Sebastian informing me to hold the
9 implementation of the sugar order by order of the
10 President;

11 13. Complying with the instruction, I immediately put
12 a halt on the supposed publication by informing the
13 Inquirer to stop the publication of SO No. 4 at
14 around 5:48 PM. I took it down from the website of
15 SRA and I likewise had it withdrawn from the
16 Office of the National Archive/UP Law Center
17 the following day.⁵⁰ (Emphasis and underscoring
18 supplied)

19 Senator Pimentel was correct when he aptly stated the following:

20 “**SEN. PIMENTEL.** You could have gotten the
21 consent before signing. You could have gotten the
22 consent after signing if you have made the signed
23 SO No. 4 as ano muna, as unofficial muna. Ganoon
24 sana, you could have gotten it.”⁵¹

25 Sugar is a major component of the socio-economic and political structure of the
26 country.⁵² Any decision to import is always a balancing act as it is fraught with
27 political and economic danger. The distinguished Minority Floor Leader,
28 Senator Pimentel acknowledged the sensitivity of the said issue and even
29 stated:

⁵⁰ No. 13 of said affidavit.

⁵¹ TSN, August 30, 2022, pages 263-264

⁵² 1st Whereas clause of EO No. 18.

1 *“Pero, offhand, ako kasi, I mean, if I were given*
2 *that July 15 memorandum, but the subject*
3 *matter is as grave as this SO No. 4, I think I*
4 *would really have gotten the prior express*
5 *approval of the President. You may have signed*
6 *some internal memo, some reorganization of the*
7 *DA without getting the express approval of the*
8 *President, iba po iyon. That is on a different level*
9 *compared to SO No. 4.”*⁵³ (Emphasis supplied)

10 To the Committee, the utter disregard of the members of the Board, who are all
11 Presidential appointees, to the directives and review process of the President
12 clearly shows bad faith. This bad faith is further reinforced by the fact that Usec.
13 Sebastian signed the sugar order “for” the President. The Committee notes
14 that the Executive Secretary signs official documents “By Authority of the
15 President” and not “for” the President. What’s more, as can be gleaned from
16 the records of the Committee, the August 8 email for referendum was
17 addressed to “H.E. President Ferdinand R. Marcos, Jr.”, as DA Secretary and
18 SRA Board Chairperson and not to Usec. Sebastian. The emails were
19 addressed to the President and to the other members of the Board. Usec.
20 Sebastian was merely copy furnished.

21 Clearly, the SRA Board had no specific legal authority and approval from the
22 President to approve and sign Sugar Order No. 4. All the proposals and
23 requests for approval, including the draft of the sugar order, were all pending
24 review with the Office of the President. The SRA Board, notwithstanding this,
25 and in utter disregard for the authority of the President and his Executive
26 Secretary, proceeded to issue the sugar order in question and to release it as

⁵³ TSN, August 30, 2022, p. 262

1 reflected in their efforts to have it registered with the proper government registry
2 for official issuances with notable haste and dispatch. It is not difficult to discern
3 in this case a veiled attempt to force or at the very least influence the decision
4 of the President on the proposed Sugar Order by making it appear as a done-
5 deal or *fait accompli* already.

6 From the foregoing, this Committee also finds the defense of good faith
7 untenable. Good faith is a state of mind denoting "honesty of intention, and
8 freedom from knowledge of circumstances which ought to put the holder upon
9 inquiry; an honest intention to abstain from taking any unconscientious
10 advantage of another, even through technicalities of law, together with absence
11 of all information, notice or benefit or belief of facts which render transaction
12 unconscientious⁵⁴.

13 The Committee came to the said conclusions upon careful considerations of
14 the above-mentioned facts and circumstances. To reiterate, at the time Usec.
15 Sebastian and the members of the Board of SRA signed, uploaded and filed
16 with the Office of the National Registrar, UP Law Center of SO No. 4., the
17 August 5, 2022 Memorandum for the President with the subject
18 "RECOMMENDATIONS FOR THE PRESIDENT," was still pending approval by
19 the President. Moreover, Usec. Sebastian on August 7 even followed up the
20 matter with the Executive Secretary but did not get a reply. Clearly, there was
21 bad faith characterized by undue haste to issue and release the sugar order

⁵⁴ *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, March 13, 2018

1 without waiting for the President or the Executive Secretary to communicate an
2 official approval.

3 **There Was Undue Haste In**
4 **The Issuance Of Sugar Order**
5 **No. 4**

6 **Non-compliance with the SRA Governance Manual.** In his August 23, 2022
7 testimony before the Committee, former Administrator Serafica disclosed that
8 he personally drafted SO No. 4 with the help of a personal staff. When asked
9 if he consulted the management of the SRA on SO. No.4, Mr. Serafica admitted
10 that he did not, which is contrary to the SRA Governance Manual.⁵⁵ Mr.
11 Guillermo Tejida, the Deputy Administrator for Regulation Department testified
12 that:

13 ***“Mr. Tejida.** According to our SRA governance
14 manual under the GCG rules, Your Honor, the
15 management is defined as the administrator - as
16 composed of the administrator, the Sugar Board,
17 and all managers. Your Honor.⁵⁶ And, as by good
18 practice in our Quality Management System, would
19 require that all endorsements before the Sugar
20 Board’s approval must pass through and be routed
21 to all the managers and the deputy administrators
22 prior to endorsement officially to the Sugar Board,
23 Your Honors.*

24 ***The Senate President.** So, you confirm this is not
25 proper protocol?*

26 ***Mr. Tejida.** That is not in accordance with our rules.
27 Therefore, it is not proper protocol, Your Honor.”⁵⁷*

⁵⁵TSN, August 23, 2022, pages 114-115

⁵⁶

⁵⁷TSN, August 23, 2022, pages 68 and 69

1 Under Section 1 (16) of the SRA Manual of Corporate Governance,
2 management refers to the body given the authority to implement the policies
3 determined by the Board in directing the course and business activities of the
4 GOCC. In the case of the SRA, the management is composed of the Sugar
5 Board, the Administrator, Deputy Administrator, Assistant Administrator, and all
6 the Department Managers. Section 22 of the Sugar Regulatory Administration
7 (SRA) Manual Corporate Governance, the management shall be the primary
8 implementer, enabler, mover and front-runner for the day-to-day affairs and
9 operations of SRA. Its functions are provided for in Section 24 of same Manual
10 of Corporate Governance, to wit:

11 Requiring Board Approval:

- 12 1. Evaluate and propose changes to corporate priorities,
13 programs, policies, rules and regulations for approval of the
14 Board;
- 15 2. Develop corporate plans and budgets in support of established
16 of established goals and objectives;
- 17 3. Formulate Policy and Procedural Guidelines Manuals and
18 other policy documents for approval of the Board; and
- 19 4. Perform a clearing house function for matters that should be
20 elevated to the Board.

1 Upon further questioning, Mr. Serafica acknowledged that unlike in SO No. 4,
2 the management was part of the issuance and crafting of SO No. 3.⁵⁸

3 ***“The Senate President.*** *No. in the past, in Sugar*
4 *Order No. 3, you had routed this to the department,*
5 *your deputy administrators, is that correct?*

6 ***Mr. Serafica.*** *That is correct.”*

7 In the August 30, 2022 hearing, this fact was reiterated by the Chairperson of
8 the Committee:

9 ***“The Chairperson (Sen. Tolentino).*** *xxx*

10 *During the last hearing, lumabas na hindi kayo nag-*
11 *uusap noong deputy administrator. Ang sabi noong*
12 *mga deputy administrators ay, “Ginawa nalang ni*
13 *Administrator Serafica iyong SO No. 4 without*
14 *consulting us.” Unlike noong SO No. 3. So, we have*
15 *established that already.*⁵⁹

16 Clearly, these provisions of the SRA Manual of Corporate Governance were
17 not observed by Administrator Serafica in the issuance of SO No. 4.

18 In the three hearings of the Committee, no statement or evidence was
19 introduced that would have indicated an emergency or a level of urgency that
20 would have justified to some extent the haste by which the Usec. Sebastian,
21 Administrator Serafica, and Board Members Beltran and Valderrama approved
22 and signed Sugar Order No. 4. In fact, no timelines were presented by any
23 resource person that would have indicated dire consequences if the sugar order
24 was not issued by a certain date. Certainly, no such urgency existed or was

⁵⁸TSN, August 23, 2022, page 115. See also page 68.

⁵⁹ TSN, August 30, 2022, page 66

1 established that could justify waiting for a few more hours or even days for the
2 Executive Secretary to at least respond to the proposals submitted. The
3 Committee is at best perplexed why the SRA Board led by Usec. Sebastian and
4 Administrator Serafica acted with such haste and without regard for the
5 authority of the President and the Executive Secretary to give the go-ahead for
6 such a critical issuance.

