

Justice Delayed Is Injustice: Understanding

Cagang v. Sandiganbayan

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I. INTRODUCTION

Delay in justice is injustice.

— Walter Savage Landor¹

The negative consequences of undue delays in the administration of justice in a democratic society are historically recognized, as reflected in the legal maxim “*justice delayed is justice denied.*”² Society is perceived to have an interest in the swift disposal of controversies to uphold public order and to avoid the oppression of its citizens.³

The age-old dictum is embodied in two distinct rights in the Philippine Bill of Rights. The first of these rights is the accused’s guarantee to a speedy trial under Article III, Section 14, Paragraph 2 of the 1987 Constitution.⁴ Such right to a speedy trial is found in most State constitutions.⁵ Under Philippine jurisprudence, it is invoked mainly in criminal prosecution before the courts.⁶

1. Walter Savage Landor, *Peter Leopold and President Du Paty*, in *IMAGINARY CONVERSATIONS: DIALOGUES OF SOVEREIGNS AND STATESMEN* 54 (2d ed. 1881).

2. See *Soriano vs. Marcelo*, G.R. No. 163178, 577 SCRA 313, 315-16 (2009).

3. See *People v. Collins*, 202 N.W.2d 769 (Mich., U.S.) (1972).

The importance of prompt trial of criminal offenses in a democratic society derives from the needs of maintaining public order and preserving individual freedom. The social interest in security demands speedy trial, for this facilitates both effective prosecution of criminals and greater deterrence to potential criminals. At the same time, society, in its concern for freedom and for the individual life, seeks to prevent prolonged prosecutions which may develop into persecutions.

Id. at 771 (citing Columbia Law Review, *The Right to a Speedy Criminal Trial*, 57 COLUM. L. REV. 864, 864 (1957)

Society has an interest in the orderly administration of criminal justice quite apart from its humanitarian and pragmatic concern for the welfare of its citizens. A long delay may make it more difficult for the government to prove its charges beyond reasonable doubt, and it may lessen the deterrent value of a conviction.

Collins, 202 N.W.2d at 771-72, n.4 (citing Alan L. Schneider, *The Right to a Speedy Trial*, 20 STAN. L. REV. 476, 476, n. 1 (1968)).

4. PHIL. CONST. art. III, § 14 (2).

5. Schneider, *supra* note 3, at 476.

6. See *People v. Sandiganbayan*, G.R. No. 239878, Feb. 28, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/21/6805> (last accessed

On the other hand, a separate right applies even against other adjudicative bodies, i.e., against quasi-judicial or administrative bodies, and finds relevance in civil, criminal, or administrative cases.⁷ The right to a speedy disposition of cases is guaranteed to every individual under Article III, Section 16 of the 1987 Constitution — “All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.”⁸

As explained in *Dansal v. Fernandez*,⁹ the right to speedy disposition of cases affords broader protection than the right to speedy trial, as it encompasses the entirety of legal proceedings¹⁰ —

Initially embodied in Section 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three provisions mandating speedier dispensation of justice. It guarantees the right of all persons to “a speedy disposition of their case[;]” [which includes] the periods before, during[,] and after trial, and affords broader protection than Section 14 (2), which guarantees just the right to a speedy trial. It is more embracing than the protection under Article VII, Section 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal[,] and administrative cases.¹¹

Explaining the rationale behind this constitutional guarantee, the Supreme Court noted —

The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights. Moreover, Section 16, Article III of the Constitution extends the right to a speedy disposition of cases to cases before all judicial, quasi-judicial, and administrative bodies. The protection extends to all citizens, including those in the military and covers

Oct. 31, 2023) (citing *Cadalin v. POEA’s Administrator*, G.R. No. 104776, 238 SCRA 721, 765 (1994)).

7. *Roquero v. Chancellor of UP-Manila*, GR No. 181851, 614 SCRA 723, 732 (2010) (citing *Lopez, Jr. v. Office of the Ombudsman*, G.R. No. 145029, 364 SCRA 569, 578 (2001) (citing *Cadalin*, 238 SCRA at 765)).

8. PHIL. CONST. art. III, § 16.

9. *Dansal v. Fernandez, Sr.*, G.R. No. 126814, 327 SCRA 145 (2000).

10. *Id.* at 152.

11. *Id.* (citing Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 489 (1996) (citing *Talabon vs. Iloilo Provincial Warden*, 78 Phil. 599 (1947)).

the periods before, during, and after trial — affording broader protection than Section 14 (2) which guarantees merely the right to a speedy trial.¹²

This broader mandate imposes a positive duty on adjudicative bodies to resolve cases and proceedings within a reasonable time.¹³ Despite this constitutional mandate, the swift resolution of cases proved to be a somewhat elusive feat, as shown in the stream of petitions decrying inordinately delayed proceedings in violation of the fundamental right.

While the causes of undue delay in the Philippine legal system may be varied, the Court took note that the right to speedy disposition of cases finds its most relevance in delays encountered during fact-finding investigations and preliminary investigations conducted by the Office of the Ombudsman, since “neither of these proceedings form part of the actual criminal prosecution.”¹⁴

The conduct of a preliminary investigation, prior to a defendant being made to undergo the rigorous proceedings of a criminal trial, is considered an important part of due process.

The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense[,] and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. The accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense; the right to an opportunity to avoid a process painful to anyone save, perhaps, to hardened criminals, is a valuable right. To deny petitioner’s claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.¹⁵

While regarded as a substantive right, the conduct of a preliminary investigation must also be in line with the prosecutor’s inherent duty to resolve the same within the proper length of time.¹⁶ A showing of vexatious, capricious, and oppressive delay in the conduct of a preliminary investigation has been taken as a clear violation of the right to speedy disposition of the case, amounting to grave abuse of discretion on the part of the branch or

12. *Abadia v. Court of Appeals*, G.R. No. 105597, 236 SCRA 676, 682 (1994).

13. *Coscolluela v. Sandiganbayan (First Division)*, G.R. No. 191411, 701 SCRA 188, 197 (2013).

14. *Cagang v. Sandiganbayan*, Fifth Division, G.R. Nos. 206438 & 206458, 875 SCRA 374, 413 (2018).

15. *Go v. Court of Appeals*, G.R. No. 101837, 206 SCRA 138, 153 (1992).

16. *Coscolluela*, 875 SCRA at 197.

instrumentality of the State, responsible for such delay.¹⁷ In instances where a court or tribunal has refused to quash the information or dismiss the proceedings against an accused despite the existence of inordinate delay, therefore in clear violation of the latter's constitutional right, the Court has not hesitated to reverse the lower court's ruling and accordingly dismiss the proceedings against the accused.¹⁸

The sanction of dismissal is, likewise, applicable to cases where an accused is deprived of his right to a speedy trial. Rule 119, Section 9 of the 2000 Revised Rules on Criminal Procedure mandates the dismissal of a case if there is a violation of the right to speedy trial.¹⁹

Section 9. Remedy where accused is not brought to trial within the time limit. — If the accused is not brought to trial within the time limit required by Section 1 (g), Rule 116 and Section 1, as extended by Section 6 of this rule, the Information may be dismissed[,] on motion of the accused[,] on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion[,] but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this Rule. The dismissal shall be subject to the rules on double jeopardy.²⁰

Delay also constitutes a violation of procedural due process.²¹ When there is a denial of the right to due process, such as a violation of the right to speedy disposition of cases, a decision that is issued in disregard of such right is void for lack of jurisdiction.²² Accordingly, the inordinate and unexplained delay in the conduct of the preliminary investigation renders the Ombudsman's resolution void, and thus, constitutes an exception to the Doctrine of Immutability of Judgment.²³

17. *Inocentes v. People*, G.R. No. 205963-64, 796 SCRA 34, 55 (2016).

