Submitted by the Committee on Good Government and Public Accountability on JUN 01 2021

Re: House Resolution No. 1197 introduced by Representative Rodante D. Marcoleta.

Informing the House of its Findings and Recommendations.

Sponsors: Chairperson Michael Edgar Y. Aglipay, Representative Rodante D. Marcoleta, and the members of the Committee on Good Government and Public Accountability.

Mr. Speaker:

The Committee on Good Government and Public Accountability to which was referred House Resolution No. 1197, entitled:

"RESOLUTION DIRECTING THE COMMITTEES ON HOUSING AND URBAN DEVELOPMENT AND GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE IMPLEMENTATION OF THE HOUSING PROJECT IN PUROK 6, LAM-AN OZAMIZ CITY, MISAMIS OCCIDENTAL, AND THE ALLEGED VIOLATIONS IN THE DEMOLITION OF HOUSES AND EVICTION OF RESIDENTS WHILE THE PHILIPPINES IS UNDER A STATE OF CALAMITY",

has considered the same and has the honor to submit to the House this attached report on its findings and recommendations.

Respectfully submitted:

MICHAEL EDGAR Y. AGLIPAY
Chairperson
Committee on Good Government and Public Accountability
THE HONORABLE SPEAKER
House of Representatives

PREFATORY STATEMENT

House Resolution No. 1197, introduced by Representative Rodante Marcoleta,
entitled:

"RESOLUTION DIRECTING THE COMMITTEES ON HOUSING AND URBAN DEVELOPMENT AND GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE IMPLEMENTATION OF THE HOUSING PROJECT IN PUROK 6, LAM-AN OZAMIZ CITY, MISAMIS OCCIDENTAL, AND THE ALLEGED VIOLATIONS IN THE DEMOLITION OF HOUSES AND EVICTION OF RESIDENTS WHILE THE PHILIPPINES IS UNDER A STATE OF CALAMITY"

was referred by the Committee on Rules, House of Representatives to the Committee on Housing and Urban Development on 9 December 2020. Subsequently however, on 18 January 2021, there was a change of referral to the Committee on Good Government and Public Accountability, which referral was duly received.

On 01 February 2021, pursuant to the Rules of Procedure Governing Proceedings Before the Committee on Good Government and Public Accountability, Committee Chairperson Michael Edgar Y. Aglipay, called on the Members of the Committee for a physical meeting and Zoom Video conference to conduct Preliminary Determination as provided under Rule 4, Section 2, of the rules. The sponsor of the resolution, Representative Rodante Marcoleta, presented the issues embodied in House Resolution No. 1197, and other parties-in-interest responded to queries of the members. Whereupon, by a majority vote of the members, there being a quorum, the Committee assumed jurisdiction over House Resolution No. 1197.

Forthwith, the Committee proceeded with its first hearing on the same day. The succeeding Committee deliberations were conducted through Zoom meeting, on 4 and 22 March 2021. The deliberation was terminated on 22 March 2021. The Committee members listened to the allegations and arguments of the sponsor of the Resolution first, while the answers and arguments of the concerned officials and other parties-in-interest were also given time. Then, the members raised questions and clarification during the
deliberations relevant to the issues raised on the subject resolution and on the statements from the resource persons.

Public officials from the city government of Ozamiz City, the Department of Public Works and Highways (DPWH), Department of Interior and Local Government (DILG), Department of Human Settlements and Urban Development (DHSUD) and the Office of the Court Administrator of the Supreme Court, and other concerned agencies and stakeholder were heard. The following resource persons participated during the public hearings, through physical attendance and Zoom video conference, to wit:

1) DPWH: Ms. Carol Lyn Abinales, former OIC District Engineer, 2nd DEO, Misamis Occidental, Tangub City; Engr. Cesar Hipona, Jr.; the incumbent District Engineer of the 2nd DEO Misamis Occidental; and Atty. Chiqui Tamala, Legal Officer of DPWH Region X;

2) DILG: Undersecretary Ricojudge Janvier Echiverri, Undersecretary for External and Legislative Affairs, DILG; Regional Director Arnel M. Agabe, CESO III, DILG Region X, Cagayan de Oro City;

3) National Housing Authority (NHA): Engr. Rolando Teves, Jr., Regional Manager, NHA, Misamis Oriental; and Atty. Carlo Quirap from NHA-Region X;

4) Presidential Commission for the Urban Poor (PCUP): Chairperson Alvin Feliciano; and Atty. Ferdinand Iman, Chief of Field Operations for Mindanao;

5) Local Government of Ozamiz City: Mayor Sancho Fernando “Ando” Oaminal; and City Administrator, Atty. Sam Norman Fuentes;

6) Bureau of Internal Revenue (BIR): RDO Mampay U. Pangcoga, RDO No. 100, Ozamiz City, Misamis Occidental;

7) Commission on Audit (COA): Regional Director Celso Vocal, Cagayan de Oro City;


9) Office of Court Administrator, Supreme Court: Atty Raul Villanueva, Deputy Court Administrator;

10) Judge Mary Faith Potoy-Montederamos, Regional Trial Court (RTC) Branch 35, Ozamiz City; Atty. Japlaarni Pasiol, Clerk of Court of RTC Branch 35; and Atty. Juliemie Guancog, Clerk of Court RTC Branch 15, both of Ozamiz City;


12) Presidential Commission for the Urban Poor (PCUP): Chairperson Alvin San Juan Feliciano; and Atty. Ferdinand Iman, Field Operations Division, Mindanao;

13) Mindanao Rock Corporation: Mr. Eric Lim, Proprietor; and

14) Alpha & Omega General Contractor & Development Corporation: Ms. Cezarah Rowena Discaya, President; and Mr. Alexander Lim.
STATEMENT OF FACTS

House Resolution No. 1197 asserted that the amount of Fifty Million Pesos (Php 50,000,000.00) was appropriated under Republic Act No. (RA) 11260, the General Appropriations Act (GAA) of 2019, to construct a multi-purpose building or housing project in Purok 6, Lam-an, Ozamiz City, Misamis Occidental (hereinafter referred to as the Housing Project). In addition to the funding from the National Government, construction for the Housing Project shall also be sourced from 20% of the Development Fund of the Local Government Unit (LGU) of Ozamiz City (hereinafter referred to as city government of Ozamiz City), by virtue of a Memorandum of Agreement between the city government and the Department of Public Works and Highways (DPWH).\(^1\)

Pursuant to the said Housing Project, on January 2020, Ozamiz City and the DPWH filed expropriation cases against affected residents of Purok 6, Lam-an, Ozamiz City who refused to leave the lands intended for the project site.\(^2\)

On 30 January 2020, the World Health Organization (WHO) declared the emergence of the novel corona virus outbreak (COVID-19) as a Public Health Emergency of International Concern (PHEIC), its highest level of alarm.\(^3\)

In the Philippines, a number of executive issuances and legislation have been signed into law to stem the ill effects of the health pandemic to the country’s population and economy.

On 08 March 2020, His Excellency, President Rodrigo R. Duterte signed Presidential Proclamation No. 922, "Declaring a State of Public Health Emergency throughout the Philippines", and on 16 March 2020, Presidential Proclamation No. 929, "Declaring a State of Calamity Throughout the Philippines due to Corona Virus Disease 2019", took effect for a period of six (6) months unless lifted or extended as circumstances may warrant.\(^4\)

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\(^1\) House Resolution No. 1197 as stated.
\(^2\) City of Ozamiz as represented by Mayor Sancho Fernando F. Oaminal vs. Elpidia Eriego Neri, et. al., Special Civil Case No. 01-20, RTC, 10\(^{th}\) Judicial Region, Branch 35, Ozamiz City
\(^3\) Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV) [who.int]
The rest of the governmental policies reflected the government’s objective to cushion the impact of the pandemic through fiscal incentives, ensuring the flow of essential goods and services, and safeguarding public health and general welfare of the population including its most vulnerable sectors.

On 24 March 2020, Republic Act No. 11469, or the Bayanihan to Heal As One Act (Bayanihan One Act) was signed by President Duterte.

On 2 April 2020, pursuant to the Bayanihan One Act, Secretary Eduardo M. Año of the Department of Interior and Local Government (DILG) issued Memorandum Circular No. 2020-068 (DILG Memorandum Circular), which enjoined concerned Local Government Units (LGUs) to postpone all demolition and eviction activities, until the State of Calamity, as cited in Presidential Proclamation No. 929, is lifted by the President.

House Resolution No. 1197 avers that despite the directive of the DILG under said Memorandum Circular, the city government of Ozamiz City and DPWH commenced the demolition of houses on 24 April 2020 to implement the subject Housing Project.

The Resolution also avers that there have been reports of non-compliance with the requisites and procedure for the execution of eviction or demolition orders, in contravention to Republic Act No. 7279, or the Urban Development and Housing Act of 1992 (UDHA), particularly on the requirement for a thirty (30) day notice prior to the date of eviction or demolition, adequate consultation on resettlement of affected families, among others.

Additionally, alleged harassment, violence, and abuse reportedly attended the subject demolition and eviction.

On 9 September 2021, Representative Marcoleta filed House Resolution No. 1197, that called for an investigation, in aid of legislation, to look into the violations in the implementation of the subject Housing Project, while the Philippines is under a State of Calamity, and to determine whether the provisions of the Bayanihan One Act, the UDHA, and other applicable laws are sufficient to preserve and protect the health, safety, and

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5 Memorandum Circular No. 2020-068. Subject, “Postponement of All Administrative Demolition and Eviction Activities During the Enhanced Community Quarantine and State of National Emergency”
welfare of the homeless, the underprivileged and vulnerable sectors of the society during and after the pandemic.

Acting on the referral to the Committee on Good Government and Public Accountability, Committee Chairperson, Representative Michael Edgar Y. Aglipay, called on the first meeting on 01 February 2021. Considering the sensitivity of the subject matter and the parties who may be affected by the conduct of the investigation, Chairperson Aglipay appealed for reasonableness and sobriety among the Members and resource persons in the course of the meetings.