7 Equally noteworthy, the haste with which the referendum to obtain the
8 signatures of the members of the SRA Board in record time of one day, despite
9 the many intricacies that need to be explained and discussed, to include review
10 of technical data, lend credence to the belief that the Board tried to pull a fast
11 one on the President. In disregarding the directives and review process of the
12 President coupled with the unusual rush of uploading the SO. No. 4, the
13 Committee is left with no other conclusion than that they were trying to preempt
14 and tie the hands of the President on the matter of sugar importation.

15 **WHEREFORE**, premises considered we recommend the following remedial
16 legislation

17 **VI. REMEDIAL MEASURES AND LEGISLATIONS**

18 Need for more transparency and accountability. It is observed that undue haste
19 and lack of transparency characterized the acts of the principal actors in the
20 fiasco. On this basis, there is reason to recommend specific legislative
21 measures that will inject more transparency in the process leading to the
22 issuance of importation permits and other critical issuances such as sugar re-

1 classification orders only when necessary to protect the interests of the
2 consuming public, the small-scale sugar farmers, among other sugar industry
3 stakeholders, and based on reliable data. It will also be useful to propose audit
4 checkpoints at certain milestones to ensure that SRA processes and
5 procedures are followed, and that appropriate consultations are conducted
6 along the way.

7 Expand The SRA Board With Additional Members To Represent Key Sectors.

8 It was clearly highlighted during the Committee hearings that the importation of
9 sugar and other basic agricultural products has profound effects on the
10 economy and the general public. Of particular interest to the Committee are
11 the effects of importation on the lives of ordinary Filipinos, especially those from
12 vulnerable sectors such as the small-scale sugarcane planters, sugar industry
13 workers and the regular sugar consumers. As such, it is imperative to ensure
14 that future importations of sugar, or other critically-important agricultural
15 products, are carefully studied, authorized only when absolutely necessary, and
16 only at such levels that would protect consumers against high prices and
17 balanced by the need to provide farmers with a decent return on their
18 production. Thus, it is recommended that Executive Order No. 18 be amended
19 to provide for expansion of the SRA Board to eight members with the Secretary
20 of Agriculture continuing to act as ex-officio Chairman, and the addition of
21 sectors represented, additional board members shall represent the consumers,
22 both industrial and household, the sugar industry workers, the sugar
23 transportation sector, and other stakeholders in the success of the sugar
24 industry.

1 Amendment on the Power of the SRA to Reclassify under Section 11 of
2 Republic Act No. 10659. To prevent the SRA Board from further delegating its
3 power to reclassify under Section 11, the Committee recommends an
4 amendment that will specifically prohibit the delegation of said authority.

5 REVIEW THE COUNTRY'S IMPORTATION POLICY. Following the fiasco, the
6 government should review the policy of allowing SRA to do the importation
7 itself. To prevent collusion between SRA, importers and other scrupulous
8 persons, the laws should be amended to allow high demand or industrial users
9 to directly import sugar based on their requirements, through issuances of
10 import permits.

11 Full Funding of SIDA - Under Republic Act No. 10659 (SIDA Act), the DBM is
12 mandated to include annually, starting the year 2016, an initial aggregate
13 amount of P2 billion in the President's program of expenditures for submission
14 to Congress. However, for several years already such a mandate was not
15 fulfilled.

16 To allay the fears of industrial users as well as consumers, the present SRA
17 Board should endeavor to pass as soon as possible a sugar importation plan
18 that would cater to their needs with strict prohibitions on non-transferability or
19 assignment of their respective sugar quota/s, the presence of a refundable
20 performance bond and strict limitation of the power to reclassify "C" sugar to
21 "B" sugar only to the SRA Board.;

22

23

1 We likewise recommend the filing of the charges stated below

2 **VII. POSSIBLE LAWS, RULES AND REGULATIONS**
3 **VIOLATED AND CRIMINAL, ADMINISTRATIVE AND/OR**
4 **CIVIL OFFENSES COMMITTED**

5 **1) For violation of Section 3(a) of the Anti-Graft and Corrupt Practices Act**
6 **(RA No. 3019)**

7 Section 3(a) of RA No. 3019 defines the following as an offense:

8 "(a) Persuading, inducing or influencing
9 another public officer to perform an act
10 constituting a violation of rules and
11 regulations duly promulgated by competent
12 authority or an offense in connection with the
13 official duties of the latter, or allowing himself
14 to be persuaded, induced, or influenced to
15 commit such violation or offense."
16 (Underscoring supplied)

17 The elements of this offense are as follows:

- 18 (1) The accused must be a public officer;
- 19 (2) He or she must have persuaded, induced
20 or influenced another public officer to
21 perform an act constituting a violation of
22 rules and regulations duly promulgated by
23 competent authority or an offense in
24 connection with the official duties of the
25 latter; and
- 26 (3) He or she allowed himself or herself to
27 be persuaded, induced or influenced to
28 commit such violation or offense.

29 There are two types of possible offenders for a Section 3(a) offense, the one
30 who persuades, induces or influences, and the one who is persuaded, induced

1 or influenced. In other words, the persuader and the one persuaded are equally
2 guilty of this offense.

3 In a resolution of the Supreme Court entitled, "Re: Report on the Judicial and
4 Financial Audit Conducted in the Municipal Trial Courts of Bayombong and
5 Solano and the Municipal Circuit Trial Court, Aritao-Sta. Fe, All in Nueva
6 Ecija",⁶⁰ Judge Alexander Balut was found to have borrowed money from court
7 funds and thus knowingly made clerks of court violate circulars on the proper
8 administration of court funds. Thus:

9 "The records show, prima facie, that Judge
10 Balut dismally failed to discharge his
11 responsibility. Worse, by "borrowing" money
12 from the court funds, he knowingly made the
13 clerks of court violate circulars on the proper
14 administration of court funds. However,
15 considering that Judge Balut was not given
16 proper opportunity to explain his side on the
17 results of the financial audit, we cannot, in
18 the present case, justly rule on any
19 administrative liability that he may have
20 incurred. Nevertheless, his signatures on the
21 withdrawal slips as recipient of the cash
22 withdrawn from the funds with MCTC, Aritao-
23 Sta. Fe, and on the deposit slips; the
24 certification which he made regarding his
25 accountability; the certifications made by the
26 involved clerks of court to the effect that he
27 had settled his accountabilities, when taken
28 with the statements of Salimpade, Esconde
29 and Ramos that he asked for and was
30 handed sums of money from the funds in
31 their custody, constitute sufficient basis for
32 the initiation of criminal cases against him, in
33 particular for violation of Republic Act No.
34 3019, Section 3 (a)." (Underscoring supplied)

⁶⁰ A.M. No. 05-3-83-MTC, October 9, 2007

1 On the basis of evidence disclosed to the Blue Ribbon Committee in the
2 hearings held thus far, it appears that Usec. Sebastian and Administrator
3 Serafica, as public officials, and in the performance of their official functions,
4 have persuaded, induced, and influenced SRA Board Members Valderrama
5 and Beltran, also public officials and members of the SRA Board, to issue Sugar
6 Order No. 4 without the participation and approval of the President, then acting
7 as Secretary of Agriculture, and without a valid corporate authority from the
8 SRA Board.

9 In their actions to persuade, induce and influence their fellow members of the
10 SRA Board to issue SO 4 without legal authority, Usec. Sebastian and
11 Administrator. Serafica acted with evident bad faith, manifest partiality, and
12 gross inexcusable neglect.

13 On the other hand, SRA Board Members Beltran and Valderrama, in signing
14 Sugar Order No. 4 without verifying whether the President had indeed approved
15 the issuance of such order, have allowed themselves to be persuaded, induced,
16 or influenced to violate the law and relevant rules and regulations through gross
17 inexcusable neglect. All told, there is basis to recommend that the said
18 members of the SRA Board be charged with a violation of Section 3(a) of RA
19 3019.