18. See *Tatad v. Sandiganbayan*, 242 Phil. 563 (1988); *Coscolluela*, 875 SCRA at 197; *Angchangco v. Ombudsman*, G.R. No. 122728, 268 SCRA 301, 306 (1997); & *Roque v. Office of the Ombudsman*, G.R. No. 129978, 307 SCRA 104, 115 (1999).

19. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 119, § 9.

20. *Id.*

21. *Tatad*, 242 Phil.

22. *Salva v. Valle*, 707 Phil. 402, 419 (2013).

23. *Perez v. Office of the Ombudsman*, G.R. Nos. 225568-70, Feb. 15, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68127> (last accessed Oct. 31, 2023).

Over the years, the Court has undoubtedly made several shifts in resolving these petitions due to the complexity of the element of timeliness. Nonetheless, a consistent precept is that “speedy disposition” is a relative concept.²⁴ A finding of whether such right has been denied or violated is not susceptible to a precise qualification.²⁵ In the same vein, determining “inordinate delay” in violation of this right is not a mere mathematical reckoning of the lapse of time.²⁶ The Court has, instead, adopted the four-factor balancing test found in the American case of *Barker v. Wingo*²⁷ to determine the existence of inordinate delay, namely: *first*, the length of delay; *second*, the reason for delay; *third*, the defendant’s assertion or non-assertion of his or her right; and *fourth*, the prejudice to the defendant as a result of the delay.²⁸

In the 2018 case of *Cagang v. Sandiganbayan*,²⁹ after more than three decades of applying *Tatad* and the *Barker* test, and a plethora of doctrines on the matter, the Court outlined guidelines for analyzing the four factors in the balancing test.³⁰ This Article is a brief survey of Supreme Court decisions concerning the four factors established in *Cagang* that are relevant to the dismissal of cases on the ground of inordinate delay.³¹

II. SUMMARY OF THE FACTS AND RULING

The case of *Cagang* acted as the backdrop of the Court’s attempt to lessen the ambiguities in the application of the *Barker* test. Although the Court found no violation of the petitioner’s right to a speedy disposition of the case, it was still urged to clarify the mode of analysis for cases involving claims of inordinate delay.³²

24. *Corpuz v. Sandiganbayan*, G.R. No. 162214, 442 SCRA 294, 312 (2004).

25. *Id.*

26. *Licaros v. Sandiganbayan*, G.R. No. 145851, 370 SCRA 394, 410 (2001) (citing *Dela Peña v. Sandiganbayan*, G.R. No. 144542, 360 SCRA 478, 485 (2001)) (citing *Binay v. Sandiganbayan*, G.R. No. 120681-83, 316 SCRA 65, 93 (1999)).

27. *Barker v. Wingo*, 407 U.S. 514, 530-33 (1972).

28. *Id.*

29. *Cagang*, 875 SCRA 374 (2018).

30. *See generally id.*

31. *Id.*

32. *Id.* at 449.

Briefly, the facts of *Cagang* are as follows —

On 10 February 2003, the Ombudsman received an anonymous complaint alleging that several public officials of the Sarangani provincial government committed graft and corruption by diverting public funds, given as grants or aid, using barangay officials and dummy cooperatives.³³ The complaint was referred to the Commission on Audit (COA) for audit investigation.³⁴ A news report from Sun Star Davao dated 7 August 2003 was also made the subject of a fact-finding investigation.³⁵

On 31 December 2002, the COA submitted its audit report finding that the officials and employees of the Sarangani provincial government appeared to have embezzled millions in public funds.³⁶

On 30 September 2003, the Ombudsman issued a Joint Order terminating both investigations, concurred with the findings of the COA, and recommended the filing of a criminal case for Malversation of Public Funds through Falsification, and violation of Section 3 (e) of Republic Act No. 3019 (R.A. No. 3019) against 180 accused.³⁷

In a Joint Order dated 29 October 2003, the accused were directed to file their counter-affidavits and submit controverting evidence before the Ombudsman.³⁸ The complainants were also given time to file their replies.³⁹

On 11 August 2004, the Ombudsman found probable cause to charge several officials with Malversation through Falsification of Public Documents and violation of Section 3 (e) of R.A. No. 3019.⁴⁰ The Ombudsman's preliminary investigations led to the filing of three separate criminal Informations before the Sandiganbayan.⁴¹

Specifically, Cagang, having served as the Provincial Treasurer of Sarangani during that time, was implicated in the following cases: (a) Malversation of Public Funds through Falsification of Public Documents filed

33. *Id.* at 393.

34. *Id.*

35. *Cagang*, 875 SCRA, at 393.

36. *Id.*

37. *Id.* at 394

38. *Id.*

39. *Id.*

40. *Id.* at 395.

41. *Cagang*, 875 SCRA, at 396-98.

in 2005; (b) Malversation of Public Funds through Falsification of Public Documents filed in 2011; and (c) violation of Section 3 (e) of R.A. 3019, which were filed in 2011.⁴²

Cagang filed a Motion to Quash/Dismiss with Prayer to nullify and set aside Order of Arrest, arguing that there was inordinate delay of eight years in the filing of the Informations in the 2011 cases.⁴³ The Sandiganbayan denied the Motion to Quash and the subsequent Motion for Reconsideration.⁴⁴

Cagang claimed before the Supreme Court that the Ombudsman incurred delay in the conduct of the preliminary investigation, considering the lapse of eight years from the preliminary investigation until the filing of the Informations.⁴⁵ Cagang pointed out two instances of delay committed by the Ombudsman: *first*, from the filing of the complaint on 10 February 2003 to the filing of the Information on 17 November 2011; and *second*, from the conclusion of the preliminary investigation in 2005 to the filing of the Information on 17 November 2011.⁴⁶

After considering the balancing test in *Barker* and related jurisprudence, the Court, in *Cagang*, set forth the following framework and guidelines in analyzing whether a person's right to speedy trial or speedy disposition of cases has been violated —

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint[,] prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint

42. *Id.*

43. *Id.* at 402.

44. *Id.*

45. *Id.*

46. *Id.* at 405.

shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first [] that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed[,] to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated[,] or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.⁴⁷

47. *Cagang*, 875 SCRA, at 449-51.

III. EXISTENCE AND LENGTH OF DELAY

The passage of time alone is not sufficient to constitute inordinate delay.⁴⁸ The right is deemed violated only when the delay is vexatious, capricious, and oppressive; or when unjustified postponements of the trial are asked for and secured; or when a long period of time is allowed to elapse without the party having his case tried even without cause or justifiable motive.⁴⁹

The right to speedy disposition of cases is commonly raised in investigations conducted by the Office of the Ombudsman because the respondent may already be prejudiced by these proceedings.⁵⁰ As such, the Ombudsman is mandated to act promptly on complaints filed against public officials and employees.⁵¹ One of the questions resolved in *Cagang* was whether the period taken by the Ombudsman for fact-finding investigation,

48. *Id.* at 453.

49. *Roquero*, 614 SCRA at 732.

50. *Malones v. Sandiganbayan*, G.R. Nos. 226887-88, Jul. 20, 2022, *available at* <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68450> (last accessed Oct. 31, 2023) (citing *Daep v. Sandiganbayan*, G.R. No. 244649, June 14, 2021, *available at* <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67480> (last accessed Oct. 31, 2023)).