Representative Marcoleta, as sponsor of the House Resolution No. 1197, stated that sometime in July 2020, he received several calls for assistance from some residents of Ozamiz City, Misamis Occidental regarding the demolition of their houses. As a partylist representative of the urban poor sector, Representative Marcoleta called several government officials from the DILG including Undersecretary Ricovide Echiverri since at the time, Secretary Eduardo M. Año was undergoing quarantine. He then asked Usec. Echiverri to confirm whether or not the demolition of the subject houses was accompanied by respective court orders or writ of demolition, to which Usec. Echiverri reportedly replied that no court orders were issued to authorize said demolition activities.

In addition, Representative Marcoleta emphasized that before resorting to expropriation of private property, other modes of land acquisition must have first been exhausted, such as land banking, land negotiation, donation, community mortgage, and the last being expropriation. And even when the government should resort to expropriation, he argued that the parcels of land belonging to small land owners should be exempted. He also elucidated that the buildings were constructed on private lands not owned by the city government of Ozamiz City, while the cluster project, located in Barangay Malaubang was erected on a public land, which is inalienable and not disposable. In January 2020, Representative Marcoleta also stated that Representative Henry Oaminal filed a House Bill that seeks to convert the subject land area [u1]into alienable and disposable. Further, he cited a report by the DPWH, particularly the Status of Contracts Report (Regular Infra Regional Implementation) as of January 31, 2020, which indicated that the completion rate for “Building 1” of the Housing Project was at 71.36%. According to Representative Marcoleta, this report is incredulous because construction was supposed to have only started in May 2020, or eight months thereafter. Representative Marcoleta said that when he sought clarification from the DPWH Central Office, they told him that the project engineer on site is the one in-charge of inputting the
update through an application called the Project and Contract Management Procedures and Application (PCMA).

Atty. Sam Norman Fuentes, City Administrator of Ozamiz City, also attended the first meeting to represent Mayor Sancho Fernando "Ando" Caminal. Atty. Fuentes narrated that the Housing Project referred to the construction of a multi-purpose building cluster, categorized as a national infrastructure project with the DPWH as the implementing agency. He also cited that the construction thereof is sanctioned under the RA 11260, or the 2019 GAA, where LGUs may be designated as implementing agency of nationally-funded projects. In consonance to the said GAA the multi-purpose building is chargeable against an authorized allotment indicated as "PPAFPPP 300103201439000PC" under the DPWH agency’s budget matrix Special Allotment Release Order (SARO). Here, the LGU, shall provide the land to be used as project site, while the DPWH shall implement the said project. In addition, the LGU shall negotiate with the residents and provide the latter with financial assistance and temporary relocation site, and file expropriation cases, as may be necessary.

Notably, Atty. Fuentes reasoned that the scope of the DILG Circular does not apply to the construction of the multi-purpose building because, according to him, it is only limited to administrative eviction and demolition activities, under Section 28 (a) and (b) of the Urban Development Housing Act (UDHA), and Section 4 (s) of the Bayanihan One Act. He further discussed that under UDHA, funding for urban development and housing program shall come from the sources listed under its Section 42, where none pertains to funding from the GAA such as in the case of the subject Housing Project. He also emphasized that when the DILG Circular was issued on 02 April 2020, Ozamiz City was under a General Community Quarantine (GCQ), and not under the Enhanced Community Quarantine (ECQ), as referred to under the Bayanihan One Act.

In addition, Atty. Fuentes contended that there was no administrative eviction because the dismantling of the structures in Barangay Lam-an was voluntarily undertaken by the residents. After the residents dismantled the structures, the DPWH, through the contractor began its clearing operations on the vacated portions of the property. Likewise, Atty. Fuentes stated that a court order eviction is the result of examination and appreciation by the RTC of the evidence presented before it. Here, it is the RTC that granted the application for writ of possession against the litigants. He cited that the LGU was not the party who caused the demolition or eviction. Atty. Fuentes argued that since the DILG Circular did not proscribe eviction or demolition, the city
government of Ozamiz City was therefore not in violation of said DILG Circular. Moreover, he argued that granting the alleged eviction and demolition are classified as administrative in nature, the same are not in violation of the DILG Circular because paragraph 5.2 of the said circular provides that “dwellings” under Section 28 (b) of the UDHA may be subject of eviction and demolition provided these relate to the general objectives of the Bayanihan One Act, and that the city government of Ozamiz City shall provide shelter for those affected.

Atty. Fuentes also belied the allegation that there was double funding to the Housing Project, citing that the first building (cluster) was funded under the GAA, while the second building was funded by the city government of Ozamiz City.

In its Position Paper, the city government of Ozamiz City posited that the Housing Project is an “on-site development project” in line with the initiatives of the national government to solve the current housing crisis. The DPWH, in coordination with the city government of Ozamiz City, identified the property site as the most suitable location for the Housing Project, which aimed to provide decent and free housing to the residents of Purok 6, Barangay Lam-an. The city government of Ozamiz City shall provide the land, while DPWH shall implement the Housing Project.

The Housing Project

The subject Housing Project is a national infrastructure project that involved the construction of a multi-purpose building cluster by the DPWH as the contracting agency in coordination with the city government of Ozamiz City. It is sanctioned under the GAA for 2019 where LGUs may be designated as the implementing agency of nationally funded projects. In keeping with the 2019 GAA, the multi-purpose building cluster is chargeable against an authorized allotment, particularly PPA-FPP-30010321439000-PC under the DPWH budget matrix SARO. The city government of Ozamiz City shall provide the land while the DPWH shall implement the project. In this regard, the city government of Ozamiz City’s role was limited to negotiating with the residents, providing them assistance and a temporary relocation site, filing of expropriation cases against those who rejected the city’s offer, payment of just compensation to residents who will be affected, and receiving the property from the residents themselves or from the courts through the sheriff in the course of expropriation proceedings.
Representative Maricleta posited that the cost of the Housing Project was Php 100 Million of which Php 50 Million was funded under the 2019 GAA and Php 50 Million was funded by the city government of Ozamiz City. Former District Engineer for the Second District of DPWH Region X, Engr. Carol Lyn Abinales, clarified that the project under Contract ID number 19KJ0186 for Php 50 Million is fully funded under the GAA for the construction of multipurpose building cluster including site development. The Phase 1 of the Housing Project has two (2) components; 1) the construction of a multi-purpose building in Barangay Laman for Php 35 Million, and 2) the construction of a multi-purpose building in Barangay Malaubang, Ozamiz City for Php 15 Million. The Phase 2 of the project under Contract ID number 20KJ0183 is locally funded for Php 50 Million for the construction of Building 2 on the same project site at Barangay Lam-an, Ozamiz City. The total project cost of Phase 1 and Phase 2 is Php 100 Million.

The DPWH submitted the following contractual data for the subject Housing Project:

**Original Contract**

<table>
<thead>
<tr>
<th>Contract ID</th>
<th>19KJ0186</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract amount</td>
<td>Php 47,289,201.03</td>
</tr>
<tr>
<td>Contractor</td>
<td>Alpha &amp; Omega General Contractor &amp; Dev’p. Corp.</td>
</tr>
<tr>
<td>Original Contract Time</td>
<td>240 calendar days</td>
</tr>
<tr>
<td>Effectivity of Contract</td>
<td>23 September 2019</td>
</tr>
<tr>
<td>Original Expiry Date</td>
<td>19 May 2020</td>
</tr>
</tbody>
</table>

In a letter dated 03 February 2020, the contractor requested for a variation order and stated that “during our on-going construction of the project, Revision of Plan is necessary”. Thereby, in an Executive Summary addressed to Engr. Abinales, the request for approval of Variation Order No. 01 on Contract ID No. 19KJ0186 was made upon evaluation of the project that there was for “deletion, deduction and additional of the various items”. Engineer Jed P. Penas, Provisional Project Engineer, submitted that the Revision of Plan was necessary due to the following conditions:

1. There was change in building location based on the availability of site cleared;
2. Parts of the foundation of the building will rest at same portion along the banks of existing creeks; and
3. The result of the Soil Exploration of the proposed four-storey building would require bigger sizes of structure and definitely require bigger cost.
In the justification for the variation order dated 03 February 2020, Engr. Peñas recommended that the plans will be replaced from a four-storey to two-storey building to effect the variation order.

The variation order due to the Revision of Plan was approved by Engr. Abinales who was then the OIC-District Engineer for the Second District Engineering Office of Misamis Occidental. The variation order resulted to a variance amount of Pphp 1,710,789.97 and the Revised Contract Amount totaled to Pphp 49,000,000.00.

Engr. Cesar Hipona, Jr., District Engineer of the 2nd DEO Misamis Occidental, admitted that the Housing Project was revised from the original plan of a four-storey building to a two-storey building with an increased area. The soil exploration study made on the project site showed that the bearing capacity of the soil strata is limited only to two-storey building. Engr. Hipona also controverted that there was any misappropriation by the DPWH nor was this a ghost project as the budget amounted to Pphp 100 Million only, and that the entire funding was all applied to the Housing Project.

Representative Marcoleta inquired whether the price for Phase 1 went down considering that the original project cost for Phase 1 in the amount of Pphp 50 Million for the construction of a four-storey building was revised to the construction of a two-storey building. Representative Marcoleta posited that since there was a 50% reduction in the construction, the cost should also be reduced by 50%. Engr. Hipona explained that the four-storey was only a proposal for the Housing Project. According to Engr. Hipona, the allotted cost for the construction of the multi-storey building in Barangay Lam-an in the amount of Pphp 35 Million, with the Pphp 15 Million of the total project cost of Pphp 50 Million allotted for the construction of the building in Barangay Malaubang, was no longer enough to construct the original plan of four-storey building. Engr. Hipona added that the scope of work was based on quantity of materials and that even if the building became two-storey only, they added additional rooms so the floor area was bigger.