20 **2) For violation of Section 3(e) of the Anti-Graft and Corrupt Practices**
21 **Act (RA No. 3019)**

22 Section 3(e) of RA 3019 defines the following as an offense:

1 “(e) Causing any undue injury to any party,
2 including the Government, or giving any
3 private party any unwarranted benefits,
4 advantage or preference in the discharge of
5 his official administrative or judicial functions
6 through manifest partiality, evident bad faith
7 or gross inexcusable negligence. This
8 provision shall apply to officers and
9 employees of offices or government
10 corporations charged with the grant of
11 licenses or permits or other concessions.”
12 (Underscoring supplied)

13 The case of *Jacinto vs. Sandiganbayan*,⁶¹ stated the elements of a Section 3(e)
14 offense as follows:

15 “1. The accused must be a public officer discharging
16 administrative, judicial or official functions;

17 2. He must have acted with manifest partiality, evident bad
18 faith or inexcusable negligence; and

19 3. That his action caused any undue injury to any party,
20 including the government, or giving any private party
21 unwarranted benefits, advantage or preference in the
22 discharge of his functions.” (Underscoring supplied)

23 The case of *Fonacier vs. Sandiganbayan*,⁶² discusses the various modes of
24 commission of a Section 3(e) offense under RA 3019, and clarifies that proof of
25 any one or more of such modes shall be sufficient to warrant conviction, thus:

26 “The second element enumerates the
27 different modes by which means the offense
28 penalized in Section 3(e) may be committed.
29 “Partiality” is synonymous with “bias” which
30 “excites a disposition to see and report
31 matters as they are wished for rather than as
32 they are.” “Bad faith does not simply connote
33 bad judgment or negligence; it imputes a
34 dishonest purpose or some moral obliquity
35 and conscious doing of a wrong; a breach of

⁶¹ G.R. No. 84571, October 2, 1989

⁶² G.R. No. L-50691 December 5, 1994

1 sworn duty through some motive or intent or
2 ill will; it partakes of the nature of fraud."
3 "Gross negligence has been so defined as
4 negligence characterized by the want of even
5 slight care, acting or omitting to act in a
6 situation where there is a duty to act, not
7 inadvertently but wilfully and intentionally
8 with a conscious indifference to
9 consequences in so far as other persons may
10 be affected. It is the omission of that care
11 which even inattentive and thoughtless men
12 never fail to take on their own property."
13 These definitions prove all too well that the
14 three modes are distinct and different from
15 each other. Proof of the existence of any of
16 these modes in connection with the
17 prohibited acts under Section 3(e) should
18 suffice to warrant conviction.

19 The use of the three phrases "manifest
20 partiality," "evident bad faith" and "gross
21 inexcusable negligence" in the same
22 information does not mean that the
23 indictment charges three distinct offenses
24 but only implies that the offense charged may
25 have been committed through any of the
26 modes provided by the law. In Criminal Case
27 No. 010, all three modes of committing the
28 offense under Section 3(e) are alleged in the
29 information. (Underscoring supplied)

30 The case of *Rivera vs. People*,⁶³ is also illustrative, describing in detail the
31 elements of the offense defined under Section 3(e) of RA 3019:

32 "The Court has consistently held that there
33 are two ways by which a public official
34 violates Section 3(e) of R.A. No. 3019 in the
35 performance of his functions, namely: (1) by
36 causing undue injury to any party, including
37 the Government; or (2) by giving any private
38 party any unwarranted benefit, advantage or
39 preference. The accused may be charged
40 under either mode or both. The disjunctive
41 term "or" connotes that either act qualifies as
42 a violation of Section 3(e) of R.A. No. 3019.

⁶³ G.R. No. 156577, December 3, 2014

1 *It is not enough that undue injury was caused*
2 *or unwarranted benefits were given as these*
3 *acts must be performed through manifest*
4 *partiality, evident bad faith or gross*
5 *inexcusable negligence. Proof of any of*
6 *these three in connection with the prohibited*
7 *acts mentioned in Section 3(e) of R.A. No.*
8 *3019 is enough to convict.*

9 *The terms partiality, bad faith, and gross*
10 *inexcusable negligence have been explained*
11 *as follows: "Partiality" is synonymous with*
12 *"bias" which "excites a disposition to see and*
13 *report matters as they are wished for rather*
14 *than as they are." "Bad faith does not simply*
15 *connote bad judgment or negligence; it*
16 *imputes a dishonest purpose or some moral*
17 *obliquity and conscious doing of a wrong; a*
18 *breach of sworn duty through some motive or*
19 *intent or ill will; it partakes of the nature of*
20 *fraud." "Gross negligence has been so*
21 *defined as negligence characterized by the*
22 *want of even slight care, acting or omitting to*
23 *act in a situation where there is a duty to act,*
24 *not inadvertently but wilfully and intentionally*
25 *with a conscious indifference to*
26 *consequences in so far as other persons may*
27 *be affected. It is the omission of that care*
28 *which even inattentive and thoughtless men*
29 *never fail to take on their own property."*
30 *(Underscoring supplied)*

31 In the matter under investigation, it is undisputed that Usec. Sebastian,
32 Administrator Serafica, and Board Members Beltran and Valderrama are all
33 public officers. Thus, the first element for the commission of a Section 3(e)
34 offense under RA No. 3019 is present.

35 Usec. Sebastian had as early as August 4, 2022, sought the approval of the
36 Office of the President for the issuance of a sugar order. In doing so, he was
37 clearly of the view that such approval of the President of the Philippines, then
38 acting as Secretary of Agriculture, was necessary before any sugar order could

1 be issued. This view was also shared by Administrator Serafica and the other
2 members of the SRA Board, Mr. Valderrama and Atty. Beltran.⁶⁴ Usec.
3 Sebastian affirmed this by sending text messages to Executive Secretary
4 Rodriguez on August 7 to follow up on the President's approval. It was
5 established during the hearings that Executive Secretary Rodriguez did not
6 respond to said messages, and that no actual approval was made or
7 communicated by the Office of the President.

8 Without waiting for any response on his proposal to issue a sugar order, Usec.
9 Sebastian, together with Administrator Serafica, and Board Members Beltran
10 and Valderrama, conducted a referendum amongst themselves without the
11 participation or consent of the President, or his alter ego, Executive Secretary
12 Rodriguez. On the basis of an affirmative vote in said referendum, the group
13 jointly signed and issued Sugar Order No. 4. By proceeding to hold a
14 referendum to issue a sugar order, and actually signing Sugar Order No. 4
15 without specific authority from the President, then acting as Secretary of
16 Agriculture, they clearly showed manifest partiality, evident bad faith, or at the
17 very least, gross inexcusable neglect, as defined and explained in the *Fonacier*
18 and the *Rivera* cases.

19 The third element of a Section 3(e) offense is the giving of any private party
20 unwarranted benefits, advantage or preference in the discharge of one's
21 functions. A perusal of Sugar Order No. 4 readily indicates that there are three
22 major differences between Sugar Order Nos. 3 and 4. They are:

⁶⁴ See no. 4.2-4.4 of the affidavit of Mr. Serafica; no. 13-14, and 22 of the affidavit of Atty. Beltran; see no. 14 of the affidavit of Mr. Valderrama

- 1 a. Section 2 of Sugar Order No. 4 provides that a qualified participant may
2 assign its import allocation to another applicant. And once assigned, the
3 assignor will remain the importer on SRA's record without a requirement
4 to mention the name of the assignee. There is no similar provision in
5 Sugar Order No. 3.
- 6 b. In Section 8.1 of Sugar Order No. 4, the SRA Administrator (position held
7 by Mr. Serafica at the time of the issuance of Sugar Order No. 4) was
8 authorized to re-classify imported "C" sugar to "B" sugar which would
9 have the effect of releasing the re-classified sugar into the domestic
10 market. It is noted that in Section 9 of the Sugarcane Industry
11 Development Act of 2015 (SIDA Law), this power to re-classify was
12 delegated by Congress to the SRA as a corporate entity and thus cannot
13 be further delegated and exercised by one person.
- 14 c. The requirement for a performance bond from applicants, meant to
15 indemnify the SRA for violations of or non-compliance with the provisions
16 of the sugar order, and designed to protect the interests of the
17 consuming public, was deleted from Sugar Order No. 4.

18 The foregoing changes in Sugar Order No. 4 are clearly meant to favor certain
19 sectors and industry players who stand to benefit from these. For instance, the
20 authority in Sugar Order No. 4 for applicants to assign or transfer their
21 allocations to third parties which need not be identified in SRA records is clearly
22 violative of the letter and spirit of RA No. 10845, or the Anti-Agricultural
23 Smuggling Act on 2016 (Section 3, par. d). This authority creates a lucrative
24 "gray market" for sugar allocations which unscrupulous importers can exploit by
25 transferring or assigning their sugar allocations to others for financial

1 consideration. Finally, the removal of the performance bond requirement in
2 Sugar Order No. 4 will provide undue benefits to applicants for sugar
3 applications who stand to save the extra cost to put up said bond, while leaving
4 the sugar industry unprotected against those who may violate or disregard the
5 said sugar order. On the basis of the foregoing, it is clear that Mr. Sebastian,
6 Mr. Serafica, Mr. Valderrama, and Mr. Beltran conspired to commit a violation
7 of Section 3(e) of RA 3019.

8 It is undisputed that SO No. 4 was canceled or revoked by the Office of the
9 President and was not actually implemented. But it appears from the evidence
10 on record with the Committee that the said order was actually issued and in fact
11 published/uploaded on the SRA's website. As such, the crime of giving
12 unwarranted benefits to private parties through manifest partiality, evident bad
13 faith, and gross inexcusable neglect has been consummated. The law does
14 not require that the benefits were actually received or enjoyed, what matters is
15 that it is unwarranted and has been actually given.