51. *See* PHIL. CONST. art. VI, § 12 & An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes [The Ombudsman Act of 1989], Republic Act No. 6770, § 13 (1989).

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency[,] or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency[,] or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil[,] and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

The Ombudsman Act of 1989, §§ 12-13.

prior to filing a complaint, should be included in the determination of the existence of inordinate delay.⁵²

Fact-finding investigation refers to the inquiry undertaken by the Ombudsman once it receives complaints which, while not supported by material evidence, contain sufficient verifiable leads to warrant a case build-up.⁵³ Fact-finding proceedings are non-adversarial, and do not give rise to any enforceable rights.⁵⁴ Fact-finding investigations are confidential in nature, and it is highly possible that the respondent will not even know that he is the subject of a fact-finding inquiry. Fact-finding investigation is different from preliminary investigation, which is the inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and the respondent is probably guilty thereof, and should be held for trial.⁵⁵

Prior to *Cagang*, the periods for fact-finding investigation and preliminary investigation were included in the computation of delay. In *Torres v. Sandiganbayan*,⁵⁶ the Court ruled that the speedy disposition of cases covers all stages to which the accused is subjected, including fact-finding investigations conducted prior to the preliminary investigation proper.⁵⁷

In *People v. Sandiganbayan*,⁵⁸ the Court rejected the State's assertion that the fact-finding investigation should not be considered as part of the preliminary investigation because the former is merely preparatory.⁵⁹ Instead, the fact-finding and the preliminary investigation were both considered by the Court when it found that the five-year period it took to file the charges in the proper court was unreasonably delayed.⁶⁰ The Court cautioned that “[t]he

52. *Cagang*, 875 SCRA at 454.

53. See Office of the Ombudsman, Prescribing the Periods in the Conduct of Investigations by the Office of the Ombudsman, Administrative Order No. 1, Series of 2020 [A.O. No. 1, s. 2020], § 1, para. 1 (Aug. 15, 2020).

54. *Id.*

55. REVISED RULES ON CRIMINAL PROCEDURE, rule 112, § 1.

56. *Torres v. Sandiganbayan* (First Division), G.R. Nos. 221562-69, 805 SCRA 455 (2016).

57. *Id.* at 468-69.

58. *People v. Sandiganbayan*, First Division & Third Division, G.R. Nos. 188165 & 189063, 712 SCRA 359 (2013).

59. *Id.* at 415.

60. *Id.* at 416.

guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted.”⁶¹

Cagang abandoned the ruling in *People v. Sandiganbayan* that fact-finding investigations are included in the period for determination of inordinate delay.⁶² *Cagang* explained that fact-finding cannot be counted even if the accused was invited to attend the investigation, since this is merely preparatory to filing a formal complaint.⁶³ At this stage, the Ombudsman will not yet determine if there is probable cause to charge the accused.⁶⁴ *Cagang* then concluded that to determine whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint, and the subsequent conduct of the preliminary investigation.⁶⁵

There is a need, however, to distinguish between fact-finding investigations conducted *before* and *after* the filing of a formal complaint, along with their legal consequences. If a formal complaint was initiated by a private complainant, the fact-finding investigation conducted by the Ombudsman *after* the filing of the complaint must be necessarily included in computing the aggregate period of the preliminary investigation.⁶⁶ If the fact-finding investigation was conducted *before* the filing of a formal complaint, as when the Ombudsman investigates pursuant to an anonymous complaint, it will not be counted in determining the existence of delay.⁶⁷ During this period, the party involved cannot, yet, invoke the right to speedy disposition of his case since he is not yet subjected to any adverse proceeding.⁶⁸

As taught by *Cagang*, the party who has to dispense with the burden of proving depends on when the right is invoked.⁶⁹ To do so, it must first be ascertained whether the Ombudsman adhered to the prescribed periods for conducting preliminary investigation.⁷⁰ The defense bears the burden of proof if the right is invoked within the periods prescribed by the Court, the Rules

61. *Id.* at 415.

62. *Cagang*, 875 SCRA at 452.

63. *Id.* at 435.

64. *Id.*

65. *Id.* at 435-36.

66. *See Magante v. Sandiganbayan* (3d Div.), et al., 836 Phil. 1108, at 1130 (2018).

67. *See id.* at 1130-31.

68. *See id.* & *Revelta v. People*, G.R. No. 237039, 909 SCRA 29, 42-43 (2019).

69. *See Cagang*, 875 SCRA at 442.

70. *See id.* at 450.

of Court, or the Office of the Ombudsman for conducting the preliminary investigation.⁷¹ In such cases, the defense has the burden of proving, not only that the right was justifiably invoked, but also that the case was motivated by malice or political considerations, and is without any basis.⁷² Additionally, the defense must prove that it did not contribute to the delay.⁷³

If the delay occurs beyond the timelines and the right is invoked, the prosecution has the burden of justifying the delay.⁷⁴ The prosecution must also show that the prescribed procedure for the conduct of preliminary investigation was followed; that the delay was inevitable considering the complexity of the case and the volume of evidence; and that the accused was not prejudiced by the delay.⁷⁵

While *Cagang* instructs courts to examine whether the Ombudsman followed the specified time periods for the conduct of preliminary investigation to determine if the delay is justified or inordinate,⁷⁶ the Court pointed out, in the cases of *Javier v. Sandiganbayan*⁷⁷ and *Catamco v. Sandiganbayan*,⁷⁸ that the Rules of the Office of the Ombudsman, Administrative Order No. 07, did not provide specific timelines.⁷⁹ Thus, in the absence of definite time periods, the Court was constrained then, to apply the timelines provided in the Rules of Court which find supplementary application to the proceedings before the Ombudsman.⁸⁰ Particularly, the Court noted that litigants should not be prejudiced by the Ombudsman's failure to provide time periods in its own Rules of Procedure.⁸¹ Accordingly, in those cases, the

71. *Id.* at 442.

72. *Id.*

73. *Id.*

74. *Id.* at 450.

75. *Cagang*, 875 SCRA at 450-51.

76. *See id.* at 450.

77. *Javier, et al. v. Sandiganbayan*, 873 Phil. 951 (2020).

78. *Catamco v. Sandiganbayan* Sixth Division, G.R. Nos. 243560-62 and 243261-63, 945 SCRA 548 (2020).

79. *See Javier, et al.*, 873 Phil. at 961-62.

80. Office of the Ombudsman, Ombudsman Rules of Procedure [Ombudsman Rules of Procedure], rule V, § 3 (Apr. 10, 1990). "Section 3. Rules of Court, application. — In all matters not provided in these rules, the Rules of Court shall apply in a supplementary character, or by analogy whenever practicable and convenient." *Id.*

81. *Cagang*, 875 SCRA at 442.