Representative Marcoleta asserted that the multi-storey building project in Barangay Malaubang was constructed on a public land, not otherwise declared alienable nor disposable. Representative Marcoleta further alleged that Representative Oaminal filed a House Bill sometime in January 2020 converting that public land into an alienable and disposable land of the public domain to rationalize the construction of building on the site. Representative Oaminal contended that since this allegation was not mentioned in the subject Resolution, the Committee cannot take cognizance of said matter.
The Implementation of the Housing Project

The DPWH, in coordination with the city government of Ozamiz City, identified the location of the project site at Purok 6, Barangay Lam-an, Ozamiz City. In its Position Paper, the city government of Ozamiz City cited City Council Resolution No. 273-2019 dated 05 August 2019 that called for the implementation of the Housing Project and requested Representative Ocaminal to find additional funds for it. It stated that the city government of Ozamiz City “concurred with the national’s government’s determination that Purok 6 was the appropriate location for the Project because of the poor and hazardous living conditions therein”.

On September 2019, the city government of Ozamiz City submitted that it held a dialogue with the landowners and occupants of Purok 6, Barangay Lam-an. It sent letters of intent to acquire the lots to some residents. According to the city government of Ozamiz City, majority of the residents accepted the offer, while others remained opposed to the project and refused the offer. Those who accepted the offer voluntarily left and purchased their own lots, while others stayed in the Ozamiz City’s temporary resettlement facility while the Housing Project is being constructed. The city government of Ozamiz City submitted that the residents voluntarily dismantled their houses and sought the help of the project contractors and barangay officials. The city government of Ozamiz City filed expropriation cases against the oppositors and applied for the issuance of writs of possession to take over the lands subject of the expropriation cases. Accordingly, the areas on the project site that were cleared by the residents who voluntarily vacated their lands and those areas which writs of possession have been issued were turned over to the government allowing the Project Contractor and the DPWH to commence construction on these areas.

Representative Marcoleta pointed out that the plaintiff in an expropriation case is required by law to deposit with the court the following: (1) 100% of the zonal value of the land as apprised by the Bureau of Internal Revenue (BIR); (2) 100% of the value of the improvements of the land; and (3) 100% of the value of crops and trees on the land. Atty. Fuentes said that expropriation cases were filed by the city government of Ozamiz City against affected private landowners who opposed the Housing Project and refused the offer of the city government of Ozamiz City. He attested that the city government of Ozamiz City had already deposited the required 100% of the value of land based on current zonal value per BIR, plus the replacement cost for the value of the improvements established thereon. According to Atty. Fuentes, the RTC has already issued the writs of possession to some of the properties, while the others were still pending in court.
Atty. Juliemie Guangco, the clerk of court for Branch 15, RTC Ozamiz City, narrated that of the total sixteen (16) expropriation cases filed, eight (8) cases have been issued writ of possession already. For those issued a writ of possession, Atty. Guangco said that the city government of Ozamiz City deposited the amount equivalent to Php 1,220.00 per square meter for the value of the lands based on the Order of the judge in the relevant cases. However, as to the replacement cost, Atty. Guangco stated that court records did not show that the city government of Ozamiz City paid the replacement cost for the value of the improvements established thereon, nor the cost of crops, shrubs or trees thereon. Atty. Fuentes mentioned that the BIR Zonal valuation to be considered was the applicable value at the time which was Php 1,220.00 per square meter. The LGU could not deposit an amount greater than that directed by the RTC since the funds used for the expropriation cases are public funds, subject to applicable auditing rules. Pending the expropriation cases and after the amounts were deposited by the city government of Ozamiz City, the RTC granted the issuance of the writs of possession.

Ms. Cezarah Rowena Discaya, President of Alpha & Omega General Contractor & Development Corporation, the private contractor for Building 1 of Phase 1, and the building for Phase 2, admitted that since their company is based in Pasig City, and they only rented equipment from DL Enterprises in Ozamiz City. She said that they received the Notice to Proceed dated 10 September 2019, only on 23 September 2019. However, they were able to actually commence construction only on 05 May 2020 since they were issued a suspension order on 28 October 2019 due to the unavailability of the area. Apparently, the city government of Ozamiz City was able to file an expropriation case only on 18 January 2020. The project site was already cleared when the private contractor commenced their work thereon.

Representative Marcoleta asserted that the procedure followed by the LGU on the taking of the lands was improper since only a writ of possession was issued by the court. He also averred that Building 1 of Phase 1 and the building for Phase 2 were built on private lands, as the expropriation was still being questioned by the residents, and in fact, the case is now pending before the Supreme Court.

Several affected residents of Purok 6, Barangay Lam-an testified that demolition of their houses was effected by the city government of Ozamiz City and the private contractor despite their protests. A video presented before the Committee showed the demolition of houses at the project site and residents were shouting and crying while the
activity was undertaken. The video also showed that heavy equipment and backhoe bearing the company logo “HSO” were used for the demolition of several houses and structures on the site. The affected residents testified before the Committee that they witnessed the demolition of houses and denied that they voluntarily dismantled their houses. The residents who protested the demolition said that they were not given relocation by the city government of Ozamiz City and that they went back to their house after the demolition to salvage whatever were left of their belongings.

The city government of Ozamiz City posited that the alleged demolition and eviction activities are not the administrative demolition and eviction activities contemplated under RA 7279 he UDHA. Section 28 of the law includes demolition or eviction for government infrastructure projects with available funding. Under the same law, however, the funding for housing and urban development must come from the sources listed in Section 42, none of which pertains to funding from the GAA, unlike in the case of the Housing Project. Since the project does not fall under Section 28 of said law, then it follows that the DILG circular does not apply. Also, there was no administrative demolition on the property to speak of as the dismantling of the structure were voluntarily done by the residents themselves, who did not oppose the project.

Mayor Oaminal maintained that there are oppositors to the Housing Project in Barangay Lam-an but they have no rightful claim on the land where the project was constructed or on houses affected thereby. Several of the oppositors are residents from other barangays and some who claimed to be successors of registered owners of land and houses affected by the project, failed to prove their affiliation to the owners.

Another video presented before the Committee showed Representative Oaminal stating that the demolition was carried out under the ROW Act. However, Atty. Fuentes admitted that in the filing of the petitions for expropriation, the city government of Ozamiz City did not go through the Office of the Solicitor General (OSG) or the Office of the Government Corporate Counsel (OGCC). In its Position Paper, the city government banked on the statement of Assistant Solicitor General Remigio Panga that the city government of Ozamiz City may initiate expropriation proceedings even without the assistance of the OSG and the OGCC. It further submitted that the city government of Ozamiz City is not proscribed from availing the provisions of the UDHA when initiating expropriation proceedings as this was explicitly allowed under Section 3 of the law.
Representative Marcoleta asserted that the city government of Ozamiz City did not follow the order of priority for the acquisition of land as well as the order of the modalities that may be availed of. He cited several Supreme Court cases on these modalities, as in the case of Lagcao v. Labra, G.R. No. 155746 dated 13 October 2004, in which the high court held that the order of priority in Sections 9 (acquisition of land) and 10 (modes of land acquisition) of the UDHA, are strict limitations on the exercise of the power of eminent domain by LGUs, especially with respect to (1) the order of priority in acquiring land for socialized housing and (2) the resort to expropriation proceedings as a means to acquiring it. Private lands rank last in the order of priority for purposes of socialized housing. In the same vein, expropriation proceedings may be resorted to only after the other modes of acquisition are exhausted. Compliance with these conditions is mandatory.

On expropriation proceedings, Asst. Solicitor General Panga expounded that there should be negotiation before expropriation is filed, and once the offer of the government is rejected, this will serve as basis to file the expropriation case. Before the government may enter into the property, it must deposit 100% of the value of the land, including the improvements thereon. Based on the ROW Act, the government must also first provide resettlement before it can ask for a writ of possession. Once the requirements are complied with and the deposit is paid, the court will issue the writ of possession, then the government may enter into the property and commence the project. Meanwhile, the court will constitute a Board of Commissioners, who will decide on the just compensation. Once the court decides on this, and the government pays the just compensation, the process for the transfer of title to the government commences.

Atty. Ferdinand Iman, PCUP Chief of Field Operations for Mindanao, explained that they received an informal invitation from several of the affected residents opposing the Housing Project in 2018. The two PCUP area coordinators who were in Ozamiz City advised the opposing residents that they cannot be forced out of their property without due process or without court order as they were the owners thereof. Thereafter, PCUP no longer heard from these residents until May 2020 when the writ of possession was already being implemented, for which they advised the complaining residents that PCUP could no longer intervene with the order of the court but advised them to file a restraining order with the court where the case was then pending or to a higher court. PCUP also advised these residents to take photos and videos of the demolition as proof. Atty. Iman admitted that the writ of possession is different from the writ of demolition.
As regards reports that the residents did not receive proper services from government agencies and were maltreated during the demolition, Atty. Iman explained that PCUP had no information because they did not receive complaints from the affected residents then. PCUP did not know if they were underprivileged or homeless as they did not receive any communication from the Local Housing Board. He added that insofar as the landed residents are concerned, PCUP could not compel the city government of Ozamiz City to provide interim shelter facilities and financial assistance to them because they were not underprivileged or homeless. PCUP however did not review whether they were small landowners. Under the UDHA, only the underprivileged or homeless or those who occupied the area before 23 March 1992 can demand resettlement and relocation from the government.

With respect to the NHA, it commented that they had no role nor any participation in the Housing Project and that it was not coursed through them.

On the status of the implementation, Representative Marcoleta submitted the 2019 Status of Contracts Report (Regular Infra Regional Implementation) as of 31 January 2020, a system-generated report from an application called PCMA of the DPWH. On page 73 of the report, the construction of the multi-purpose building under Project ID 19KJO186 constructed by Alpha & Omega General Contractor, is reflected as 71.36% complete. However, videos and pictures taken on December 14, 2020 and presented before the Committee, showed less than 50% completion of the project.