16 Section 9 of RA 3019 provides that upon conviction, the accused found guilty
17 of a violation of Section 3(e) of the same law may suffer imprisonment of
18 between 6 years and one month to 15 years. In addition to imprisonment,
19 accused who are public officers are perpetually disqualified from holding public
20 office. Those convicted by final judgment of Section 3(e) of RA19 cannot avail
21 of probation and are disqualified from the benefits of Presidential Decree No.
22 968, otherwise known as the Probation Law of 1976, as amended by Republic
23 Act No. 10707 (2015), and must serve their sentence.

1 **3) For Violation of Article 177 of the Revised Penal Code, as amended.**

2 The evidence presented during the Blue Ribbon hearings indicate that the
3 principal parties involved, namely, Mr. Sebastian, Mr. Serafica, Mr. Valderrama,
4 and Mr. Beltran may have violated Article 177 of the Revised Penal Code, as
5 amended (RPC).

6 Article 177 of the Revised Penal Code, as amended by RA No. 379, states:

7 *"Art. 177. Usurpation of authority or official*
8 *functions. — Any person who shall knowingly*
9 *and falsely represent himself to be an officer,*
10 *agent or representative of any department or*
11 *agency of the Philippine Government or of*
12 *any foreign government, or who, under*
13 *pretense of official position, shall perform*
14 *any act pertaining to any person in authority*
15 *or public officer of the Philippine Government*
16 *or of any foreign government, or any agency*
17 *thereof, without being lawfully entitled to do*
18 *so, shall suffer the penalty of prision*
19 *correccional in its minimum and medium*
20 *periods." (Amendment to Article 177 of the*
21 *Revised Penal Code Re: Usurpation of*
22 *Authority, Republic Act No. 379, [June 14,*
23 *1949])*

24 There are two types of offenses defined in Article 177. The first is
25 usurpation of authority, and the second one is usurpation of official
26 functions. Under the first, the public official, under false pretenses,
27 misrepresents himself to have authority while in the second mode, the
28 public official performs a function that pertains to another person in

1 authority. Thus, in the case of *Degamo vs. Ombudsman*,⁶⁵ the Supreme

2 Court explained how these types of crimes are committed:

3 *The crime of usurpation of official functions*
4 *punishes any person who, under pretense of*
5 *official position, performs any act pertaining*
6 *to any person in authority or public officer of*
7 *the Philippine Government or any foreign*
8 *government, or any agency thereof, without*
9 *being lawfully entitled to do so.*

10 *Under Article 177 of the Revised Penal*
11 *Code, as amended, the elements of the*
12 *crime of usurpation of official functions are*
13 *when a person: (1) performs any act*
14 *pertaining to any person in authority or public*
15 *officer of the Philippine Government or any*
16 *foreign government, or any agency thereof;*
17 *(2) acts under pretense of official position;*
18 *and (3) acts without being lawfully entitled to*
19 *do so. (Underscoring supplied)*

20 In the *Degamo* case, Negros Oriental Governor Roel Degamo claimed in his
21 complaint before the Office of the Ombudsman that Department of Budget
22 Management Undersecretary Mario Relampagos falsely represented himself to
23 have been authorized by President Benigno Aquino when Undersecretary
24 Relampagos wrote a letter to Governor Degamo withdrawing a previously
25 issued Special Allotment Release Order (SARO) and Notice of Cash Allocation
26 (NCA). The withdrawal by Undersecretary Relampagos was upon orders of
27 DBM Secretary Florencio Abad. The Supreme Court on this occasion found
28 that Undersecretary Relampagos signed the letter in his own name as
29 Undersecretary of Operations of DBM, and under the words, "By Authority of
30 the Secretary". Equally significant, Undersecretary Relampagos did not claim

⁶⁵ G.R. No. 212416, December 5, 2018

1 to write for and on behalf of the President in his letter informing Governor
2 Degamo of the withdrawal of the SARO and the NCA. Thus, the Supreme Court
3 in this case failed to see how Usec. Relampagos could have usurped the
4 Executive Secretary's function when there was no attempt to represent the
5 President in the letter.

6 In the case of Usec. Sebastian's signing of Sugar Order No. 4, he affixed his
7 signature together with the word "for" which indicates a clear attempt to write
8 for and on behalf of the President who was the Secretary of Agriculture without
9 specific legal authority to do so. In fact, his authority to sign for the President
10 was repeatedly repudiated by Executive Secretary Rodriguez in the latter's
11 statements before the Blue Ribbon Committee. On this basis, there is ground
12 to recommend that Usec. Sebastian be investigated for Usurpation of Official
13 Functions defined and penalized under Article 177 of the RPC, as amended.

14 **4) For violation of the provisions of RA No. 10845, otherwise known**
15 **as the Anti-Agricultural Smuggling Act of 2016.**

16 Section 3, par. d of RA No. 10845 states:

17 *"SECTION 3. Large-Scale Agricultural*
18 *Smuggling as Economic Sabotage. — The*
19 *crime of large-scale agricultural smuggling*
20 *as economic sabotage, involving sugar,*
21 *corn, pork, poultry, garlic, onion, carrots, fish,*
22 *and cruciferous vegetables, in its raw state,*
23 *or which have undergone the simple*
24 *processes of preparation or preservation for*
25 *the market, with a minimum amount of one*
26 *million pesos (P1,000,000.00), or rice, with a*
27 *minimum amount of ten million pesos*
28 *(P10,000,000.00), as valued by the Bureau*

1 of Customs (BOC), is committed through any
2 of the following acts:

3 xx xx xx
4 (d) Selling, lending, leasing, assigning,
5 consenting or allowing the use of import
6 permits of corporations, non government
7 organizations, associations, cooperatives, or
8 single proprietorships by other persons;

9 xx xx xx
10 (underscoring supplied)

11 Customs Administrative Order No. 002-17 was issued on May 9, 2017 to
12 implement RA No. 10845 pursuant to Section 6 of said law. In CAO No. 002-
13 17, import permits are defined in Section 3.6 thereof as follows:

14 3.6. *Import Permit* — refers to a written
15 certificate issued by the concerned authority
16 stating the volume of consignment. This
17 includes the minimum access volume (MAV)
18 import certificate, Sanitary and Phytosanitary
19 (SPS) Import Clearance, Clearance for the
20 Release of Imported Sugar or any other
21 equivalent document issued for the
22 importation of Agricultural Products.
23 (Underscoring supplied)

24 SO No. 4 authorizes the assignment of notice of sugar import allocations. Under
25 the definition of an import permit in CAO No. 002-17, the notice of allocations
26 issued by the SRA under its sugar orders, particularly SO No. 3 and SO No. 4,
27 can be considered as import permits. In Sugar Order No. 4, which Mr. Serafica
28 admitted to having written personally together with members of his personal
29 staff during the first Blue Ribbon hearing on the Sugar Fiasco, a qualified
30 participant is authorized to assign its import allocation to another authorized
31 participant, and in this situation, the assignor will continue to be the importer on

1 record with SRA with no requirement for the evaluation of the qualifications of
2 the assignee or provisions for the latter's accountability.

3 This authorization for the assignment of the notice of allocation for sugar
4 importation without sufficient accountability mechanisms for assignees will
5 open the floodgates to agricultural smuggling and runs counter to the letter and
6 spirit of RA 10845. Among others, Section 3(d) of RA 10845 penalizes *the act*
7 *of any person of assigning an import permit to any person other than the original*
8 *permittee, or the consenting or the allowing of the use of such permit by any*
9 *person other than the original permittee.* It is submitted that the inclusion of a
10 provision in SO No. 4 authorizing a qualified applicant who has been granted
11 an allocation to import sugar to assign said allocation is a violation of Section
12 3(d) of RA 10845 and its implementing rules and regulations.

13 Section 4(b) of RA 10845 prescribes the penalty for large-scale agricultural
14 smuggling as economic sabotage.

15 *“(b) The penalty of imprisonment of not less*
16 *than seventeen (17) years but not more than*
17 *twenty (20) years, and a fine of twice the fair*
18 *value of the smuggled agricultural product*
19 *and the aggregate amount of the taxes,*
20 *duties and other charges avoided shall be*
21 *imposed on the officers of dummy*
22 *corporations, non government organizations,*
23 *associations, cooperatives, or single*
24 *proprietorships who knowingly sell, lend,*
25 *lease, assign, consent or allow the*
26 *unauthorized use of their import permits for*
27 *purposes of smuggling.”*

28

XX

XX

XX

1 *If the offender is a government official or*
2 *employee, the penalty shall be the maximum*
3 *as hereinabove prescribed and the offender*
4 *shall suffer an additional penalty of perpetual*
5 *disqualification from public office, to vote and*
6 *to participate in any public election.*
7 (Underscoring supplied)

8 On this account, there may be sufficient basis to recommend the investigation
9 of Administrator Serafica as author of SO No. 4, and the other signatories of
10 SO No. 4, Usec. Sebastian, and Board Members Valderrama, and Beltran for
11 the offense of large-scale agricultural smuggling as economic sabotage defined
12 and penalized under Section 3(d) of RA 10845.