Court applied Section 3, Rule 112 of the Revised Rules of Criminal Procedure, which provides a 10-day period for the investigating prosecutor to determine whether there is sufficient ground to hold the respondent for trial.⁸²

In 2020, Ombudsman Samuel M. Martires issued Administrative Order No. 1, series of 2020 (A.O. No. 1-2020) dated 15 August 2020, prescribing the periods in the conduct of investigations by the Office of the Ombudsman.⁸³ AO No. 1-2020 prescribed time periods for the conduct of both fact-finding investigation and preliminary investigation.⁸⁴ As regards the period for the conduct of preliminary investigation, A.O. No. 1-2020 pertinently provides —

Section 8. Period for the conduct of Preliminary Investigation. [—] Unless otherwise provided for in a separate issuance, such as an Office Order creating a special panel of investigators/prosecutors and prescribing the period for completion of the preliminary investigation, the proceedings therein shall not exceed twelve months [(12)] for simple cases or twenty-four months (24) months for complex cases:

- (a) The complexity of the case shall be determined on the basis of factors such as, but not limited to[:] the number of respondents, the number of offenses charged, the volume of documents, the geographical coverage, and the amount of public funds involved[:];
- (b) Any delay incurred in the proceedings, whenever attributable to the respondent, shall suspend the running of the period for purposes of completing the preliminary investigation[:]; and
- (c) The period herein prescribed may be extended by written authority of the Ombudsman, or the Overall Deputy Ombudsman/Special Prosecutor/Deputy Ombudsman concerned for justifiable reasons, which extension shall not exceed one [] year.⁸⁵

For purposes of determining whether inordinate delay exists in the resolution of the preliminary investigation, the Court considered the delay and computed the period from the filing of complaints and the party's respective counter-affidavits, up to the time the Ombudsman issued the resolutions, or up to the time the Ombudsman filed the corresponding Informations before the Sandiganbayan.

82. *Catamco*, 945 SCRA at 558-59 & *Javier, et al.*, 873 Phil. at 962 (citing Ombudsman Rules of Procedure, rule V, § 3).

83. *See generally* A.O. No. 1, s. 2020, § 8.

84. *See generally id.*

85. *Id.*

In *Martinez III v. People*,⁸⁶ there was an inordinate delay of *nearly five years* from the time the petitioners therein were required to submit their counter-affidavits, up to the time the corresponding Informations were filed before the Sandiganbayan.⁸⁷ In *Javier v. Sandiganbayan*, there was an inordinate delay of *five years* from the filing of petitioners' counter-affidavits, up to the time the preliminary investigation was terminated, through the approval of the Ombudsman's resolution finding probable cause.⁸⁸ In *Catamco*, there was also an inordinate delay of *two years, 11 months, and 12 days* from the filing of the last counter-affidavit, up to the time the corresponding Informations were filed before the Sandiganbayan.⁸⁹ In *Perez v. Sandiganbayan*,⁹⁰ there was an inordinate delay of *one year, two months, and two days* from the filing of counter-affidavit, up to the issuance of the Ombudsman's resolution finding probable cause.⁹¹ In *Magaluna v. Office of the Ombudsman (Mindanao)*,⁹² there was inordinate delay of *five years* from the start of preliminary investigation, until the approval of the resolution for filing of the formal complaint in court.⁹³ In *Lerias v. Ombudsman*,⁹⁴ there was inordinate delay of *three years, nine months, and one day* from the investigation, until the filing of the information with the Sandiganbayan.⁹⁵ In *Mamba, Jr. v. Sandiganbayan*,⁹⁶ there was inordinate delay when it took the Ombudsman *five years, two months, and 15 days* to terminate the preliminary investigation without sufficient justification.⁹⁷ In *Perez v. Office*

86. *Martinez III v. People*, G.R. No. 232574, 921 SCRA 242 (2019).

87. *Id.* at 256.

88. *Javier, et al.*, 873 Phil. at 961.

89. *Catamco*, 945 SCRA at 560.

90. *Perez v. Sandiganbayan*, G.R. No. 245862, 960 SCRA 194 (2020).

91. *Id.* at 227.

92. *Magaluna v. Ombudsman*, G.R. No. 214747, July 18, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68594> (last accessed Oct. 31, 2023).

93. *Id.*

94. *Lerias v. Ombudsman*, G.R. No. 241776, Mar. 23, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68261> (last accessed Oct. 31, 2023).

95. *Id.*

96. *Mamba, Jr. v. Sandiganbayan*, G.R. Nos. 249343 & 249382, July 6, 2022, available at <https://sc.judiciary.gov.ph/wp-content/uploads/2022/11/249343.pdf> (last accessed Oct. 31, 2023).

97. *Id.* at 9.

of the Ombudsman,⁹⁸ there was inordinate delay as the Ombudsman failed to provide sufficient justification for the lapse of *10 years* from the filing of the complaints on 5 December 2005, until the issuance of the resolution on 15 December 2015.⁹⁹

All branches of government are duty bound to observe the constitutional safeguard against arbitrary delay. Accordingly, any party may demand expeditious action on the part of officials tasked to administer justice.¹⁰⁰ The analytical framework and guidelines in *Cagang* are not limited to cases before the regular courts but may also be invoked and applied before quasi-judicial agencies.

In *Ecleo v. Commission on Elections*,¹⁰¹ the COMELEC initiated the filing of a complaint against Ecleo in 2014. Yet, it was only in 2021, or after seven years, that the COMELEC issued a resolution directing the Law Department to file the appropriate Information against Ecleo for violation of the Omnibus Election Code.¹⁰² In deciding that the COMELEC committed inordinate delay, the Court noted that the COMELEC Rules of Procedure, particularly, Section 8, Rule 34, states that the preliminary investigation must be terminated within 20 days after receipt of the counter-affidavits and other evidence of the respondents, with a resolution issued within five days thereafter.¹⁰³

According to the Court, in addition to the flagrant violation of its own rules of procedure, the COMELEC failed to establish that the issue of election overspending was complex or intricate, as it can be resolved through a simple mathematical equation, and does not even need the examination of voluminous records.¹⁰⁴ The Court also emphasized that since the COMELEC, itself, *motu proprio* filed a complaint against Ecleo, it should have been more circumspect in ensuring the prompt prosecution of election

98. *Perez v. Office of the Ombudsman*, G.R. Nos. 225568-70.

99. *Id.*

100. *Magante*, 836 Phil. at 1119 (citing *Lopez, Jr.*, 364 SCRA at 578 (citing *Cadalin*, 238 SCRA at 765 (1994))).

101. *Ecleo v. Commission on Elections*, G.R. No. 263061, Jan. 10, 2023, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68694> (last accessed Oct. 31, 2023).

102. *Id.*

103. *Id.*

104. *Id.*

offenses.¹⁰⁵ Consequently, the Court dismissed the complaint filed against Ecleo for the violation of his right to speedy disposition of his case.¹⁰⁶

The Court reached a similar conclusion on the existence of inordinate delay in *Peñas v. Commission on Elections*.¹⁰⁷ According to the Court, the delay was unexplainable, considering that the case only involved one respondent, and the issue was neither complex nor intricate which would require review of voluminous records.¹⁰⁸ The Court also noted that the sole issue to be resolved was whether petitioner exceeded the prescribed campaign expenditure limit, which could be determined by a simple mathematical computation.¹⁰⁹ Hence, the Court dismissed the complaint against Peñas on the ground of inordinate delay.¹¹⁰

IV. CAUSE OF THE DELAY

In resolving cases where the right to speedy disposition or speedy trial is invoked, the Court not only calculated the length of the delay, but also examined the specific reasons for it, assessing whether these grounds are valid and justifiable.¹¹¹ As declared in *Cagang*, the prosecution must be able to prove that it adhered to established procedures and that the delay was warranted due to the complexity of the case or the substantial amount of evidence to be presented; otherwise, the case will be dismissed for inordinate delay.¹¹²

In *Javier*, the Court found that the Sandiganbayan gravely abused its discretion by accepting the prosecution's bare assertions that the delay was justified since the case had voluminous records, without presenting any proof or details regarding the extent of those records.¹¹³ Mere allegation that the case involves substantial amount of money, intricate transactions, and numerous

105. *Id.*

106. *Id.*

107. *Peñas v. Commission on Elections*, UDK-16915, Feb. 15, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67912> (last accessed Oct. 31, 2023).