Mr. Alexander Lim, of Alpha & Omega General Contractor and Development Corporation, said that Phase 1 of the Housing Project is the construction of the multipurpose building in Barangay Lam-an, Ozamiz City and was 90% complete as of March 2021. The contractor received payment of Php 13 Million for its first billing on October 2020 with accomplished work at 39%. The second billing was on December 2020 with 77% work accomplished. Mr. Lim said that the contract was revised by the DPWH from the original plan of four-storey building to a two-storey building due to the soil bearing capacity of the land where the building is being constructed. Representative Marcoleta posited that there was misuse of public funds as the billboard for the Housing Project at Barangay Lam-an stated its cost at Php 35 Million when the fund allotted is Php 50 Million. Mr. Lim said that Php 35 Million is for the multi-purpose building in Barangay Lam-an while the Php 15 Million is for the construction of a multi-purpose building in Barangay Malaubang. Thus, the Housing Project has two (2) components, particularly the construction of the multi-purpose in Barangay Lam-an, and the construction of the
multipurpose building in Barangay Malabang. To further his point, Representative Marcoleta pointed to the PCMA report of DPWH dated 31 January 2021 that showed that as of May 2020, Phase 1 was 100% completed.

On the implementation of the construction of the building for Phase 2, Mr. Eric Lim, Proprietor of Mindanao Rock Construction and contractor of Building 2 under Contract ID number 20KJ0183, said that the project site was already cleared when they commenced the construction of Building 2. The Notice of Award for the project was given on 05 August 2020 while the Notice to Proceed was dated 18 August 2020. They actually commenced the construction on 24 August 2020. Mr. Lim said that he was not aware of the situation of the land where the project will be constructed and who were the previous occupants.

The Parties

Concerned government officials and agencies are the parties concerned in the [ underline]:filing of the subject House Resolution No. 1197. The Committee duly passed upon their respective mandate, function, duties and responsibilities, to wit:

1) **Local Government Unit of Ozamiz City** -- R.A. No. 321, “An Act Creating the City of Ozamiz” was signed into law on 16 July 1948.⁶ Section 3, provides thus:

   *xxx Section 3, Corporate Character of the City -- The City of Ozamiz constitutes a political body corporate and as such is endowed with the attribute of perpetual succession and possessed of the powers which pertain to a municipal corporation, to be exercised in conformity with the provisions of this Charter.*

2) **The Department of Public Works and Highways (DPWH)** -- The DPWH is one of the three departments of the government undertaking major infrastructure projects. The DPWH [ underline]:jis mandated to undertake (a) the planning of infrastructure, such as national roads and bridges, flood control, water resources projects and other public works, and (b) the design, construction, and maintenance of national roads and bridges, and major flood control systems. The Department of Public Works and Highways[ underline]: functions as the engineering and construction arm of the

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⁶ [http://www.chanrobles.com](http://www.chanrobles.com)
Government tasked to continuously develop its technology for the purpose of ensuring the safety of all infrastructure facilities and securing for all public works and highways the highest efficiency and quality in construction.  

3) The Department of Human Settlements and Urban Development (DHSUD) -- On 14 February 2019, R.A. No. 11201 was issued creating the DHSUD, which shall act as the primary national government entity responsible for the management of housing, human settlement and urban development; be the sole and main planning and policy-making, regulatory, program coordination, and performance monitoring entity for all housing, human settlement and urban development concerns, primarily focusing on the access to and the affordability of basic human needs. It has absorbed the duties and functions of the Housing and Urban Development Coordinating Council (HUDCC) and the Housing and Land Use Regulatory Board (HLURB).

4) The National Housing Authority (NHA)—The NHA is the sole national agency mandated to engage in housing production for low income families. On 15 October 1975, the NHA was organized as a government-owned-and-controlled corporation. Upon the creation of the DHSUD, under Section 4 of said R.A. No. 11201, Executive Order (EO) 90 was released placing NHA and other attached agencies and corporation under the administrative supervision for purposes of policy and program coordination, monitoring and evaluation. NHA shall continue to function as a production and financing arm in housing and shall exercise all other functions based on its existing laws.

5) The Department of the Interior and Local Government (DILG)—The DILG is the executive department responsible for promoting peace and order, ensuring public safety, and strengthening the capability of local government units to effectively deliver basic services to the citizenry. The following agencies are attached to the DILG: Bureau of Fire Protection (BFP), Bureau of Jail Management and Penology (BJMP), Local

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7 [http://www.dpwh.gov.ph](http://www.dpwh.gov.ph), The Department of Public Works and Highways website
8 [http://dhsud.gov.ph](http://dhsud.gov.ph)
9 [http://nha.gov.ph](http://nha.gov.ph)
Government Academy (LGA), National Police Commission (NPC),
Philippine National Police Commission (NPC), and Philippine National
Police (PNP).10

RELEVANT LAWS, RULES AND REGULATIONS

Article III, Section 9 of the 1987 Constitution of the Republic of the Philippines,
explicitly provides the limitations on the taking of private property for public use. It states:

Section 9. Private property shall not be taken for public use without just
compensation.

The constitutional precept rests on the power of eminent domain, one of the
essential or inherent powers of government. In the words of the High Tribunal, the power
of eminent domain was stated in this wise:

Eminent domain is the right, authority or power of the State, as
sovereign, or of those to whom the power has been lawfully delegated to
take private property for public use upon observance of due process of law
and paying to the owner a just compensation to be ascertained according
to law. It is the government’s inherent right to expropriate, in the nature of
a compulsory sale to the State, private property for public use or purpose”.
(Moday vs. Court of Appeals, G.R. 107916, 20 February 1987; City of
Cebu vs. Dedamo, G.R. No. 142971, 07 May 2002).11

Further, the procedure for the exercise of the power of eminent domain, commonly
referred to as expropriation, is provided in Rule 67, Rules of Court.12

The right of eminent domain may be exercised by the legislative[19] as an inherent
power of sovereignty under the authority of some statute; by the executive authorities,
subject to the limits that Congress may prescribe; and by delegation to government
agencies. The power of eminent domain may be conferred upon local government units
and other government entities. The grant to local governments under Section 19, R.A.

10 http://www.officialgazette.gov.ph
11 De Leon, H. (2012). Philippine Constitutional Law, Principles and Cases (Volume 1). Quezon City,
Philippines: Rex Bookstore
12 Supra
No. 7160, or the Local Government Code\textsuperscript{[13]} of 1991 (the LGC)\textsuperscript{[13]} cannot be understood as being pervasive and all-encompassing power vested in the legislative branch of government.\textsuperscript{[14]}

Expropriation proceedings may be undertaken by the government, not only by voluntary negotiation with the landowner, but also by taking appropriate judicial action or by legislation (\textit{J.M. Tuazon & Co., Inc. vs Land Tenure Administration}, 33 SCRA 882 [1970]; \textit{Republic vs. De Knecht}, 182 SCRA 142 [1990]). It is incumbent, however, upon the condemnor to exhaust all reasonable efforts to obtain the property it desires by agreement (\textit{Jesus is Lord Christian School Foundation, Inc. vs. Municipality of Pasig}, 466 SCRA 235 [2005]).\textsuperscript{[14]}

Expropriation proceedings are to be resorted to only after the modes of acquisition have been exhausted. Compliance with the conditions for expropriation is mandatory because these are the only safeguards of private property owners against violation of due process when their property is forcibly taken from them for public use (\textit{Estate of Heirs of J.B.L. Reyes vs. City of Manila}, \textit{supra}; \textit{Lagcao vs. Tabra}, 490 SCRA 279 [2004]).\textsuperscript{[15]}

The Committee considered the related laws cited in the subject Resolution, such as the Bayanihan Act, as it relates to the subject DILG Memorandum Circular. Moreover, the Committee looked into R.A. No. 10752 (the Right-of-Way Act), R.A. No. 7279 (the UDHA), and the respective mandates of DHSUD and DILG. Further, the Local Government Code of 1991 was noted as it describes the power of eminent domain exercised by local government units. Together, the laws create a tapestry of conditions with which the alleged demolition and eviction activities have been undertaken in Purok 6, Barangay Lam-an, Ozamiz City.

Section 4 (s) of R.A. No. 11469\textsuperscript{[12]} (Bayanihan One Act), states that the President is authorized to exercise powers which are necessary and proper to carry out the declared national policy, as cited by the DILG Memorandum Circular. The same provides:

\textsuperscript{13} Section 19, Republic Act No. 7160, or the Local Government Code of 1991. \textsuperscript{14} \textit{Supra}
\textsuperscript{15} \textit{Supra}
otherwise known as the Local Government Code of 1991", LGUs may also adopt the provisions of this Act for use in the acquisition of right-of-way for local government infrastructure projects. Further, Section 9 of the Right-of-Way Act mandates the HUDCC, now the DHSUD, NHA and any concerned LGU, to establish and develop resettlement sites for informal settlers, among others, before carrying out infrastructure projects. Also, paragraph 2 hereof provides the issuance of writ of possession and writ of demolition, respectively should circumstances warrant.

2.2 **Section 9, Republic Act No. 10752 (supra)***

**Section 9. Relocation of Informal Settlers.** – The government, through the Housing and Urban Development Coordinating Council (HUDCC) and the National Housing Authority (NHA), in coordination with the LGUs and implementing agencies concerned shall establish and develop resettlement sites for informal settlers, including the provision of adequate basic services and community facilities, in anticipation of informal settlers that have to be removed from the right-of-way site or location of future infrastructure projects, pursuant to the provisions of Republic Act 7279, otherwise known as the “Urban Development Housing Act of 1992”. Whenever applicable, the concerned LGUs shall provide and administer the resettlement sites.

In case the expropriated land is occupied by informal settlers who refuse or are unable to demolish their structures and other improvements therein despite the writ of possession issued by the court under Section 6 hereof, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act No. 7279.
On the same vein, Section 14 of the Implementing Rules and Regulations (IRR) of the ROW Act which also mandates the concerned agencies to establish relocation sites for informal settlers. Additionally, paragraph 2 thereof states issuance of writ of possession and writ of demolition, as applicable.

Section 14. Relocation of Informal Settlers. – As provided in Section 9 of the Act, the government, through the Housing and Urban Development Coordinating Council (HUDCC) and the National Housing Authority (NHA), in coordination with the LGUs and IAs (implementing agencies) concerned, shall establish and develop resettlement sites for informal settlers, including the provision of adequate basic services and community facilities, in anticipation of informal settlers that have to be removed from the ROW or site of future infrastructure projects, pursuant to the provisions of RA No. 7279. Whenever applicable, the concerned LGUs shall provide and administer the resettlement sites.

