G.R. Nos. 212761-62 (*Senator Jose "Jinggoy" P. Ejercito Estrada v. Office of the Ombudsman, et al.*); G.R. Nos. 213473-74 (*John Raymund de Asis v. Conchita Carpio Morales, etc., et al.*); and G.R. Nos. 213538-39 (*Janet Lim Napoles v. Conchita Carpio Morales, etc., et al.*).

Promulgated:

July 31, 2018

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It is true that the Constitution allows the exercise of the power of judicial review in cases where grave abuse of discretion exists. In this case, however, a petition for *certiorari* before this Court is not the "plain, speedy, and adequate remedy in the ordinary course of law" because, as discussed above, the trial court already acquired jurisdiction over the case. As such, the proper remedy for petitioners was to proceed to trial and present their evidence.[5]

The foregoing notwithstanding, I find it necessary to express my views on the impropriety of some of the indictments against petitioner Estrada. He should not have been charged separately for violations of Section 3(e) of R.A. No. 3019 for reasons discussed below.

Section 2 of R.A. No. 7080 provides as follows:

> ***Definition of the Crime of Plunder; Penalties*** - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth **through a combination or series of overt or criminal acts as described in Section 1(d) hereof**, in the aggregate amount or total value of at least Seventy-five million pesos (P75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State.[6]

Section 1(d) of the same law defines "ill-gotten wealth" as any asset, property, business enterprise or material possession of any person within the purview of Section 2 thereof, acquired by him, directly or indirectly, through dummies, nominees, agents, subordinates, and/or business associates by any combination or series of means or similar schemes enumerated therein.

Based on the above provisions, the elements of plunder are:

> 1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

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5 *Id.*

6 Emphasis supplied.

2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

> (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
>
> (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;
>
> (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries;
>
> (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
>
> (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
>
> (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[7]

On the other hand, Section 3(e) of R.A. No. 3019 reads:

> Section 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x

[7] *Estrada v. Sandiganbayan*, 421 Phil. 290, 343-344 (2001); *Enrile v. People, et al.*, 766 Phil. 75, 115-116 (2015).

> (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 elements of the above-quoted Section 3(e) are:

> (1) the offender is a public officer or a private person charged in conspiracy with the public officer;
>
> (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
>
> (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
>
> (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[8]

Under the Complaint filed by the Field Investigation Office (*FIO*) of the Office of the Ombudsman, petitioner Estrada, among others, was charged with violation of Section 3(e) of R.A. No. 3019 and plunder for supposedly giving unwarranted benefits to Napoles and to several NGOs that she organized, thereby causing injury to the government in an amount exceeding ₱278,000,000.00.

In the Complaint filed by the NBI, petitioner Estrada was charged with plunder for having allegedly acquired and/or received on various occasions, and in conspiracy with his co-respondents, commissions, kickbacks, or rebates from projects financed by his PDAF.

Under the given facts of the present case, had petitioner Estrada not committed the acts constituting alleged violations of Section 3(e) of R.A. No. 3019, would he have been charged with plunder? In other words, is it possible for petitioner Estrada to commit plunder in the instant case without having committed the acts which were used as bases to charge him with violation of Section 3(e) of R.A. No. 3019? I submit that it is not.

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[8] *Ampil v. The Honorable Office of the Ombudsman, et al.*, 715 Phil. 733, 755 (2013); *People v. The Honorable Sandiganbayan (4th Div.)*, 642 Phil. 640, 650 (2010).

These alleged various acts of giving unwarranted benefits to Napoles and various NGOs and of receiving commissions, kickbacks, or rebates are what comprises, precisely, what is defined under R.A. No. 7080 as a "combination or series of overt or criminal acts" which, when taken together, constitute the crime of plunder. In the instant case, the various acts constituting alleged violations of Section 3(e) of R.A. No. 3019, taken together, are predicate acts of plunder which should not be considered independent crimes for which petitioner Estrada should be separately indicted.

Predicate means "found" or "base."[9] Hence, by definition alone, the acts enumerated under Section 1(d) of R.A. No. 7080 are the bases or foundation for the commission of the crime of plunder, without which the said crime cannot be committed. Evidently, the acts allegedly committed by petitioner Estrada which were used as bases to charge him with several counts of violation of Section 3(e) of R.A. No. 3019 are part of the same series of acts used as grounds to indict him for plunder.

In *Estrada v. Sandiganbayan (Third Division)*,[10] this Court had the occasion to explain one of the primary reasons for the enactment of R.A. No. 7080, which is to avoid the mischief and folly of filing multiple informations against persons committing various crimes of malversation of public funds, bribery, extortion, theft and graft but, these offenses, nonetheless, make up a complex and manifold network of crimes constituting plunder which causes material damage to the nation's economy. This is clearly evident in the Explanatory Note to Senate Bill No. 733, to wit:

> Plunder, a term chosen from other equally apt terminologies like kleptocracy and economic treason, punishes the use of high office for personal enrichment, committed thru a series of acts done not in the public eye but in stealth and secrecy over a period of time, that may involve so many persons, here and abroad, and which touch so many states and territorial units. The acts and/or omissions sought to be penalized do not involve simple cases of malversation of public funds, bribery, extortion, theft and graft but constitute plunder of an entire nation resulting in material damage to the national economy. The above-described crime does not yet exist in Philippine statute books. Thus, the need to come up with a legislation as a safeguard against the possible recurrence of the depravities of the previous regime and as a deterrent to those with similar inclination to succumb to the corrupting influence of power.[11]

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9 Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1993, p. 1786; 72 C.J.S. 478.

10 427 Phil. 820 (2002).

11 *Estrada v. Sandiganbayan (Third Division), supra,* at 851-852.

Thus, to hold petitioner Estrada liable and indict him separately under a different law (R.A. No. 3019) for the same acts executed as a means of committing plunder would run afoul of the intent of R.A. No. 7080.

In view of the foregoing discussions, I vote to **DISMISS** the petitions for being **MOOT**.

DIOSDADO M. PERALTA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court