108. *Id.*

109. *Id.*

110. *Id.*

111. See generally *Cagang*, 875 SCRA 374.

112. *Id.* at 443.

113. *Javier, et al.*, 873 Phil. 962.

parties requiring review, along with a change in administration at the Ombudsman without proof, is insufficient to justify delay.¹¹⁴

In *Perez*, the Court noted that while it is cognizant of the constraints in the Ombudsman's resources which often causes institutional delays, this should not be a "blanket authority for the Ombudsman's non-observance of the periods provided for preliminary investigation."¹¹⁵ The prosecution must still prove that the complexity of the issues and the voluminousness of evidence made the delay unavoidable.¹¹⁶ The prosecution's heavy workload and the thorough review required for each case do not constitute valid justifications for the Ombudsman's delay in its investigation.¹¹⁷

In *Magaluna*, the Court considered the Ombudsman's excuse — that the delay was due to voluminous number of cases handled by the investigator officer — untenable, as there was no evidence of a steady stream of cases or a heavy workload.¹¹⁸ The Court also noted that the case involved the simple crime of falsification of document, which was not complex.¹¹⁹ Similarly, the Court found the Ombudsman's reasoning in *Lerias* — that the delay was due to the complexity of the case — unacceptable.¹²⁰ On the contrary, the Court noted that the case was straightforward, and did not require years of examination; the documents were readily accessible and did not require forensic examination or highly technical evaluation.¹²¹

The Court also rejected the Ombudsman's excuse in *People v. Sandiganbayan*,¹²² that the delay was due to the difficulty in locating some respondents.¹²³ According to the Court, the Ombudsman failed to identify these individuals and did not specify the diligent efforts made to locate

114. *Mamba, Jr.*, G.R. Nos. 249343 & 239382, at 8-9.

115. *Perez v. Sandiganbayan*, 960 SCRA at 229.

116. *Id.*

117. *Coscolluela*, 701 SCRA at 197.

118. *Magaluna*, G.R. No. 214747.

119. *Id.*

120. *Lerias*, G.R. No. 241776.

121. *Id.*

122. *People v. Sandiganbayan*, G.R. Nos. 233059-60, Feb. 16, 2022, available at <https://sc.judiciary.gov.ph/wp-content/uploads/2022/11/233059-60.pdf> (last accessed Oct. 31, 2023).

123. *Id.* at 13.

them.¹²⁴ The Court also questioned the Ombudsman's failure to proceed with the investigation even without the respondents' counter-affidavits, considering that its own Rules of Procedure allow the resolution of complaints on the basis of the records, in case respondents could not be served with orders.

As the Court noted in *Lorenzo v. Sandiganbayan*,¹²⁵ institutional delay alone does not justify the delayed resolution of the preliminary investigation against an accused.¹²⁶ As when parties request for additional time to comply with the court's directive, or for the admission of a belatedly filed pleading, the Court does not accept the mere excuse of heavy workload on the part of the counsel as sufficient justification.¹²⁷

In *Magdaet v. Sandiganbayan*,¹²⁸ the Court rejected the excuse that delay was due to the political episode that resulted in the disruption of the hierarchy within the Ombudsman.¹²⁹ The Court added that the Ombudsman failed to sufficiently justify the lapse of eight years, nine months, and 19 days to conclude its investigation, and the one year, two months, and 20 days to file the Information before the Sandiganbayan.¹³⁰ Consequently, the criminal charges against her were dismissed.¹³¹

In instances, however, where the accused caused the delay, the Court has been consistent that "delay of his own making cannot be oppressive to him."¹³² In *Dela Rosa v. Court of Appeals*,¹³³ the Court declared that the right was not violated, as the delays were mainly due to petitioner's fault in failing to secure services of counsel, which led to several postponements of the trial dates.¹³⁴

124. *Id.*

125. *Lorenzo v. Sandiganbayan*, G.R. Nos. 242506-10, Sept. 14, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68542> (last accessed Oct. 31, 2023).

126. *Id.*

127. *Id.* (citing *Perez v. Sandiganbayan*, 960 SCRA at 229) (citing *Adtel, Inc. v. Valdez*, G.R. No. 189942, 836 SCRA 57, 67-68 (2017)).

128. *Magdaet v. Sandiganbayan*, G.R. Nos. 230869-70, 954 SCRA 327 (2020).

129. *Id.* at 338.

130. *Id.*

131. *Id.* at 339.

132. *Medina vs. Orozco, Jr.*, G.R. No. L-26723, 18 SCRA 1168, 1172 (1966).

133. *Dela Rosa v. Court of Appeals*, G.R. No. 116945, 253 SCRA 499 (1996).

134. *Id.* at 505-06.

In *Mendoza-Ong v. Sandiganbayan*,¹³⁵ the Court held that the right was not violated, as the accused herself contributed to the delay because of her refusal to provide documents and information, despite orders from the Court.¹³⁶ Also, in *Domondon v. Sandiganbayan*,¹³⁷ the Court held that the right was not violated because the postponements were caused by numerous motions or petitions filed by the accused themselves.¹³⁸ In *Mamansual v. Sandiganbayan*,¹³⁹ the Court did not believe the petitioner's claim of inordinate delay as this was inconsistent with their requests to have the cases re-investigated, referred to special audit, and even moved for the suspension of the cases, which showed their willingness to prolong the proceedings.¹⁴⁰

With respect to cases arising from or connected with the Fertilizer Fund Scam, the Court clarified that the mere fact that the case is part of the so-called scam is not, by itself, proof of the complexity of the case to justify delay.¹⁴¹

In *Dorado v. Sandiganbayan*,¹⁴² the Ombudsman took five years, three months, and 17 days to complete the preliminary investigation prior to the filing of the Informations in court.¹⁴³ The prosecution tried to justify the delay by claiming that the case arose from the fertilizer scam, whose nature and complexity necessitated careful review and scrutiny.¹⁴⁴ In resolving the case, the Court cited *Martinez III*, where the Court held —

The representation by the OSG that the Office of the Ombudsman had investigated the present case in conjunction with the other Fertilizer Fund scam cases did not sufficiently justify the close to five years spent in conducting the preliminary investigation. There was no allegation, to start with, that the petitioners had conspired with those involved in the other so-called Fertilizer Fund scam cases, which might have explained the long period necessary for the preliminary examination. The delay was really

135. *Mendoza-Ong v. Sandiganbayan*, G.R. Nos. 146368-69, 440 SCRA 423, (2004).

136. *Id.* at 428.

137. *Domondon v. Sandiganbayan*, G.R. No. 166606, 476 SCRA 496 (2005).

138. *Id.* 506-07.

139. *Mamansual v. Sandiganbayan* (Fifth Division), G.R. Nos. 240378-84, 960 SCRA 272 (2020).

140. *Id.* at 287-88.

141. *People v. Sandiganbayan*, G.R. No. 239878.

142. *Dorado v. Sandiganbayan*, G.R. Nos. 244742-43, 244745, 244746, 245910-11, and 246677-78 (2022).