In case the expropriated land is occupied by informal settlers who are unable or refuse to demolish their structures and other improvements therein despite the writ of possession issued by the court under Section 7 of this IRR, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The IA shall take into account and observe diligently the procedure provided for in Section 28 and 29 of R.A. No. 7279.

Immediately after the project approval by the appropriate agency, the IA shall notify the HUDCC of its proposed project which may require the acquisition of ROW that may cause the displacement or relocation of informal settlers. xxx

3. Sections 8, 9, 10 and 28 of Republic Act No. 7279, otherwise known as the UDHA [u14]

Corollary to the above stated sections of R.A. No. 10752, Section 8 of R.A. No. 7279 mandates the identification of sites for socialized housing. It states:
"Sec. 8. Identification of Sites for Socialized Housing. – After the inventory the local government units, in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and the Land Management Bureau, shall identify lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas, taking into consideration the degree of availability of basic services and facilities, their accessibility and proximity of job sites and other economic opportunities, and the actual number of registered beneficiaries. xxx."

Moreover, the Committee passed upon Section 9 of the UDHA, which provides the order of priority for land acquisition, however the second paragraph thereof asserts that in cases of “on-site development”, the said order may not apply. The same provision was cited by Atty. Quirap, from the NHA during the hearing on 22 March 2021. It stated:

Section 9. Priorities in the Acquisition of Land. – Lands for socialized housing shall be acquired in the following order:

(a) Those owned by the government or any of its subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations and their subsidiaries;

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

(d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the mentioned in this section shall not apply. The
local government units shall give budgetary priority to onsite
development of government lands. xxx

In addition, Section 10, thereof provides the modes of land acquisition, in the order
as indicated, to wit:

Section 10. Modes of Land Acquisition. – The modes of acquiring
lands for purposes of this Act shall include, among others, community
mortgage, land swapping, land assembly or consolidation, land banking,
donation to the government, joint-venture agreement, negotiated
purchase, and expropriation: Provided, however, That expropriation
shall be resorted to only when other modes of acquisition have
been exhausted: Provided, further, That where expropriation is
resorted to, parcels of land owned by small property owners shall
be exempted for purposes of this Act: Provided, finally, That
abandoned property, as herein defined, shall be reverted and escheated
to the State in a proceeding analogous to the procedure laid down in Rule
91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed
properties shall be acquired by the local government units, or by the
National Housing Authority primary through negotiated purchase:
Provided, That qualified beneficiaries who are actual occupants of the land
shall be given the right of first refusal. (Emphasis supplied)

Meanwhile, Section 28 (b) and (c) of the UDHA provides the
circumstances where eviction and demolition may be undertaken in relation to
construction projects, viz:

xxx

Section 28. Eviction and Demolition. – Eviction or demolition as a
practice shall be discouraged. Eviction or demolition, however, may be
allowed under the following situations:

a) xxx

b) When government infrastructure projects with available funding are
about to be implemented; or
1) Section 4 (s) of Republic Act No. 11469, otherwise known as “Bayanihan to Heal As One Act”:

Section 4. Authorized Powers. – Pursuant to Article VI, Section 23 (2) of the Constitution, the President is hereby authorized to exercise powers that are necessary and proper to carry out the declared national policy. The President shall have the power to adopt the following temporary emergency measures to respond to crisis brought about by the pandemic:

s) Regulate traffic on all roads, streets, and bridges, and access thereto; prohibit putting up of encroachments or obstacles; authorize the removal of encroachments and illegal constructions in public places; and perform all other related acts;

Additionally, Section 3, the Right-of-Way Act provides that the Local Government Units may adopt the provisions of the said Act, in consonance to Republic Act 7160[^13], or the Local Government Code of 1991.

2) Section 3 and 9, R.A, No. 10752, otherwise known as the Right-of-Way Act of 2015 in relation to RA 7160, or the Local Government Code of 1991:

2.1 Section 3, Republic Act No. 10752, or the Right-of-Way (ROW) Act of 2015, provides:

Section 3. National Government Projects. – As used in this Act, the term “national government projects and its public service facilities, engineering works and service contracts, including projects undertaken by government-owned and controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the “Build-Operate-and-Transfer-Law”, and other related and necessary activities, such as site acquisition, supply or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. Subject to the provisions of Republic Act No. 7160,
c) When there is a court order for eviction and demolition. In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

3) Presence of local government officials or their representatives during eviction or demolition;

4) Proper identification of all persons taking part in the demolition;

5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and

8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.
4. **DILG Memorandum Circular No. 2020-068, issued on 02 April 2020.**

DILG Secretary Año signed Memorandum Circular No. 2020-068, pursuant to Section 28 (b) of the UDHA and Proclamation Nos. 922 and 929, on the existence of State of Calamity and National Emergency, respectively. The DILG Memorandum Circular enjoins “All Provincial Governors, City and Municipal Mayors, DILG Regional Directors, BARMM Minister of Local Government, Punong Barangays, and all other concerned individuals”. Its subject states:

“Postponement of all Administrative Demolition and Eviction Activities During the Enhanced Community Quarantine and State of National Emergency”, the pertinent provisions of which are as follows:

xxx

5.2 For Eviction and Demolition under Section 28 (b) of UDHA in relation to Section 4(s) of R.A. No. 11469, otherwise known as “Bayanihan to Heal as One Act”.

5.2.1 Only the identified dwellings qualified under Section 28 (b) of UDHA and related to Section 4 (s) shall be allowed eviction and demolition;

5.2.1.1 Provided that the eviction or demolition of the identified dwellings are crucial in the general objectives stipulated in R.A. 11496;

5.2.1.2 Provided further that prior to the conduct of eviction and demolition, LGUs shall provide interim shelter facilities for affected communities who will be demolished within the locality and, finally, provide appropriate financial assistance, relief, and other basic services.

5.3 All Local Government Units shall provide interim shelter facilities to all homeless families and/or individuals found in their respective jurisdiction, and appropriate financial assistance, relief, and other basic services. xxx
Section 19, Republic Act No. 7160, or the Local Government Code of 1991

The Committee likewise examined Section 19 of the Local Government Code of 1991, which provides the exercise of the power of eminent domain by local government units.

Section 19. Eminent Domain. — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: Provided, further, That the local government unit may immediately take possession of the property upon filing of expropriation proceedings and upon making a deposit with the proper court of at least 15% of the fair market value of the property based on the current tax declaration of the property to be expropriated.

ISSUES

The Committee has consolidated the following issues for clarity and brevity, as it relates to its jurisdiction of determining malfeasance, misfeasance and nonfeasance of government officials and employees, to wit:

1. Whether or not the implementation of the Housing Project complied with existing laws, rules and regulations.
2. Whether or not the rights of residents affected by the Housing Project were respected.
3. Whether or not public officials and employees involved in the implementation of the Housing Project committed malfeasance, misfeasance or non-feasance in the performance of their official duties and functions.
DISCUSSION

1. Laws, rules and regulations have been violated in the implementation of the Housing Project.

A basic precept laid down in the Constitution states that “no person shall be deprived of life, liberty or property without due process of law.” There are laws that govern the taking of public properties and privately-owned properties for public use. Article III, Section 9 of the 1987 Constitution provides, “Private property shall not be taken for public use without just compensation”. Further, the ROW Act [16] declared that the State shall ensure that owners of real property acquired for national government infrastructure projects are promptly paid just compensation for the expeditious acquisition of the required right-of-way for the projects.

As submitted by the OSG, the city government of Ozamiz City may adopt the ROW Act to implement an infrastructure project, based on Section 3 of that law:

Section 3. National Government Projects. – As used in this Act, the term “national government projects” shall refer to all national government infrastructure projects and its public service facilities, engineering works and service contracts, including projects undertaken by government owned and controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the “Build-Operate-and-Transfer-Law”, and other related and necessary activities, such as site acquisition, supply or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding. Subject to the provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991”, LGUs may also adopt the provisions of this Act for use in the acquisition of right-of-way for local government infrastructure projects.
Section 9 of the same law mandates the HUDCC, now the DHSUD, NHA and any concerned LGU, to establish and develop resettlement sites for informal settlers before carrying out infrastructure projects.

Section 9. Relocation of Informal Settlers. – The government, through the Housing and Urban Development Coordinating Council (HUDCC) and the National Housing Authority (NHA), in coordination with the LGUs and implementing agencies concerned shall establish and develop resettlement sites for informal settlers, including the provision of adequate basic services and community facilities, in anticipation of informal settlers that have to be removed from the right-of-way site or location of future infrastructure projects, pursuant to the provisions of Republic Act 7279, otherwise known as the "Urban Development Housing Act of 1992". Whenever applicable, the concerned LGUs shall provide and administer the resettlement sites.

In case the expropriated land is occupied by informal settlers who refuse or are unable to demolish their structures and other improvements therein despite the writ of possession issued by the court under Section 6 hereof, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act No. 7279. xxx

However, the requirement of the law was not complied with as the LGU failed to coordinate with government agencies tasked to provide socialized housing, particularly the DHSUD and NHA, on the subject Housing Project, to identify the location of the socialized housing and to present its relocation program, if any, as an indispensable component of the project. DHSUD and NHA have the mandate under the ROW Act to establish resettlement sites for informal settlers, basic services and community facilities, in anticipation of informal settlers that have to be removed from the intended project site.

Section 9 of the ROW Act, with Section 14 of its Implementing Rules and Regulations, is sufficient to safeguard the interests of the homeless and underprivileged citizens as defined under Section 3(t) of the UDHA. In the case of the subject Housing Project, it was the DPWH, in coordination with the LGU, that identified the project site and
the temporary relocation of the displaced residents without coordination with the DHSUD and NHA. Engr. Rolando I. Teves Jr., Regional Manager for NHA-Region X admitted before the Committee that NHA had no role nor any participation in the Housing Project.