13 **5) There is preliminary evidence indicating that the public officials**
14 **principally involved in the Sugar Fiasco, namely Usec. Sebastian,**
15 **Administrator Serafica, and Board Members Beltran and Valderrama,**
16 **may have committed the administrative offenses of Serious**
17 **Dishonesty, Gross Neglect of Duty, Grave Misconduct, Conduct**
18 **Prejudicial to the Best Interest of the Service, and Gross**
19 **insubordination under Sections 50 (A)(1-3) and (B)(9-10) of the 2017**
20 **Rules on Administrative Cases in the Civil Service or the “ 2017**
21 **RACCS”.**

22 The 2017 RACCS classifies these offenses as grave and made punishable by
23 dismissal from the service or suspension of six months and one day to one year

1 for the first offense and dismissal from the service for the second offense.⁶⁶
2 Further, Section 57 (a) of the RACCS, provides that the penalty of dismissal
3 from the service shall carry with it the accessory penalties of cancellation of
4 eligibility, forfeiture of retirement benefits, perpetual disqualification from
5 holding public office and bar from taking Civil Service examination. The penalty
6 of suspension shall carry with it disqualification from promotion corresponding
7 to the period of suspension.⁶⁷ During the period of suspension, the respondent
8 shall not be entitled to all monetary benefits including leave credits.⁶⁸

9 **a. Grave Misconduct** is defined as the transgression of some
10 established and definite rule of action, more particularly,
11 unlawful behavior or gross negligence by a public officer
12 coupled with the elements of corruption, willful intent to
13 violate the law or to disregard established rules. Corruption,
14 as an element of grave misconduct, consists in the official
15 or employee's act of unlawfully or wrongfully using his
16 position to gain benefit for one's self.⁶⁹

17 **b. Gross Neglect of Duty** refers to negligence characterized
18 by the want of even slight care, or by acting or omitting to
19 act in a situation where there is a duty to act, not
20 inadvertently but wilfully and intentionally, with a conscious
21 indifference to the consequences, insofar as other persons

⁶⁶ Among the offenses mentioned, conduct prejudicial to the best interest of the service and insubordination are punishable by suspension for the first offense and dismissal for the second offense. The rest are punishable by immediate dismissal.

⁶⁷ Section 57 (c) of the RACCS.

⁶⁸ Section 56 (c) of the RACCS.

⁶⁹ *Fajardo vs. Corral*, G.R. No. 212641, July 5, 2017

1 may be affected. It is the omission of that care that even
2 inattentive and thoughtless men never fail to give to their
3 own property. It denotes a flagrant and culpable refusal or
4 unwillingness of a person to perform a duty. In cases
5 involving public officials, gross negligence occurs when a
6 breach of duty is flagrant and palpable.⁷⁰

7 **c. Dishonesty** is defined as the concealment or distortion of
8 truth, which shows lack of integrity or a disposition to
9 defraud, cheat, deceive, or betray, or intent to violate the
10 truth.⁷¹ CSC Memorandum No. 13, Series of 2021 classifies
11 dishonesty as serious, less serious or simple. Dishonesty
12 is considered serious if any of the following attended the
13 commission:

- 14 1. The dishonest act caused serious damage and grave
15 prejudice to the government such as when the integrity of
16 the office is tarnished, or the operations of the office are
17 affected;
- 18 2. The respondent gravely abused his/her authority in order
19 to commit the dishonest act;
- 20 3. Where the respondent is an accountable officer, the
21 dishonest act directly involves property, accountable forms
22 or money for which he/she is directly accountable and the
23 respondent shows an intent to commit material gain, graft
24 and corruption; and
- 25 4. The dishonest act exhibits moral depravity on the part of
26 the respondent whether or not said act was committed in
27 the performance of his/her duties.

⁷⁰ *GSIS vs. Manalo*, G.R. No. 208979, September 21, 2016

⁷¹ *Fajardo vs. Corral*, G.R. No. 212641, July 5, 2017

1 d. **Insubordination** - is defined as a refusal to obey some order,
2 which a superior officer is entitled to give and have obeyed.
3 The term imports a willful or intentional disregard of the
4 lawful and reasonable instructions of the employer.⁷²
5 Insubordination or willful disobedience requires the
6 concurrence of the following requisites: (1) the employee's
7 assailed conduct must have been willful or intentional, the
8 willfulness being characterized by a "wrongful and perverse
9 attitude"; and (2) the order violated must have been
10 reasonable, lawful, made known to the employee and must
11 pertain to the duties which he had been engaged to
12 discharge.⁷³

13 d. **Conduct Prejudicial to the Best Interest of the Service** - In
14 *Avenido v. Civil Service Commission*,⁷⁴ The SC ruled that "acts may
15 constitute Conduct Prejudicial to the Best Interest of the Service as
16 long as they tarnish the image and integrity of his/her public office.
17 In *Office of the Ombudsman-Visayas vs Castro*,⁷⁵ the SC noted that
18 "the Court has also considered the following acts or omissions,
19 among others, as constituting conduct prejudicial to the best

⁷² *CSC vs Arandia*, G.R. No. 199549, April 7, 2015

⁷³ *Villanueva vs Ganco*, G.R. No. 227175, January 08, 2020

⁷⁴ G.R. No. 177666, April 30, 2008

⁷⁵ G.R.No. 172637, April 22, 2015

1 interest of the service: misappropriation of public funds,
2 abandonment of office, failure to report back to work without prior
3 notice, failure to safe keep public records and property, making
4 false entries in public documents and falsification of court orders.”

5 Let a copy of this Committee Report be furnished to the Department of Justice,
6 the Commission on Audit and the Office of the Ombudsman for their information
7 and appropriate action.

8 Let a copy of this committee report be also furnished to the Bureau of
9 Immigration for the inclusion of the names of Leocadio S. Sebastian,
10 Hermenegildo R. Serafica, Atty. Roland B. Beltran and Aurelio Gerardo J.
11 Valderrama Jr. in the Immigration Look Out Bulletin.

Adopted,

**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES**
First Regular Session



'22 SEP 13 P1:47

SENATE

RECEIVED BY

MINORITY REPORT

Investigation of the Committee on Accountability of Public Officers and
Investigations (Blue Ribbon) and
Committee on Agriculture, Food and Agrarian Reform

Re: PRIVILEGE SPEECH OF SENATE PRESIDENT
JUAN MIGUEL "MIGZ" ZUBIRI DELIVERED ON
15 AUGUST 2022, ENTITLED
"FIASCO BEHIND SUGAR ORDER NO. 4."

MR. PRESIDENT:

The undersigned Senate Minority Leader and Senate Deputy Minority Leader (collectively, the "Minority") wish to file our Report on the investigation conducted by the Blue Ribbon Committee re: The Privilege Speech of Senate President Juan Miguel "Migz" Zubiri on 15 August 2022.

FINDINGS

A. THERE IS A CLEAR, ACTUAL, INDUBITABLE, AND UNDENIABLE EXISTING SUGAR SHORTAGE, WHICH IS DANGEROUS IF INSUFFICIENTLY AND/OR INADEQUATELY ADDRESSED.

B. EXECUTIVE SECRETARY VICTOR D. RODRIGUEZ IS NOT ENTIRELY BLAMELESS IN THE SO-CALLED FIASCO BEHIND SUGAR ORDER (SO) NO. 4.

C. THE SERIES OF ACTIONS OF DEPARTMENT OF AGRICULTURE (DA) UNDERSECRETARY SEBASTIAN, SUGAR REGULATORY ADMINISTRATION (SRA) ADMINISTRATOR SERAFICA, BOARD MEMBERS BELTRAN AND VALDERRAMA HAD OVERWHELMING BADGES OF GOOD FAITH.

D. THE RECOMMENDATION OF THE MAJORITY TO INITIATE

ADMINISTRATIVE AND CRIMINAL CHARGES AGAINST USEC. SEBASTIAN ET AL., AND TO ISSUE A LOOK OUT BULLETIN ARE LACKING FACTUAL AND LEGAL BASIS.

DISCUSSION

A. THERE IS A CLEAR, ACTUAL, INDUBITABLE, AND UNDENIABLE EXISTING SUGAR SHORTAGE, WHICH IS DANGEROUS IF INSUFFICIENTLY AND/OR INADEQUATELY ADDRESSED.

Contrary to the insinuations made, and as aptly explained in the hearings, the **300,000 metric tons (MT)** figure mentioned in SO No. 4 did not come from thin air, but is based on facts, historical data, and a result of consultation with stakeholders.

The numerical figure is based on a consultation with various stakeholders.

On 29 July 2022, the SRA conducted a stakeholders' consultation where SRA presented the current sugar stock balance, sugar prices, and sugar projections. As a result of the consultation, various sugar industry stakeholders submitted their recommendations which mostly suggested the importation of 300,000 MT of sugar with a mix between refined and raw sugar classifications.