143. *Id.*

144. *Id.*

inordinate and oppressive[,] considering that the Informations ultimately filed against the petitioners did not appear to have resulted from a complex preliminary investigation that involved the review of voluminous documentary and other evidence.¹⁴⁵

In *Catamco*, which also involved the Fertilizer Fund Scam, the Court rejected the prosecution's claim of alleged complexity of the matter,¹⁴⁶ and explained —

Moreover, a perusal of the Ombudsman's Resolution and the Informations filed against petitioners shows that the issues in this case are simple, straightforward[,] and are easily determinable considering that only one transaction is involved. There was also no allegation that petitioners herein had conspired with those involved in the other so called 'Fertilizer Fund Scam' cases. In fact, the Ombudsman's primary findings that petitioners violated the Procurement Law and that the transaction was made with undue haste are mere reiterations of the audit findings and previous issuances of the COA. While a meticulous review and verification of documents may have been necessary[,] given the number of respondents in this case, a protracted investigation of more than two [] years from the time the last counter-affidavit was filed is still quite unreasonable especially considering that, at the end of the day, the Ombudsman merely relied on, and even adopted as its only facts, the audit findings and previous issuances of the COA. In this light, the Ombudsman's delay in the termination of the preliminary investigation against all respondents was clearly unjustified.¹⁴⁷

Accordingly, in the cases which arose from the Fertilizer Fund Scam, complexity alone is insufficient to justify the delay. As in the cases of *Catamco*, *Dorado*, *Martinez III*, and *Lorenzo*, the presence of the other circumstances, such as voluminous records or conspiracy with those involved in other related case must be established by the prosecution to justify the delay in the conduct of the preliminary investigation.¹⁴⁸

V. TIMELY ASSERTION OF THE RIGHT

One determining factor for the Court's dismissal of the petition in *Cagang* was the petitioner's failure to invoke his right to a speedy disposition of his case.¹⁴⁹

145. *Martinez III*, 921 SCRA at 252.

146. *Catamco*, 945 SCRA at 566-67.

147. *Id.*

148. See generally *Catamco*, 945 SCRA 548; *Dorado*, G.R. Nos. 244742-43, 244745, 244746, 245910-11, AND 246677-78, at 8; *Martinez et. al.*, 864 Phil. 86; & *Lorenzo*, G.R. Nos. 242506-10.

149. See *Cagang*, 945 SCRA at 445.

According to the Court, petitioner never invoked his right prior to the filing of the Information, despite being aware of the pendency of the preliminary investigation being conducted against him.¹⁵⁰ Applying the previous rulings in *Alvizo v. Sandiganbayan*¹⁵¹ and *Dela Peña v. Sandiganbayan*,¹⁵² the Court ruled that failure to invoke the right to speedy disposition of cases, even when the defendant has already suffered or will be suffering the consequences of the delay, constitutes a waiver of such right.¹⁵³

A consequence of the *Cagang* ruling is that a defendant, upon becoming aware of a preliminary investigation conducted against him, must timely invoke their right prior to the filing of the Information in the Court — specifically, during the conduct of the investigation. Otherwise, the defendant will be deemed to have acquiesced to the delay.

The importance of the defendant's timely assertion of his constitutional right as a factor in the *Barker* balancing test was touched upon by the Court in much earlier cases — even prior to *Cagang*. For instance, in *Tilendo v. Ombudsman*,¹⁵⁴ the Court bore in mind the lack of any overt act on the defendant's part, such as the filing of a motion for early resolution to accelerate the disposition of the investigation.¹⁵⁵ The same doctrine was invoked in the cases of *Guerrero v. Court of Appeals*¹⁵⁶ and *Bernat v. Sandiganbayan*.¹⁵⁷

In *Coscolluela* and subsequent cases, however, the Court seems to favor the doctrine that the burden to expedite cases to ensure compliance with the fundamental rights of an accused rests with the State. Citing *Duterte v. Sandiganbayan*,¹⁵⁸ the Court clarified that a defendant is not obligated to follow-up on the prosecution of their case.¹⁵⁹ Instead, it is the prosecution's responsibility to fulfill its mandate by acting promptly on complaints.¹⁶⁰

150. *Id.*

151. *Alvizo v. Sandiganbayan*, G.R. No. 101689, 220 SCRA 55 (1993).

152. *Dela Peña*, 360 SCRA 478 (2001).

153. *See Alvizo*, 220 SCRA at 64 & *Dela Peña*, 360 SCRA at 487-88.

154. *Tilendo v. Ombudsman*, G.R. No. 165975, 533 SCRA 331 (2007).

155. *Id.* at 344.

156. *See Guerrero v. Court of Appeals*, G.R. No. 107211, 257 SCRA 703, 715-16 (1996).

157. *See Bernat v. Sandiganbayan*, G.R. No. 158018, 428 SCRA 787, 790-91 (2004).

158. *Duterte v. Sandiganbayan*, G.R. No. 130191, 289 SCRA 721 (1998).

159. *Coscolluela*, 701 SCRA at 198-99 (citing *Duterte*, 289 SCRA at 744).

160. *Coscolluela*, 701 SCRA at 199.

The same ruling was adopted in several cases decided in 2016, prior to *Cagang*. In *People v. Sandiganbayan*, the Court disagreed with the Ombudsman when the latter invoked the respondents' failure to take any steps to expedite the resolution of the case.¹⁶¹ Citing *Cervantes v. Sandiganbayan*,¹⁶² the Court reiterated the prosecution's duty to expedite the prosecution of the case.¹⁶³

In *Almeda v. Ombudsman*,¹⁶⁴ a protracted investigation took as long as 11 years to resolve.¹⁶⁵ The Court emphasized that the prosecutor has the duty to resolve the complaint promptly, regardless of whether the respondent objects to the delay, if such delay is not directly attributable to him.¹⁶⁶

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. For this reason, a balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on *ad hoc* basis.

Regarding delays, it may be said that it is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire. These principles should apply to respondents in other administrative or quasi-judicial proceedings as well. It must also be remembered that generally, respondents in preliminary investigation proceedings are not required to follow up on their cases; it is the State's duty to expedite the same within the bounds of reasonable timeliness.

A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the (respondent) did not object to the delay[,] or that the delay was with his acquiescence, provided that it was not due to causes directly attributable to him. Failure or inaction may not have been deliberately intended, yet unjustified delay[,] nonetheless[,] causes

161. *Id.* at 47.

162. *Id.* at 48 (citing *Cervantes v. Sandiganbayan*, G.R. No. 108595, 307 SCRA 149, 155 (1999)).

163. *Id.*

164. *Almeda v. Office of the Ombudsman (Mindanao)*, G.R. No. 204267, 798 SCRA 131 (2016).

165. *Id.* at 146.

166. *Id.* at 145 (citing *Coscolluela*, 701 SCRA at 155).

just as much vexation and oppression. Indeed, delay prejudices the accused or respondent — and the State just the same.¹⁶⁷

Taking the above pronouncements in mind, the Court found it inconsequential that the defendant filed written manifestations seeking the immediate resolution of the investigation almost 10 years after its commencement since, as a rule, she was not required to follow-up on her case.¹⁶⁸ Hence, her acts cannot be considered a late invocation of her right that amounts to a waiver of the same.¹⁶⁹

This ruling was also invoked in *Inocentes v. People*,¹⁷⁰ notwithstanding the fact that the petitioner appeared to have only invoked his right once the Information was lodged before the Sandiganbayan, and not during the investigation itself.¹⁷¹

In *Remulla v. Sandiganbayan*,¹⁷² the Court had the opportunity to harmonize the two seemingly opposing stances when the Ombudsman invoked the earlier cases of *Tilendo*, *Guerrero*, *Bernat*, and *Tello*, in arguing that the accused is mandated to actively assert his right to a speedy disposition of his case.¹⁷³ The Court clarified that in this set of cases, other factors in the balancing test were considered, and the issue was not resolved solely on the basis of the defendants' non-assertion of their right.¹⁷⁴ Particularly, the Court pointed out that the prosecution was able to justify the reason for the delay in those cases invoked by the Ombudsman.¹⁷⁵

On the other hand, the Court noted that in *Cervantes*, *Inocentes*, and *Coscolluela*, the protracted nature of the investigations involved were not sufficiently and adequately explained. In other words, there is no conflicting doctrine between the two sets of cases since, as explained by the Court —

167. *Id.* at 144-45 (citing *Barker*, 407 U.S. at 527 & *Coscolluela*, 701 SCRA at 155).