The DPWH and the LGU did not coordinate with key housing agencies pursuant to the “National Urban Development and Housing Framework” and thus encroached on the NHA’s primary function as the “sole government agency engaged in direct shelter production” per Executive Order No. 90 dated 17 December 1986. The same coordination is necessary in the identification of sites for socialized housing provided under Section 8 of the UDHA. Atty. Carlo Quirap from NHA-Region X posited that NHA is not the sole government agency that can be in charge of housing projects and that local government units can initiate housing projects. However, as pointed out by Representative Marcoleta, the city government of Ozamiz should coordinate with NHA on the implementation of Housing Project. This was the original position of Ms. Remedios Abillera of the NHA Region X during a public hearing before residents of Barangay Lam-an. She later recanted when the city government took the position that the city government of Ozamiz City can initiate housing projects without NHA’s assistance.

In a video footage shown before the Committee, Mayor Oaminal openly disputed the prior stand taken by Ms. Abillera arguing that LGUs are not precluded from undertaking housing projects but always in coordination with key housing agencies. Thus, the NHA regional official was constrained to eventually change her position on the matter in her letter to a resident dated 04 January 2020.

On the payment of just compensation, the Clerk of Court of RTC-Branch 15, Ozamiz City testified that Php 1,220.00 per square meter of the land subject of the expropriation cases were deposited by the LGU as payment for just compensation. However, the other two (2) mandatory deposits for the replacement cost of improvements and the value of the crops and trees within the properties were not complied with. The RTC then issued the writs of possession that permitted the LGU to take over the lands, demolish the structures found therein, and eject the affected residents—all in violation of Section 6 of the ROW Act. The Clerk of Court also testified that there are expropriation cases that had not been issued with writs of possession as of the last hearing. However, affected residents and defendants to the expropriation cases who were not issued with the writ of possession testified that their houses or portion thereof have already been demolished by the city government of Ozamiz City.
Without just compensation and adequate relocation as required by law, and without the RTC issuing writs of demolition, the LGU undertook the demolition of houses of the residents contrary to the claim of the City Administrator that the affected residents voluntarily dismantled their houses.

Engr. Abinales stated that she was the one who issued the “Notice of Taking” to facilitate the payment of just compensation to the opposing residents but admitted later before the Committee that her office had no authority to do so because only the RTC, not the DPWH, is the proper office to determine just compensation.

In a report to DILG Secretary Eduardo Año, a copy of which was submitted to this Committee, DILG Region X narrated its position on this matter, and that DILG Provincial Director Pablo Benitez conducted an investigation on the reported demolition incident. However, the report stated that no demolition was committed, despite there being documentary evidence on the said demolition, such as photos and videos of houses being demolished, and police blotter certifications to this effect. The report also did not disclose that officials from DILG Region X previously met with the affected residents. Provincial Director Benitez confirmed to Usec. Rico Echiverri that the RTC did not issue any writ of demolition.

During the Committee hearing, DILG Region X Regional Director Arnel Agabe admitted that he had personal knowledge of the meeting of the DILG Region X officials with the affected residents and their lawyers, but this was not included in the report to Sec. Año because he based his report on the report given by Provincial Director Benitez. Representative Marcoleta contended that such information is relevant as it could have urged the Secretary to look into the reported demolition. Thus, it can be surmised that suppression of this vital information was intended to cover up the demolition that actually took place in Barangay Lam-an, Ozamiz City during the pandemic—in violation of DILG Memorandum Circular No. 2020-068.

The OSG, in its Position Paper, pointed out that the ROW Act is the law specifically applicable to writs of demolitions arising from writs of possessions issued in expropriation cases. Under said law, the establishment and development of resettlement sites for informal settlers, including the provision of adequate basic services and community facilities, is a policy that must be complied with in anticipation of informal settlers that have to be removed from the right-of-way site or location of future infrastructure projects.
That policy does not distinguish whether there is a state of national emergency, such as the one brought about by the COVID-19 pandemic.

In its Amended Complaints for Expropriation and Position Papers filed in the RTC, the city government of Ozamiz City alleged that the DPWH identified the location of the project site. However, Engr. Abinales denied the allegation in her testimony before the RTC. The city government of Ozamiz City submitted to the Committee the Site Inspection Report of the City Health Office and the Office of the City Social Welfare and Development on the suitability of the project site for the proposed community housing development. Also, the city government of Ozamiz City insisted that the Housing Project is more of a "multipurpose building" than plain housing in order to preclude the applicability of the UDHA. Yet, even the title of the project itself includes "site development" and thus, together with the requisites and preference on land acquisition, obviously fall within the purview of said law.

Atty. Quirap of NHA who was asked on the "priorities of land acquisition" was less candid by arguing that the last paragraph of Sec. 9 of the UDHA provides the exception for the subject Housing Project because it was an "on site development", forgetting the fact that on-site developments should be funded by the LGUs, not by the national government. Besides, Atty. Quirap failed to consider that "on-site development" refers to the process of upgrading and rehabilitation of blighted and slum urban areas" which does not apply to Brgy. Lam-an, Ozamiz City, since it is considered as a highly-urbanized area.  

In the related cases decided by the Supreme Court (Lagcao vs. Labra, G. R. No. 155746, 13 October 2004; Estate of JBL Reyes vs. City of Manila, G. R. No. 132431, 13 February 2004; Flistream vs. Court of Appeals, G. R. No. 125218, 28 January 1998), the Supreme Court repeatedly stressed that Sections 9 and 10 of the UDHA are limitations to the exercise of eminent domain especially with respect to the order of priority in acquiring private lands and the modes in resorting to expropriation proceedings. The reliance of the city government of Ozamiz City on the decision of the RTC that the UDHA does not apply cannot be given authority as the lower court is not the final arbiter on

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16 Sec. 3, (l), RA 7279 - "On-site development" refers to the process of upgrading and rehabilitation of blighted slum urban areas with a view of minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 of the law.
question of law. Said RTC decision was brought before the Supreme Court by the opposing residents.

The RTC’s appealed Decision dated 21 February 2020, which ruled that the UDHA does not apply in the Housing Project because the funding thereof did not come from those specified under Section 42 of the said law. The possible sources of funding enumerated under said law is neither rigid nor exclusive, these being the primary prototypes for funding socialized housing. The type or source of funds cannot, in any way, remove the application of the UDHA being the controlling law that rationalizes urban housing and site development. Conversely, the GAA’s co-funding the housing project in Barangay Lam-an project may even be questioned for not originating from among the primary sources identified by the law, the implementation of which resided only in the authority of key housing agencies of the government – not the DPWH. The matter is brought before the Supreme Court on question of law.

It was also revealed during the Committee hearing that Phase 1 of the Housing Project was split into two (2) construction projects. The first project is the construction of the condo-type building in Barangay Lam-an which was originally for four (4)-storey but was later reduced to only two (2)-storey without securing the approval of the DPWH Central Office, in contravention of Department Order No. 37, series of 2018 in regard to project modification and under the GAA. The second project, portion of the funding of Phase 1 was used for the construction of cluster-type building in Barangay Malaubang, an area considered as marshland that is still an inalienable part of the public domain.

When asked as to why Phase 1 was subsequently reduced to two-storey from the original plan of four-storey in the contract, Engr. Hipona cited soil bearing capacity as reason which is an integral technical component to be determined before the project conception and should have been considered during the planning stage of the project and not during the construction phase. But despite his earlier testimony that Phase 1 is only good for only two (2)-storey building due to soil issue, he admitted that “yan ang gusto ni Congressman” when shown with the video of the solon promising to add a third floor. The decision to reduce the building level from four-storey to two-storey was made to use portion of the fund for Phase 1 for the construction of the building cluster at Barangay Malaubang.
Phase 2 of the Housing Project is equally problematic. It was locally funded by the city government of Ozamiz City and implemented by DPWH thru a Memorandum of Agreement (MOA) entered into by then District Engineer Abinales and the city government of Ozamiz City, and covered by Resolution No. 184-2020 dated May 22, 2020. Being the state’s construction and engineering arm, DPWH should have deferred to the NHA in jointly undertaking housing development or resettlement projects with the said city government of Ozamiz City pursuant to the mandate of Presidential Decree No. 757. This applies to Phase 1 too since the project was deceptively titled “multipurpose building” in the said MOA to purposely circumvent the UDHA law. If the testimony of the DPWH Legal Officer in Region X is true that the region has no control on locally funded projects, then the MOA entered into by DPWH District Engineering Office is illegal to say the least.

It is even premature for the city government of Ozamiz City to claim that the beneficiaries of the so-called “Multipurpose Building (Housing Project)” have already been identified, absent the official registry list to be submitted by the city government of Ozamiz City pursuant to Sec. 17 of UDHA, where all local governments units are mandated to identify and register all beneficiaries pursuant to the system designed by the HUDCC, one (1) year from the effectivity of the said law. In fact, even the actual numbers of persons and families have not been accurately determined given the conflicting testimonies of the City Mayor, the City Administrator and the spokesperson of the purported group of beneficiaries.

The two (2) PCMA status reports of DPWH Region X as of 31 January 2020 and 31 January 2021 relative to the status on the implementation of the subject housing project, showed conflicting information on the work progress of the said project denominated as 19KJ0186. In the first report, this project was reported to be 71.36% accomplished\(^\text{17}\) as of 31 January 2020 while the contractor\(^{[2]}\) testified that he started the project only in May 2020; the second report, however, indicated that as of 21 May 2020—the contract’s expiry date—this Housing Project was already reported to be 100% finished\(^\text{18}\), in contrast with the photo of Phase 1 of the Housing Project taken on 03 March 2020, showing a far-from-finished structure.

\(^{\text{17}}\) PCMA FY 2019 Status of Contracts-Report for Stakeholders, As of January 31, 2020, p. 79. \(^{[2]}\) Alpha & Omega General Contractor & Development Corporation.
Mr. Celso Vocal, COA Regional Auditor-Region X initially denied having reviewed the plans of the Housing Project due to the standard post-audit system employed by their office. He later contradicted himself when he admitted that COA could have reviewed the contract on the construction of the Housing Project per COA Circular No. 2009-001 dated 12 February 2009 which provides that within five (5) days from the execution of the contract, the Auditor of the agency concerned shall be given copy of the contract and all documents forming part thereof.

2. The rights of the affected residents were not respected.

Article III, Section 1 of the Constitution provides that "no person shall be deprived of life, liberty, or property without due process of law, xxx."