The recommendations received from stakeholders are as follows:

1. CONFED – import a volume of not more than 300,000 MT (150,000 MT of raw sugar and 150,000 MT of refined sugar);
2. PSMA – 300,000 MT (150,000 MT of raw sugar and 150,000 MT of refined sugar);
3. LUZONFED AND UNIFED (Joint Board Resolution) – 300,000 MT refined sugar;
4. NFSP – 300,000 MT (50% for domestic market and 50% for industrial users);

5. PANAYFED – 300,000 MT (150,000 MT for industrial users and 150,000 MT for farmers, traders, and other stakeholders);

6. PASRI – 200,000 MT; and

7. DELMAX CORP. – 250,000 MT (100,000 MT raw and 150,000 MT refined).

Based on the data submitted, raw sugar production is 1,802,739 MT; carry over from the last crop year (period of 1 September 2021 to 7 August 2022) is 251,182 MT; raw withdrawal is 1,924,155 MT; total raw stock balance is 129,766 MT. This stock balance as of 7 August 2022 is less than the average monthly raw withdrawal (demand) of 170,000 MT.

Refined sugar production is 742,506.75 MT, while the refined starting balance (carryover/ending balance) from the last crop year (period of 1 September 2021 to 7 August 2022) is 143,712.25 MT. Refined withdrawal (demand) for domestic sugar is 859,552.60 MT. The local refined ending balance is 26,666.40 MT. This is clearly much less than the 85,000 MT monthly average demand for refined sugar.

Although the imported sugar balance as of 7 August 2022 is 124,324.50 MT, this is already reservedly owned by industrial users.

In previous years the total stock of sugar that needed to be available in August, at the end of the sugar crop year, was an average of 400,000 metric tons. Such a gap-filling 400,000 metric tons of sugar in warehouses was deemed enough in previous years to keep sugar prices stable even as the domestically milled sugar was not yet available to supply the demand.

The current existing shortage in sugar will affect industrial users one at a time, until their warehouses are empty. Institutional and household users on the other hand will compete for limited supplies in the retail market and bid up the prices, until imports of a sufficient quantity arrive and are then augmented by freshly milled raw sugar.

The figure is supported by statistical trend based on historical by-month production vis-a-vis by-month withdrawals.

A study of the latest SRA data on the historical production by month and historical sugar withdrawals, which can be used to project average production per

month and the sugar demand in the coming months, shows that production will fall short of demand and that prices will remain high.

For emphasis, the Committee Report fell short of making this a point: to leave this shortage unaddressed - or addressing it inadequately and unscientifically - may result in dangerous consequences for Filipino consumers and Filipino workers.

Data show that Filipinos under the poverty line spend 60% to 70% of income on food commodities. This is predicated on the classic economic assumption that the household budget share of food is inversely related to that household's real income.

Since most of the food and drink commodities purchased by lower-income families contain sugar as a major ingredient, unrestrained or unabated sugar prices will result in higher prices of *pan de sal*, *3-in-1* instant coffee, *turon* and banana cue. This will result in significant, if not deeper food insecurity and poverty.

A sugar shortage may also render precarious the livelihoods of workers in industries heavily dependent on sugar, such as workers in companies making softdrinks and other sweetened beverages.

In a statement by the Federation and Cooperation of Cola Beverage and Allied Industry Unions – SENTRO, the sugar shortage in Coca Cola has "*... led to unilateral leaves, using existing sick and vacation leaves by management. Those that have exhausted these are forced to take leaves without pay.*"¹

It is important to note that the Executive Secretary himself, during the 6 September 2022 hearing, manifested that "**There is no issue regarding the need to import. The debate is how much to import.**"²

Hence, this is not simply a question of whether or not importation is necessary, but how many metric tons should actually be imported to provide for the shortage already existing. Indeed, a decision to import a lesser amount, *sans* any factual basis in either available data and/or other evidence, may be inadequate to address the shortage and stem its consequences over time. The danger that could have been avoided was the importation of too little too late.

¹ Statement of the FCCU – SENTRO on the impact of the sugar crisis on the food and beverage industry.

² Transcript of Stenographic Notes, 6 September 2022.

Regrettably, from the inception of this fiasco, up to the writing of this Minority Report, nothing has been done to address the increase in sugar prices and the shortage in supply. Instead of addressing the serious consequences of shortage for our people, what ensued was an exercise in finger-pointing. Despite all the resources poured into this investigation, the existing sugar shortage and the high prices still persist.

B. EXECUTIVE SECRETARY VICTOR D. RODRIGUEZ IS NOT ENTIRELY BLAMELESS ON THE SO-CALLED FIASCO BEHIND SUGAR ORDER (SO) NO. 4.

The Committee Report failed, or purposely refrained, to discuss the part which Executive Secretary Rodriguez played in this unfortunate debacle.

In his manifestation during the Blue Ribbon Committee's hearing on 23 August 2022, Executive Secretary Rodriguez stated that the SRA board members issued Sugar Order No. 4 "... **behind the President's back, without the President's knowledge and in a dishonorable way,**" to wit:

"MR. RODRIGUEZ. ... I confronted Usec. Leo Sebastian and asked him why he did such a thing behind the President's back without the President's knowledge and in a dishonorable way."³

In effect, Executive Secretary Rodriguez was insinuating that there was an intent on behalf of the SRA board members to conceal the execution of SO No. 4 from the President.

However, the Minority would like to emphasize that the testimonies during the hearings and the sworn affidavits submitted clearly established that all pertinent information related to the issuance of SO No. 4 – from the planning to the drafting of the sugar order, and recommendations as to the terms thereof – were promptly communicated to the Office of the President through the Office of the Executive Secretary.

Interestingly, during the 25 August 2022 hearing, Executive Secretary Rodriguez admitted that his office received a draft sugar order from

³ Transcript of Stenographic Notes, 23 August 2022, page 16.

Administrator Serafica and a memorandum from Usec. Sebastian containing a recommendation to import 300,000 MT of sugar.

Likewise, he also admitted that on 7 August 2022, he received a text message from Usec. Sebastian asking if there were any instructions from the President regarding the sugar issue, which **he admitted he purposely did not answer**, to wit:

"MR. RODRIGUEZ. On 7 August, which is a Sunday, at around 2:57 p.m., I received a text message from Senior Usec. Leo Sebastian. And the message contains, and I quote, "Good afternoon, ES Vic. Any instruction from the President after his meeting with SINAG on sugar and on fertilizer for farmers? Thanks." **I purposely did not answer him** dahil wala pa pong tugon ang Pangulo sa tatlong bagay na ito.

"On August 8, Monday, at around 7:06 p.m., I received again another message from Usec. Leo Sebastian, and I quote, "Good evening, ES Vic. Any decision by the President on the additional fertilizer funding for rice? Thanks." **Again, I purposely did not respond** because these are the matters that are still on the table of the acting secretary of the Department of Agriculture that we have yet to act upon and that he has yet to decide on."⁴ (Underscoring ours)

By virtue of his position, Executive Secretary Rodriguez has a direct link to the President. He stands as the **gatekeeper to the President**.

Considering that Usec. Sebastian is President Marcos's "Chief-of-Staff of the Office of the Secretary of the DA" and has been authorized to "sit as *ex-officio* Chairman or Member [of the SRA] where the Secretary of the DA is a member" by virtue of a 15 July 2022 Memorandum which the Executive Secretary himself issued, prudence should have dictated to the Executive Secretary that, at the very least, he should have replied to the e-mails and text messages he received from Usec. Sebastian.

There would not have been any miscommunication had the Executive Secretary simply replied that the SRA Board should give the President more time

⁴ Transcript of Stenographic Notes, 23 August 2022, pp. 14-15.

to study the 'draft' Sugar Order No. 4 and to hold in abeyance the planned referendum pending advice or instruction from the Office of the President.

Moreover, had the Executive Secretary properly and promptly communicated instead of remaining deafeningly silent, he could have been clarified and informed that the requested sugar importation plan or program was already the draft Sugar Order submitted to him on 5 August 2022.

If the President truly had no knowledge of the recommendations and the draft sugar order, then whose fault would that be?

As things stand now, we cannot know for sure if Executive Secretary Rodriguez truly relayed to the President the existence of draft SO No. 4 as well as the urgent memorandum thereon, both of which were sent to him on 5 August 2022 via e-mail. Nor could we also know for sure if Executive Secretary Rodriguez informed the President of the follow-up text messages from Usec. Sebastian.

It was the Executive Secretary's duty to relay these information and messages to the President for proper and prompt action, given the urgency of the situation. Usec. Sebastian could not be faulted for thinking that by informing the Executive Secretary, the gatekeeper to the President, it is as if he had also informed the President himself. However, with the alleged surprised reaction of the President on 10 August 2022 to Usec. Sebastian's report that the SRA Board already passed a resolution approving SO No. 4, it can be surmised that the President was not duly informed of the happenings from the start. This cannot be blamed on the SRA Board. The Executive Secretary's inaction on this matter is the proximate cause of the President's lack of knowledge about SO No. 4.