168. *Id.* at 147.

169. *Id.*

170. *Inocentes*, 796 SCRA 34 (2016).

171. *Id.* at 53.

172. *Remulla v. Sandiganbayan*, et al., G.R. No. 218040, Apr. 17, 2017, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63005> (last accessed Oct. 31, 2023).

173. *See generally id.*

174. *See id.*

175. *Id.*

[T]here is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court[,] in the second set of cases[,] took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

Accordingly, both sets of cases only show that a balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.¹⁷⁶

In similarly ruling that the State failed to defend the nine-year delay in the proceedings, the Court ruled that the prosecution's inaction far outweighs the petitioner's lack of objection.¹⁷⁷ Further, the Court reiterated the finding that an accused has no corollary duty to act and inquire upon the status of her case.¹⁷⁸ To this end, the Court in *Remulla* declared —

[T]here is no constitutional or legal provision which states that it is mandatory for the accused to follow up his case before his right to its speedy disposition can be recognized. To rule otherwise would promote judicial legislation[,] where the Court would provide a compulsory requisite not specified by the constitutional provision. It simply cannot be done, thus, the *ad hoc* characteristic of the balancing test must be upheld.¹⁷⁹

On the other hand, in its survey of prior jurisprudence regarding the right to a speedy disposition of cases, *Cagang* makes a clear distinction. Affirming *Alvizo* and *Dela Peña*, the ruling states that the non-assertion of the right may be construed as a waiver or acquiescence by the accused, the Court further notes that the acquiescence is “premised on the presumption that the accused was fully aware that the preliminary investigation has not yet terminated despite a considerable length of time.”¹⁸⁰ To the Court, this is what sets the cases of *Duterte* and *Coscolluela* apart from the other cases.¹⁸¹ The defendants

176. *Id.*

177. *Id.*

178. *Remulla*, G.R. No. 218040.

179. *Id.*

180. *Cagang*, 875 SCRA at 439.

181. *Id.*

therein were unaware of the pendency of the investigation against them; hence, they could not have urged the speedy resolution of their case.¹⁸²

While it is clear that an *ad hoc* approach should be taken for each instance of inordinate delay, *Cagang* appears to have fortified the importance of following up on a pending investigation to determine whether an accused has waived his constitutional right, as long as the defendant is aware of its pendency.

The Court, however, has taken a different turn in recent cases, and clarified what constitutes a timely assertion of the right to speedy disposition of cases, in line with the ruling in *Inocentes*. In *Javier, Perez, and Dorado*, the Court repeatedly held that invoking the right to a speedy disposition in a motion to quash or motion to dismiss upon the filing of the Information, constitutes a timely assertion of their right to speedy disposition of cases.¹⁸³

In *Salcedo v. Sandiganbayan*,¹⁸⁴ the Court stressed the importance of giving strong evidentiary value to when and how a defendant asserts his right.¹⁸⁵ Citing *Cagang*, as well as the earlier cases of *Ombudsman v. Jurado*¹⁸⁶ and *Perez v. People*, the Court discussed —

Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Every accused in a criminal case has the intense desire to seek an acquittal, or at least, to see the swift end of the accusation against him. To this end, it is natural for him to exert every and all efforts available[,] and within his capacity[,] in order to resist prosecution. Here, Salcedo's inaction gives the impression that the supervening delay seems to have been without his

182. *Id.*

183. *Javier, et al.*, 873 Phil. at 967; *Perez*, 960 SCRA at 213; & *Dorado*, G.R. Nos. G.R. Nos. 244742-43, 244745, 244746, 245910-11, and 246677-78, at 9.

184. *Salcedo v. Third Division of the Sandiganbayan*, G.R. No. 223869-960, 893 SCRA 25 (2019).

185. *Id.* at 46.

186. *Ombudsman v. Jurado*, G.R. No. 154155, 561 SCRA 135 (2008).

objection, and hence, it was implied with his acquiescence. Indeed, Salcedo's silence may be considered as a waiver of his right.¹⁸⁷

In concluding that there is no violation on the prosecution's part, the Court found that the defendant had effectively slept on his constitutional right, as he had never sought to expedite the investigation by filing a motion for early resolution.¹⁸⁸ In this case, the defendant only invoked his right when seeking reconsideration of the lower court's denial of his motion to quash the Information filed against him.¹⁸⁹ It is noteworthy that the defendant failed to invoke this right when he was the one who originally filed the motion to quash the Information.

In *Alarilla v. Sandiganbayan*,¹⁹⁰ the Court explained that persons with pending cases before the Ombudsman have no legitimate avenues to assert their right to speedy disposition of cases because the Ombudsman's Rules of Procedure prohibits the filing of motions to dismiss, except for lack of jurisdiction.¹⁹¹ Thus, it is sufficient that the right is timely asserted after the conduct of preliminary investigation.¹⁹²

Finally, the preceding doctrines were reiterated in the Court's ruling in *Lorenzo* —

It should be emphasized that the filing of a motion for early resolution is not a mandatory pleading during a preliminary investigation. With or without the prodding of the accused, there are determined periods for the termination of the preliminary investigation.¹⁹³

Accordingly, petitioners' failure to prod the Ombudsman to perform its positive duty and mandate should not, as it simply cannot, be deemed as acquiescence to an unjustified delay. It is the Ombudsman which is mandated by no less than the Constitution, as enforced by The Ombudsman Act of 1989, to act promptly on complaints filed before it against public officials and government employees. Verily, mere inaction on the part of the accused

187. *Salcedo*, 893 SCRA at 46-47 (citing *Jurado*, 561 SCRA at 150).

188. *Id.* at 46.

189. *Id.*

190. *Alarilla v. Sandiganbayan*, G.R. No. 240124, Aug. 31, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68530> (last accessed Oct. 31, 2023).

191. *Id.*

192. See also *id.* & *Javier, et al.*, 873 Phil. at 961.

193. *Lorenzo*, G.R. Nos. 242506-10, at 17.

without more, does not qualify as an intelligent waiver of their constitutionally guaranteed right to the speedy disposition of cases.

Notably, cases applying *Cagang* have considered the filing of a motion for reconsideration of the Ombudsman Resolution finding probable cause as a timely invocation of the right to speedy disposition of cases. [...] Above all, petitioners moved for the quashal of the Informations filed against them at the earliest opportunity, which is after the filing of the Informations and prior to arraignment. The timely filing of their motions to quash — where they invoked their right to speedy disposition of cases — undoubtedly contradicts any implied intention on the [petitioners] as to the waiver of their constitutional right to the speedy disposition of cases.¹⁹⁴

VI. PREJUDICE SUFFERED BY ACCUSED

Prejudice to the accused was defined in *Corpuz v. Sandiganbayan*¹⁹⁵ —

Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall[,] accurately[,] the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty[,] and by living under a cloud of anxiety, suspicion[,] and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.¹⁹⁶

Coscolluela further explains —

Let it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice[,] but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its ‘salutary objective’ is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by

194. *Id.* at 18.