Due process is comprised of two components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. 19

Procedural due process refers to the constitutional requirement that when the government acts in such a way that denies a person of a life, liberty, or property, the person must be afforded the twin requirements of notice and hearing, to include the opportunity to be heard and refute the opposing parties, upon which a decision made by an impartial and competent body shall be based. Non-compliance with these requirements will invalidate the proceedings.

The city government of Ozamiz City submitted that it held a dialogue with the landowners and occupants of Purok 6, Barangay Lam-an. It sent letters of intent to acquire the lots from some residents. However, there were residents that opposed the construction of the Housing Project and refused to accept the city government of Ozamiz City's offer. These residents did not surrender their lands and remained in their houses until they were forcibly driven out when the backhoe and other heavy equipment dismantled their houses. The city government persisted armed with the writs of possession issued by the court. Thus, an issue that must be settled is whether a writ of possession shall suffice to sanction the demolition of houses of private individuals.

19 Cruz, Constitutional Law, 1993 Ed., pp. 102-106
The Deputy Court Administrator of the Supreme Court, the Clerk of Court of the RTC, Branch 15, Ozamiz City, and DILG Usec. Rico Echiverri of the DILG conceded that writs or orders of demolition issued by the courts must be obtained before any demolition can take place, in consonance with the basic right that “no person shall be deprived of life, liberty or property without due process of law.” The contrary view of the representative from the OSG appears to be misplaced as he could not provide the legal basis for asserting that the ROW Act is silent on the need for a writ of demolition. Section 9, paragraph 2 of the said law categorically provides that:

"In case the expropriated land is occupied by informal settlers who refuse or are unable to demolish their structures and other improvements therein despite the writ of possession issued by the court under Sec. 6 hereof, the court shall issue the necessary writ of demolition for the purpose of dismantling any and all structures found within the subject property. The implementing agency shall take into account and observe diligently the procedure provided for in Sections 28 and 29 of Republic Act 7279." (Emphasis supplied)

Further provided under Section 9 of the UDHA, expropriation proceedings are to be resorted to only after the modes of acquisition have been exhausted. Compliance with the conditions for expropriation is mandatory because these are the only safeguards of private property owners against violation of due process when their property is forcibly taken from them for public use (Estate of Heirs of J.B.L. Reyes vs. City of Manila, supra; Lagcao vs. Tabra, 490 SCRA 279 [2004]).

Atty. Roschelle Dagarbona-Bagas, Legal Officer for CHR-Region X, testified that complaints for violation of human rights were filed before the CHR by the opposing residents. Upon investigation, the CHR found that there was demolition of houses of the complaining residents on August 2020. Said office earlier wrote a letter to the PCUP based on the complaint from residents on the expropriation of their lots and demolition of their houses during the pandemic, in violation of the circular issued by the DILG, refuting the testimonies of DPWH, LGU officials, and the private contractor.

Atty. Iman of PCUP testified that the manner with which the demolition was undertaken was violative of Sec. 28 of the UDHA. The PCUP coordinators at Ozamiz

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City initially advised the residents on their rights and to seek court assistance on the matter. However, PCUP admitted that it did not investigate on the matter as there were no complaints filed before it by the opposing residents. Thus, no determination was made on whether these residents were underprivileged or homeless that would allow the UDHA to apply. Representative Marcoleta presented a video during the Committee hearing showing PCUP Region X officials meeting with Representative Oaminal at the South Lounge of the House of Representatives. After the said “meeting” the regional officials of the PCUP were seen in a video apologizing on their action following the subsequent news report aired by local media sympathetic to the Housing Project.

Further, the 1987 Constitution provides under Article III, Section 9, “private property shall not be taken for public use without just compensation.” The affected residents were not properly compensated for the taking of their lands where the Housing Project was constructed.

Just compensation in expropriation cases has been defined “as the full and fair equivalent of the property taken from its owner by the expropriator”. The Supreme Court has repeatedly ruled that the true measure is not the taker’s gain but the owner’s loss. The word “just” is used to modify the meaning of the word “compensation” to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample.\(^\text{21}\) In expropriation cases, the plaintiff is required by law to deposit with the court the following: 1) 100% of the zonal value of the land as apprised by the Bureau of Internal Revenue (BIR); 2) the value of the improvements of the land; and 3) the value of crops and trees on the land.\(^\text{22}\)

The determination of just compensation in expropriation proceedings is essentially a judicial prerogative.\(^\text{23}\) This determination of just compensation, which remains to be a judicial function performed by the court, is usually aided by the appointed commissioners. Atty. Fuentes mentioned that the amount deposited to the court as just compensation, equivalent to Php 1,220.00 per square meter, was based on the BIR zonal valuation prevailing at the time of the filing of the expropriation case. Atty. Guangco said that there was no record with the court that deposit for the value of improvements and value for the crops and trees on lands subject of the expropriation case was made. There was no mention that the court appointed commissioners for the determination of just

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\(^{21}\) Republic vs. Mupas, 790 SCRA 217 (2016)

\(^{22}\) Section 6, RA 10752

\(^{23}\) National Power Corporation vs. Spouses Asoque, G.R. No. 172507, 14 September 2016
compensation. Thus, the purported amount deposited to the court as just compensation was not full and fair for the affected residents.

On the expropriation case and the Petition for Certiorari brought by the complaining residents before the Supreme Court, the Committee will defer to the jurisdiction of the court. The Rules of Procedure Governing Inquiries in Aid of Legislation (Section 1, second paragraph) states that the filing or pendency of a case before any court, tribunal or quasi-judicial or administrative body shall not stop or abate any inquiry conducted to carry out a legislative purpose. However, when an issue presented before a legislative inquiry is one over which jurisdiction had been acquired by a judicial body, the Committee defer from acting on it and submit to the discretion of the court.

To allow the Committee to conduct its own findings on an issue already before the court would not only pose the possibility of conflicting decision between legislative committee and a judicial tribunal, but if the Committee’s findings were to be reached before that of the court, the possibility of the influence being made to bear on the ultimate judgement of the court cannot be discounted. In fine, for the Committee to probe and inquire into the same justiciable controversy already before the court, would be an encroachment into the exclusive domain of judicial jurisdiction that had much earlier set in.24

3. Public officials and employees involved in the implementation of the Housing Project committed malfeasance, misfeasance and non-feasance

Section 28, Subsection (t) of the Rules of the House of Representatives, as adopted, defines the jurisdiction of the Committee on Good Government and Public Accountability, to wit:

"r. Good Government and Public Accountability - All matters directly and principally relating to malfeasance, misfeasance and nonfeasance in office committed by officers and employees of the government and its political subdivisions and instrumentalities inclusive of investigations of any matter of public interest on its own initiative or upon order of the House."

As it refers to a public official, malfeasance is defined as the intentional performance of an official act that is wrong or illegal. Further, misfeasance denotes a

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24 See Bengzon, Jr. vs. Senate Blue Ribbon Committee, 203 SCRA 767
legal act but performed in a wrongful manner, while nonfeasance means the failure to do what ought to be done.

The DPWH is mandated to undertake (a) the planning of infrastructure, such as national roads and bridges, flood control, water resources projects and other public works, and (b) the design, construction, and maintenance of national roads and bridges, and major flood control systems. It is the engineering and construction arm of the Government tasked to continuously develop its technology for the purpose of ensuring the safety of all infrastructure facilities and securing for all public works and highways the highest efficiency and quality in construction.\(^{25}\)

On the other hand, the UDHA mandated that the HLURB under the direction of the HUDCC in coordination with all local government units and other concerned public and private sectors shall formulate the National Urban Development and Housing Framework within one year from the effectivity of the law. The Framework shall refer to the comprehensive plan for urban and other areas aimed at achieving the objectives of the Program. In the formulation of the Framework, a review and rationalization of existing town and land use plans, housing programs, and all other projects and activities of government agencies and the private sectors which may substantially affect urban land use patterns, transportation and public utilities, infrastructure, environment and population movements shall be undertaken with the concurrence of the local government units concerned.\(^{26}\)

On 14 February 2019, the DHSUD was created under R.A. No. 11201 through the consolidation of HUDCC and the HLURB. It shall act as the primary national government entity responsible for the management of housing, human settlement and urban development; be the sole and main planning and policy-making, regulatory, program coordination, and performance monitoring entity for all housing, human settlement and urban development concerns, primarily focusing on the access to and the affordability of basic human needs.\(^{27}\)

Also, Section 8 of the UDHA on the identification of sites for socialized housing provides that "after the inventory the local government units, in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National

\(^{25}\) DPWH website
\(^{26}\) Section 6, RA 7279
\(^{27}\) Section 4, RA 11201
Mapping Resource Information Authority, and the Land Management Bureau, shall identify lands for socialized housing and resettlement areas for the immediate and future needs of the underprivileged and homeless in the urban areas, xxx." The NHA, under Presidential Decree No. 757 dated 31 July 1975, was tasked to develop and implement a comprehensive and integrated housing program which shall embrace, among others, housing development and resettlement, sources and schemes of financing, and delineation of government and private sector participation.²⁸

In the implementation of the Housing Project, the DPWH and the city government of Ozamiz City did not coordinate with the DHSUD as the primary national agency responsible for the management and development of housing programs. The city government also failed to show that there was a comprehensive plan for urban and other areas for housing development for its homeless and underprivileged citizens. The city government submitted that the DPWH, in coordination with the LGU, identified the property as the most suitable location. However, no coordination made with key government agencies responsible for the Housing Project. Further, the NHA admitted that DPWH and the city government did not confer with it on the Housing Project. It is apparent that there was a transgression by the DPWH and city government on the authority of DHSUD and other key government agencies on the planning and development of the Housing Project.

Section 6 of the ROW Act provided the guidelines for expropriation proceedings. It stated that to acquire real property for the right-of-way site or location for any national government infrastructure through expropriation, the appropriate implementing agency, through the Office of the Solicitor General (OSG), the Office of the Government Corporate Counsel (OGCC), or their deputized government or private legal counsel, shall immediately initiate the expropriation proceedings. This is not so with the Housing Project when the expropriation proceedings were initiated by the city government.