On the matter of the requested "importation plan", Administrator Serafica clarified during the hearings that, for the sugar industry, the draft Sugar Order was already the requested sugar importation plan. In short, the sugar importation plan and the Sugar Order are one and the same. In fact, Sugar Order No. 4 is titled "*Second Sugar Import Program for Crop Year 2021-2022*". This draft Sugar Order was emailed to Executive Secretary Rodriguez on 5 August 2022 with notice that the SRA Board is planning to have a referendum to approve the same.

Therefore, it is most unfair for Executive Secretary Rodriguez to say that the SRA Board passed the said resolution approving SO No. 4 "**without submitting the requested documents, without the knowledge of the President, and without even convening the SRA Board**".

Note that in any and all matters which require the approval of the SRA Board, these are submitted to the Board either through the usual face-to-face meetings or by referendum. In this case, Administrator Serafica and Usec. Sebastian, the alternate ex-officio Chairman, sought approval of the sugar importation plan (SO No. 4) through a referendum, sending the e-mail to all SRA Board Members with copy furnished to the Office of the Executive Secretary.

The claim of Executive Secretary Rodriguez of concealment is belied by the facts and evidence on record.

Contrary to Executive Secretary Rodriguez's claim, it does not appear that there was an intention to conceal the matter from the President. Otherwise, had concealment been the real intention of Usec. Sebastian, he should not have - and would not have - made the effort to personally report to Malacañang on 10 August 2022 and inform the President that they (the SRA Board) have already issued SO No. 4.

What transpired was a case of lack of communication and clear directive, or even any advice, from the Executive Secretary on how the SRA Board should proceed to handle the subject matter. As already stated earlier, their inquiries were met with a deafening silence.

Clearly, Executive Secretary Rodriguez's claim that there was intentional concealment on the part of the signatories to SO No. 4 appears to be nothing more than mere passing the buck (and the blame), because the claim is clearly not supported by the facts.

We are disappointed with the treatment given to Usec. Sebastian considering that he has been chosen as the President's "eyes and ears" and representative in the DA and in other committees, councils, and boards where the President as the DA Secretary is a member of, as proven by the said 15 July 2022 Memorandum.

**C. THE SERIES OF ACTIONS OF
DEPARTMENT OF
AGRICULTURE (DA)
UNDERSECRETARY SEBASTIAN,
SUGAR REGULATORY
ADMINISTRATION (SRA)
ADMINISTRATOR SERAFICA,
BOARD MEMBERS BELTRAN
AND VALDERRAMA HAD**

OVERWHELMING BADGES OF GOOD FAITH.

The Minority would like to point out that there were clearly badges of good faith on the part of Usec. Sebastian, Administrator Serafica, and Board Members Beltran and Valderrama that the Committee Report apparently failed to notice and give importance to.

Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.⁵ It is a valid defense to the charge of violations under R.A. No. 3019.⁶

The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another.⁷

From the facts as found by your Minority, we deem that there was good faith on the part of Usec. Sebastian, Administrator Serafica, Atty. Beltran, and Mr. Valderrama.

As a body politic, Usec. Sebastian, Administrator Serafica, Atty. Beltran, and Mr. Valderrama had the legal authority to issue Sugar Order No. 4.

Aside from the fact that there was no evidence of an intention to conceal the execution of SO No. 4 from the President, the sworn affidavits and the testimonies of the four (4) key persons made during the public hearings are consistent in their assertion that they only did their job and what they believed was required of them at that given time.

First, as already discussed above, there is an existing sugar shortage. The meetings with the stakeholders and with the President on different occasions gave enough impetus to the SRA Board members to act fast to address the existing sugar crisis and prevent it from worsening.

⁵ *Philippine National Bank vs. Generoso De Jesus*, G.R. No. 149295, 23 September 2003.

⁶ *Alejandro v. Sandiganbayan*, G.R. No. 81031, 20 February 1989.

⁷ *Id.*, citing *Enrique Bernardo, et al. vs. Crisostomo S. Bernardo*, G.R. No. L-5872, 29 November 1954. See also *Ignacia Negrete vs. CFI of Marinduque and Igmedio Maderazo*, G.R. No. L-31267, 24 November 1972.

As mentioned above, the 300,000 MT of sugar to be imported was based on SRA data as well as the recommendations received from stakeholders.

Section 4 of Executive Order No. 18, s.1986, as amended by Executive Order No. 292, Book IV, Chapter 6, vests the corporate powers of the SRA in the Sugar Board.

As a collegial body, a governmental entity whose power or authority is vested in its membership and which may act only upon the will of the majority of its membership, the Sugar Board, just like any corporate body, can enact policies and approve or disapprove corporate actions and matters by a simple majority vote.

Because of the collegial nature of the SRA, the Chairman is considered to have just one (1) vote, and can be outvoted even over his express disapproval, as he cannot overrule the majority vote.

SO No. 4, having been approved by a majority of the members of the Board, is therefore a valid board or collegial decision, to say the least. Thus, the majority-signed SO No. 4 is within the mandate and authority of the Sugar Board to issue even against the will of the Chairperson.

The facts are clear: Sugar Order No. 4 was submitted for approval via referendum on 9 August 2022. The draft resolution was sent through email to Atty. Roland Beltran, Board Member (Millers' Representative), for his review and approval. Upon his approval of the draft resolution, Atty. Beltran affixed his signature on the Board resolution and Sugar Order.

Thereafter, it was brought to Mr. Aurelio Gerardo Valderrama Jr., Board Member (Planters' Representative), for his signature. The signed copy was scanned and sent through email, to the Office of the Board Secretary.

This signed copy was printed in SRA's Quezon City Office and thereafter signed by Administrator Serafica. It was this copy that was brought to Usec. Sebastian for his signature.

At the risk of sounding repetitive, Usec. Sebastian believed he had the legal authority to sign on behalf of the Secretary of the Department of Agriculture (who happens to be the President) by virtue of the 15 July 2022 Memorandum. If the said belief had been misplaced, despite the language used in the said Memorandum, we are not convinced that such a mistake was attended by evident bad faith or manifest partiality as contemplated in Republic Act No. 3019, the

“Anti-Graft and Corrupt Practices Act”, which the Committee Report recommends he be charged with.

The Chairperson’s signature is not absolutely needed in issuing a Sugar Order since an alternate may sign on his behalf.

That an alternate of the Chairperson signs a Sugar Order is not entirely novel. In fact, there are precedents regarding a Sugar Order being issued without the signature of the Chairman as one of the approving authorities, as these were signed by an alternate of the Secretary of Agriculture as *Ex-Officio* Chairperson.

For example, Sugar Order No. 5 (Series of 2018-2019) was signed by Undersecretary Roldan G. Gorgonio as alternate of the Department of Agriculture Secretary. We also have Sugar Order No. 5 (Series of 2017-2018), Sugar Order No. 11 (Series of 2017-2018), Sugar Order No. 7 (Series of 2017-2018), and Sugar Order No. 1-B (Series of 2017-2018), just to name a few.

In the hearings, Usec. Sebastian consistently cited the 15 July 2022 memorandum issued by Executive Secretary Rodriguez, wherein he (Sebastian) was tasked to perform the following functions, among others:

"xxx

- a. Serve as the Chief-of-Staff of the Office of the Secretary of the DA;
- b. **Sign**, contracts, memoranda of agreement, administrative issuances, instrumentalities, and administrative and financial documents necessary to carry out department objectives, policies and functions, plans, programs, and projects, for the efficient and effective operations of the DA, including those enumerated in DA General Memorandum Order (GMO) No. 03 (s.2016), as amended by DA GMO No. 01(s.2018);
- c. **Sit as *ex-officio* Chairman or Member of all duly constituted committees, councils, boards, or bodies where the Secretary of DA is a member**, or designate other DA officials to the same;

xxx" (Emphasis and underscoring supplied)

While the Committee Report suggested that the above-quoted Memorandum covers mostly administrative, finance, and human resource related matters, with all due respect to the Majority, a careful perusal of the same shows that there is no qualification in the same memorandum that would qualify or limit it to mostly administrative, finance, and human resource related matters.

Moreover, aside from the 15 July 2022 Memorandum, the **SRA Manual of Corporate Governance** allows the ex-officio chairman to designate his ex-officio alternate, whose acts shall be considered his acts, i.e. "*The Ex-officio Chairman may designate his ex-officio alternate, whose acts shall be considered his acts.*"

This is further supported by Section 14 of **Republic Act No. 10149** in relation to **GCG Memorandum Circular No. 2012-08**⁸ which provides that "*ex officio* members of the GOCC may designate their respective alternates who shall be the officials next-in-rank to them and whose acts shall be considered as acts of their principals."

From the foregoing, it should be clear therefore that Usec. Sebastian's reliance on the 15 July 2022 Memorandum should not and could not be dismissed outright. His actions based on this belief, which has legal bases, cannot be called or labelled as whimsical and capricious.