195. *Corpuz*, 442 SCRA 294.

196. *Id.* at 313 (citing *United States v. Marion*, 92 S.Ct. 455, 463 (1971) (U.S.)).

the passage of time should be weighed against the State and in favor of the individual.¹⁹⁷

In practical terms, prejudice pertains to the parties' and their witnesses' ability to prepare a cogent case or defense; secure witnesses; and preserve honor and reputation, financial resources, memory, and evidence.¹⁹⁸ In *Inocentes*, the Court characterized prejudice as the inability of witnesses to recall, accurately, the events of the distant past.¹⁹⁹ Likewise, in *Torres*, the Court noted that the protracted delay deprives a litigant of the ability to adequately prepare, as he may no longer have any access to records or contact with any witness in support of his defense.²⁰⁰

In *Peñas*, the Court described prejudice suffered by elected officials who are subjected to prolonged litigation, as follows —

The unjustified delay caused petitioner mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury, which naturally attend every criminal prosecution. The pendency of the investigation unduly affected his reputation, an invaluable asset for an elected official like him. The ascription of an offense to him eroded the confidence reposed on him by the people of Digos City, all the more so because he was a 'first time' mayor[,] from whom much was expected by his constituents and adversaries. Too, the prolonged investigation impaired his defense in the event of a full-blown trial, for witnesses may no longer be available to testify for him, or documentary evidence[,] such as receipts[,] may have gotten lost along the way.²⁰¹

In *Pacuribot v. Sandiganbayan*,²⁰² the Court ruled that an accused may still be prejudiced by delays even if there is no showing that he was deprived of any defense, as he "had to face the difficulties and anxieties embedded in the experience of an unduly prolonged State inquiry into his supposed guilt."²⁰³ Even if an accused was not imprisoned or subjected to trial, the Court still

197. *Coscolluela*, 701 SCRA at 199 (citing *Corpuz*, 442 SCRA at 312).

198. *Almeda*, 798 SCRA at 147.

199. *Inocentes*, 796 SCRA at 55.

200. *Torres*, 805 SCRA at 470.

201. *Peñas*, UDK-16915.

202. *Pacuribot v. Sandiganbayan*, G.R. Nos. 247414-18, July 6, 2022, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/68457> (last accessed Oct. 31, 2023).

203. *Id.*

recognized prejudice to have been aggravated by the fact that “he has lived under a cloud of anxiety by virtue of the delay in the resolution of his case.”²⁰⁴

The consequences of delay, however, do not only affect the accused; the prosecution of the case also becomes increasingly challenging as time passes.²⁰⁵ For the government to sustain its right to try the accused despite delay, it must establish that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and that there was no more delay than is reasonably attributable to the ordinary processes of justice.²⁰⁶

Equally significant, it is not enough for an accused to allege that he suffered prejudice as a result of the delay. Prejudice cannot be based on ambiguous claims and vague assertions, but must have conclusive and factual basis.²⁰⁷ As the Court held in *Alvizo*, prosecution of criminal cases should not be “forested[,] either by conjectural supplications of prejudice or by dubious invocations of constitutional rights.”²⁰⁸

In *Daep*, the Court rejected the petitioners’ claim of undue prejudice, finding it to be self-serving and unsubstantiated. The Court pointed out that the petitioners failed to identify the supposed witnesses who were no longer available to testify, the reasons for their unavailability, the documents which can no longer be presented, and how these would have helped the defense.²⁰⁹ The Court concluded that the claimed undue prejudice was more imaginary than real.²¹⁰

While anxiety typically accompanies a criminal charge, there must be evidence that this anxiety was of such nature and severity that it became oppressive, unnecessary, and notoriously disproportionate to the criminal charges to justify the dismissal of the charges on the ground of inordinate delay.²¹¹

204. *Torres*, 805 SCRA at 473.

205. *Cagang*, 875 SCRA at 444.

206. *Corpuz*, 442 SCRA at 318.

207. *Republic v. Sandiganbayan*, G.R. No. 231144, Feb. 19, 2020, available at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/17/66277> (last accessed Oct. 31, 2023).

208. *Alvizo*, 220 SCRA at 65.

209. *Daep*, G.R. No. 244649.

210. *Id.*

211. *Salcedo*, 893 SCRA at 51.

VII. CONCLUSION

The delay in the administration of justice necessarily undermines the public's confidence in the justice system. While there are recognized constraints in the Ombudsman's and State's resources that hinder their ability to resolve cases promptly, these should not serve as a convenient excuse for the delays in the resolution of the preliminary investigation against an accused. The Court in the case of *Cagang* attempted to strike a balance between the State's right to prosecute and a litigant's right to speedy trial and speedy disposition of his case by providing an analytical framework to determine the existence of inordinate delay.²¹²

The recent decisions after *Cagang* offer a more detailed criteria of how the *Cagang* guideposts should be interpreted and applied, as follows:

First. Fact-finding investigations are no longer included in the computation of delay. A case is deemed to have commenced only upon the filing of the formal complaint and the subsequent conduct of the preliminary investigation.²¹³

Second. The defense carries burden to prove delay if the right is invoked within the period provided by the Court, the Rules of Court, or the Office of the Ombudsman for the conduct of preliminary investigation.²¹⁴ The prosecution bears the burden of justifying delay in case delay occurs beyond the timelines, and the right is invoked.²¹⁵

Third. The period of delay should be computed from the filing of the complaint, until the Ombudsman's issuance of the resolution or the filing of the corresponding Information with the Sandiganbayan.²¹⁶

Fourth. Courts are also mandated to determine the specific reasons of the delay.²¹⁷ The Ombudsman or the prosecution must prove and substantiate that the delay was caused by the complexity of the case, nature of the transaction,

212. See generally *Cagang*, 875 SCRA at 374.

213. *Id.* at 436.

214. *Id.* at 450.

215. *Id.*

216. *Id.* at 435-36.

217. See *id.* at 458.

and voluminousness of the evidence and records.²¹⁸ If the delay is attributable to the accused or petitioner, the right is not considered violated.²¹⁹

Fifth. The right to speedy disposition of cases must be raised at the earliest opportunity.²²⁰ This can be done by filing a motion to quash or motion to dismiss upon the filing of the Information before the courts. Parties are not required to follow-up the resolution of their cases with the Ombudsman during the conduct of the preliminary investigation.²²¹

Sixth. The accused must establish and substantiate, with factual basis, the prejudice suffered by reason of the delay.²²² For instance, the accused must specifically identify the supposed witnesses who were no longer available to testify, the documents which can no longer be presented, and how these would have helped the defense.²²³

Finally, in resolving cases where the constitutional rights to speedy disposition of cases and speedy trial are invoked, judges and justices must be mindful of the Court's pronouncement in *Malones* —

Indeed, courts should not brook undue delays in the ventilation and determination of causes. It should be their constant effort to assure that litigations are prosecuted and resolved with dispatch. The speedy disposition of cases is the obligation and goal[,] not only of the judicial and quasi-judicial bodies[,] but of the citizenry for whom this guarantee is made. The Government should be the last to set an example of delay and oppression in the administration of justice.²²⁴

218. *See Caqang*, 875 SCRA at 443.

219. *See id.* at 442.

220. *Id.* at 451

221. *See id.* at 483.

222. *Id.* at 445-56.

223. *See id.* at 473.

224. *Malones*, G.R. Nos. 226887-88.