The city government contended that it is authorized to initiate expropriation proceedings without the assistance of the OSG and the OGCC citing the last sentence of Section 3 of the ROW Act that states: "Subject to the provisions of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991", local government units (LGUs) may also adopt the provisions of this Act for use in the acquisition of right-of-way for local government infrastructure projects."

²⁸PD 757, 31 July 1975
An expropriation action is an exercise of the power of eminent domain essentially lodged to the State through the legislature and subject to certain conditions provided under Section 9, Article III of the Constitution. The power is validly delegated to LGUs pursuant to the Local Government Code of 1991, and as much as the authority of LGUs is a delegated power, certain limitations are imposed in the exercise of the authority. The exercise of the power of eminent domain involves a derogation of fundamental right of an individual to his private property which is a constitutionally-protected right. Therefore, the exercise of such power must undergo painstaking scrutiny especially when exercised by LGUs which is merely a delegated power.

Under Section 19 of the Local Government Code of 1991, the exercise of the power of eminent domain by LGUs is subject to the following requisites: 1) an ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; 2) the power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; 3) there is payment of just compensation, as required under Section 9, Article III of the 1987 Constitution, and other pertinent laws; and 4) a valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

It must be emphasized that the exercise of such delegated power should be pursuant to the 1987 Constitution and pertinent laws. The UDHA is such pertinent law as it governs the expropriation of private properties by LGUs for purposes of housing development and urban land reform. Thus, the rules and limitations set forth in the law cannot be disregarded particularly Section 9 on the priorities in the acquisition of land and Section 10 on the modes of acquisition. Under Section 9, privately-owned land is last in the list of priorities while Section 10 provides that expropriation shall be resorted to only when other modes of acquisition have been exhausted.

The Supreme Court emphatically ruled that the cited provisions are strict limitations on the exercise of the power of eminent domain by LGUs, especially with respect to: 1) the order of priority in acquiring land for socialized housing; and 2) the resort to expropriation proceedings as a means of acquiring it. Compliance with these conditions is mandatory because these are the only safeguards of oftentimes helpless

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26 Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila, 467 Phil. 165 (2004)
owners of private property against what may be a tyrannical violation of due process when their property is forcibly taken from them allegedly for public use.30

Section 12 of the ROW Act provides for sanctions or penalties for government officials or employees who violate any of the provisions of said law in the exercise of their powers in the acquisition of private property for national infrastructure projects, to wit:

**SECTION 12. Sanctions.** – Violation of any provision of this Act shall subject the government official or employee concerned to appropriate administrative, civil, or criminal sanctions, including suspension or dismissal from the government service and forfeiture of benefits in accordance with the provisions of the law.

These criminal sanctions include those imposed under the Revised Penal Code, and those covered under special laws, such as R.A. No. 3019, also known as the “Anti-Graft and Corrupt Practices Act” (Anti-Graft Law).

Furthermore, Section 45 of the UDHA provides that: “Any person who violates any provision of this Act shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than Five thousand pesos (P5,000) but not more than One hundred thousand pesos (P100,000), or both, at the discretion of the court: Provided, That, if the offender is a corporation, partnership, association or other juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.”

Section 3 of the Anti-Graft Law, enumerates the corrupt practices of public officers that are considered unlawful and punishable under the law in addition to acts or omissions already penalized by other existing laws. Section 3(e) of the Anti-Graft Law was violated by the DPWH DEO of Ozamiz City and the city government of Ozamiz City in entering into the Memorandum of Agreement for the construction of the Housing Project and in the implementation of the project without adherence to the requirements of relevant laws on socialized Housing Project. It states:

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30 City of Manila vs. Alejandro Roces Prieto, et.al., GR 221336, July 08, 2019

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(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 though 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.

It also became apparent that the city government violated DILG Memorandum Circular No. 2020-068, pursuant to Section 28 (b) of the UDHA and Proclamation Nos. 922 and 929, when it undertook the demolition of houses during the pandemic brought about by COVID-19. The contention of the city government that there was no demolition of houses at Purok 6, Barangay Lam-an, Ozamiz City was disputed by the photos and videos presented during the Committee hearings and on the admission of DILG Region X Regional Director Arnel Agabe that he had personal knowledge of the meeting of DILG Region X officials with complaining residents on the demolition undertaken by the city government.

The DPWH admitted that Phase 1 of the Housing Project funded under the 2019 GAA in the amount of Php 50 Million has two (2) components, namely: 1) construction of the multi-purpose building in Barangay Lam-an in the amount of Php 35 Million; and 2) construction of the building in Barangay Malaubang for Php 15 Million. The line item under the 2019 GAA indicated the Project for the Construction of Multi-purpose Building (Housing Project) Cluster including Site Development, Ozamiz City, Misamis Occidental. However, the actual project implementation involved the construction of two (2) buildings in separate project areas, Barangay Lam-an and Barangay Malaubang.

It was also revealed that there were two (2) private contractors, the Alpha & Omega General Contractor & Development Corporation for the construction project in Barangay Lam-an and the Mindanao Rock Corporation for the construction project in Barangay Malaubang. The construction project can constitute splitting of contracts. Under Section 54.1 of the IRR-A of R.A. No. 9184, otherwise known as the Government Procurement Reform Act, splitting of contracts means the division or breaking up into smaller quantities and amounts, or dividing contract implementation into different phases or sub-contracts, for the purpose of evading or circumventing the requirements of the Government Procurement Reform Act or its IRR-A, especially the necessity of public bidding.
On the allegation that Representative Oaminal intervened with the implementation of the Housing Project by his announcement that the four-storey multi-purpose building changed to a two-storey building due to soil bearing capacity will be made to a three-storey building, this may be tantamount to legislators overstepping on the functions of the Executive Branch. There is also a video presentation when Representative Oaminal invited PCUP officials at the South Lounge of the House of Representatives and reproved the actions of these officials when they met with the affected residents of Purok 6, Barangay Lam-an whom they advised to file complaints. Representative Marcoleta contended that these actuations of Representative Oaminal were inappropriate and beyond his prerogative as District Representative.

The Supreme Court, in its landmark decision entitled, Belgica vs. Ochoa,\textsuperscript{31} that abolished the "pork barrel system", ruled:

"xxx the Legislative branch of government, much more any of its members, should not cross over the field of implementing the national budget since, as earlier stated, the same is properly the domain of the Executive. xxx"

Upon approval and passage of the GAA, Congress' law-making role necessarily comes to an end and from there the Executive's role of implementing the national budget begins. So as not to blur the constitutional boundaries between them, Congress must "not concern itself with details for implementation by the Executive."

FINDINGS AND CONCLUSION

Premises considered, after a thorough and careful deliberation pursuant to House Resolution No. 1197, the Committee found and concluded as follows:

1. There is violation of laws in the implementation of the Housing Project. In particular:
   a) Section 9, Article III of the Constitution in relation to Section 6 of R.A. No. 10752 (ROW Act) for failure of the city government of Ozamiz City as plaintiff to the expropriation cases to include in its deposit the mandatory value of the

\textsuperscript{31} G.R. No. 208566, November 19, 2013
improvement and value of crops and trees on the lands subject of the expropriation cases;

b) Section 8 of R.A. No. 7279 (UDHA) for failure of the city government of Ozamiz City to coordinate with NHA and key government agencies to identify socialized housing in the city;

c) Section 9 of the UDHA for failure of DPWH and the city government of Ozamiz City to coordinate with DHSUD and key government agencies to establish and develop resettlement sites for informal settlers in the city;

d) Section 9 of the UDHA for failure of the DPWH and the city government of Ozamiz City to follow the order of priorities in the acquisition of lands for the Housing Project;

e) Section 10 of the UDHA for failure of the city government of Ozamiz City to exhaust all modes of acquisition of lands as site for the Housing Project before it resorted to expropriation proceeding;

f) Section 54.1 of the IRR-A of R.A. No. 9184, otherwise known as the Government Procurement Reform Act, splitting of contracts.

2. As mandated under the Philippine Constitution, "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency x x x." (Section 1, Article XII)

The people rely on the public official and employee to uphold the Constitution and observe the laws, rules and regulations passed for an orderly society. Public officers have the duty and responsibility to uphold public interest over personal interests.

Engr. Abinales, Engr. Hipona and all officials and employees in the Second District Engineering Office of Misamis Occidental involved in the implementation of the Housing Project, as well as the city government of Ozamiz City shall be liable under Section 12 of ROW Act for violation of the provisions of the law in the exercise of their powers in the acquisition of private property for the Housing Project. Corollary, these officials can be held liable under Section 45 of the UDHA, for violation of the provisions of said law.
RECOMMENDATIONS

In view of the foregoing, this Committee respectfully recommends the following:

1. The DPWH must revisit its mandate as the engineering and construction arm of the Government. Given the foregoing findings, the DPWH must ensure that it properly coordinates with government agencies that have technical specialization and proficiency on the implementation of the project, such as DHSUD and NHA for housing projects.

2. The DPWH must ascertain that all procedures and processes on the implementation of a construction project, beginning from its planning, identification of project site, acquisition of lands for the project site, and actual implementation, are complied with, as prescribed by law, and a physical and thorough evaluation of the lands, whether public or privately-owned, is conducted prior to construction.

3. The DPWH must institutionalize safeguards to ascertain that the DPWH District Engineering Office does not abuse its discretion on the entry and approval of Memorandum of Agreement and other similar agreements, with private contractors for the implementation of a construction project. An independent oversight committee in the national level should be created to review and evaluate all construction projects by DPWH DEO.

4. The LGUs must prepare its Urban Development and Housing Plan in coordination with the DHSUD, NHA and other key government agencies mandated to plan and managed socialized housing program.

5. The alleged intervention of Representative Oaminal on the implementation of the Housing Project shall be referred to the Committee on Ethics and Privileges of the House of Representatives for proper disposition.

6. A copy of this Committee Report shall be furnished to the DPWH, DILG, DHSUD, NHA, PCUP, city government of Ozamiz City for their information and appropriate action.
7. A copy of this Committee Report will be furnished to the OSG, Department of Justice and Office of the Ombudsman for further investigation as to possible administrative, civil, and criminal liability against public officials and private individuals involved.