The President of the Philippines, in whom executive power is vested as provided in Art. VII, Section 1 of the 1987 Constitution, possesses the power to amend, change, or reverse acts done by his subordinates. He is also entitled to change his mind. In this particular case, since the President does not approve of the decision of his subordinate-representative (Usec. Sebastian), then the remedy should have been simply to reverse the act or decision in question.

Disapproval by the President, however, does not automatically mean that the act of the alter ego / representative / subordinate is tainted with malice or criminal intent.

The treatment Usec. Sebastian et al., have been subjected to, which has amounted to a vilification, is uncalled-for and cannot be justified. We are all best reminded that "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." (Art. 19 of the New Civil Code, R. A. No. 386.)

D. THE RECOMMENDATION OF THE MAJORITY TO INITIATE ADMINISTRATIVE AND CRIMINAL CHARGES AGAINST USEC. SEBASTIAN ET AL., AND

⁸ GCG Memorandum Circular No. 2012-08 entitled "Alternates for Ex-officio" attached as ANNEX "37" in the Supplemental Affidavit.

**TO ISSUE A LOOK OUT
BULLETIN ARE LACKING
FACTUAL AND LEGAL BASIS.**

The recommendation to initiate administrative charges against Usec. Sebastian et al., is moot and academic.

While the Minority does not agree with the recommendation to initiate administrative charges against Usec. Sebastian et al., the matter has been rendered moot and academic with the initiation by the Office of the President of administrative charges against Usec. Sebastian, Administrator Serafica, Board Members Beltran and Valderrama for grave misconduct, gross dishonesty and conduct prejudicial to the best interest of the service.

The recommendation to file charges against Usec. Sebastian et al., for violations of the Anti-Graft and Corrupt Practices Act for giving unwarranted benefits, advantage or preference in the discharge of one's duties is lacking in legal basis.

As discussed above, there are badges of good faith on the part of Usec. Sebastian et al. This in itself constitutes a valid defense against charges of violation of the Anti-Graft and Corrupt Practices Act.

The Committee Report concluded that Sugar Order No. 4 is "... clearly meant to favor certain sectors and industry players who stand to benefit from those." And for this reason, Usec. Sebastian et al., have been made to appear guilty of giving "unwarranted benefits, advantage or preference in the discharge of one's duties."

The applicable provision of the Anti-Graft and Corrupt Practices Act referred to by the Majority defines the criminal offense as follows -

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

The law uses the term "private party", which means a specified individual who was given an unwarranted benefit. Clearly, the law envisioned the party

given unwarranted benefits to be identified before an offense of this type can be committed. Considering that there was no evidence on who or what private third parties allegedly benefited or stood to benefit from the issuance of SO No. 4, the recommendation or finding is a mere surmise or conjecture.

Furthermore, the provision in Sugar Order No. 4 states that "... a qualified participant may assign its import allocation to another qualified applicant." By limiting the assignee to only qualified applicants, it obviously means that no assignments can be made to random, unscrupulous, and anonymous importers. These qualified applicants will therefore all appear in the database of the SRA.

On the point that SO No. 4 authorized the SRA Administrator to re-classify imported "C" sugar to "B" sugar which would have the effect of releasing the re-classified sugar into the domestic market, the delegation was not a blanket authority. As it is an authority granted by the Board, the Board may at any time should it deem fit, revoke or cancel the same. Therefore, this is a non-issue considering that the Administrator shall be required to submit weekly reports on the status of the import program, including the importer(s) and their import volumes that were issued SRA Clearances and reclassified to "B" sugar, to the Chairman and Members of the Sugar Board.

Anent the removal of performance bond, it is worthy to note that there were Sugar Orders previously issued which do not impose such bond, in particular, (a) Sugar Order No. 4, Series of 2019-2020; (b) Sugar Order No. 4-A, Series of 2019-2020; (c) Sugar Order No. 4, Series of 2015-2016; and (d) Sugar Order No. 3, Series of 2020-2021. We are therefore not persuaded that the absence of a performance bond *ipso facto* demonstrates bad faith absent any supporting extrinsic evidence.

The recommendation to file charges against Usec. Sebastian et al., for violation of Republic Act No. 10845, or the Anti-Agricultural Smuggling Act of 2016 is lacking in factual and legal basis.

The Majority concluded that there may be sufficient basis to recommend the investigation of Administrator Serafica, as author of Sugar Order No. 4, Usec. Sebastian, Atty. Beltran, and Mr. Valderrama for the offense of large-scale agricultural smuggling as economic sabotage as defined in the Anti-Agricultural Smuggling Act of 2016. This is because Sugar Order No. 4 allowed a qualified applicant who has been granted an allocation to import sugar to assign said allocation to another qualified applicant. According to the Majority this is a violation of Section 3(d) of R. A. No. 10845, as well as its implementing rules and regulations.

This is a very serious charge and recommendation. The penalty for this crime is life imprisonment as provided in Section 4(a)⁹ of the said law and not the penalty of not less than seventeen (17) years nor more than twenty (20) years of imprisonment as erroneously stated in the Committee Report. This is therefore a non-bailable offense.

Furthermore, to be liable for this offense, there must have been an import permit issued which was sold, lent, leased, or assigned to another person. It is doubtful if any import permit has already been issued as a consequence of Sugar Order No. 4 and that import permit has been sold, lent, leased, or assigned to another person.

The Majority's directive to the Bureau of Immigration to include the names of Usec. Sebastian et al., in the Immigrations Look Out Bulletin is lacking in factual and legal basis.

It is the Secretary of the Department of Justice that has the authority to issue look out bulletins. Even the recent look out bulletins issued for the nine (9) persons involved in the inquiry on the use of government funds for Covid-19 response were issued by the DOJ Secretary, not the Chairperson of the Blue Ribbon Committee.

The Philippine Constitution guarantees that an individual's right to travel may be impaired only in the interest of national security, public safety or public health, as may be provided for by law.¹⁰ There does not appear to be any reason to impair the right to travel of the mentioned individuals in this case, as of the moment.

The Philippine Constitution also guarantees an individual's right to be presumed innocent until the contrary is proven.¹¹ This puts the burden on the government to prove the guilt of the accused by proof beyond reasonable doubt, including the right to have an impartial and public trial. The Committee Report has vilified persons, who are human beings with careers, reputations, and families, that have, in fact, been vindicated by what has been unearthed in the hearings themselves.

⁹ Sec. 4 (a) provides "The penalty of life imprisonment and a fine of twice the fair value of the smuggled agricultural product and the aggregate amount of the taxes, duties and other charges avoided shall be imposed on any person who commits any of the acts enumerated under Section 3 of this Act."

¹⁰ Section 6, Article III of the 1987 Philippine Constitution.

¹¹ Par. 2, Section 14, Article III of the 1987 Philippine Constitution.

RECOMMENDATIONS

THE FOREGOING PREMISES CONSIDERED, the Minority submits the following recommendations:

1. This sugar fiasco is an eye-opener that a full-time Secretary of Agriculture is needed. We call on the President to appoint a full-time Secretary of Agriculture at the soonest possible time to take charge of the Department and the agricultural sector and give these his/her utmost attention.
2. Executive Order No. 18 creating the Sugar Regulatory Administration must be amended (1) to strengthen the independence of the Board, (2) to make the Board more inclusive and representative by expanding the composition of the SRA Board to include representatives from other stakeholders of the sugar industry such as small farmers, sugar workers, and the consumers, and (3) to make the SRA better perform its developmental role.
3. There is an urgent need to develop and improve our sugar industry with the end in view of increasing the country's sugar productivity so as not to be dependent on importation moving forward. It can be deduced from the discussions during the hearings that the SRA is organizationally challenged to perform developmental roles that support its regulatory functions and its over-all implementation of other laws such as the Sugar Industry Development Act (SIDA) of 2015.¹²


The Minority stresses the need to advance the development of the sugar industry by fully implementing existing laws and having a coherent policy and program framework in place to address long-standing challenges besetting the sugar industry. It is important for the government to exert efforts to strengthen the sugar industry's institutional support mechanisms. Instead of further reducing the budget allotted under the SIDA from P2 billion in 2016 to 500 million in 2019, we should instead beef up SRA's developmental role and provide human resource and budget support. Particularly, investment in the Research and Development (R&D) capability of the SRA must be supported so that the industry can find new business opportunities in alternative products like bioethanol, muscovado, biomass-based electric power, and more. We must remember that milling has many by-products.

¹² Republic Act No. 10659, Approved March 27, 2015.

4. The SRA must immediately resolve the internal conflicts and disagreements afflicting the agency. That it is so afflicted was made very obvious during the hearings. The SRA has great responsibilities under our laws. They should keep their eyes on the ball and focus on their mandate and responsibilities.

RESPECTFULLY SUBMITTED.


AQUILINO "KOKO" PIMENTEL III
Minority Leader


RISA HONTIVEROS
Deputy Minority Leader