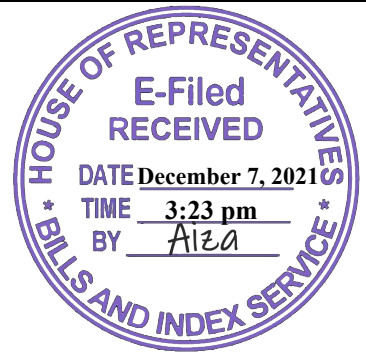


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Third Regular Session



COMMITTEE REPORT No. 1370

Submitted by the **COMMITTEE ON GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY** on December 7, 2021

Re: **House Resolution No. 1751**

Informing the House of its Findings and Recommendations.

Sponsors: Representatives Michael Edgar Y. Aglipay, Gil "Kabarangay" A. Acosta Jr., Angelo Marcos Barba, Maximo Y. Dalog Jr. and Hector S. Sanchez.

Mr. Speaker:

The **Committee on Good Government and Public Accountability** to which was referred **House Resolution No. 1751**, entitled:

"RESOLUTION CALLING FOR AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED IRREGULARITIES AND SETBACKS ON THE FREE WI-FI INTERNET ACCESS IN PUBLIC PLACES PROJECT IMPLEMENTED BY THE DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (DICT) THAT MARRED THE PROJECT AND GRAVELY AFFECTED THE DELIVERY OF SERVICE TO THE FILIPINO PEOPLE",

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

Respectfully submitted:

A handwritten signature in black ink, appearing to be "Michael Edgar Y. Aglipay".

MICHAEL EDGAR Y. AGLIPAY
Chairperson
Committee on Good Government and Public Accountability

THE HONORABLE SPEAKER
House of Representatives

PREFATORY STATEMENT

House Resolution No. 1751, introduced by Representatives Michael Edgar Y. Aglipay, Gil “Kabarangay” A. Acosta Jr., Angelo Marcos Barba, Maximo Y. Dalog Jr. and Hector S. Sanchez, entitled:

“RESOLUTION CALLING FOR AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED IRREGULARITIES AND SETBACKS ON THE FREE WI-FI INTERNET ACCESS IN PUBLIC PLACES PROJECT IMPLEMENTED BY THE DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (DICT) THAT MARRED THE PROJECT AND GRAVELY AFFECTED THE DELIVERY OF SERVICE TO THE FILIPINO PEOPLE”,

was referred by the Committee on Rules, House of Representatives to the Committee on Good Government and Public Accountability on May 18, 2021. Due to the urgency of the issues submitted to the jurisdiction of the Committee, the deliberation pursuant to House Resolution No. 1751 ensued and public hearings were conducted on May 25, June 1 and June 8, 2021. The Committee deliberation was terminated on June 8, 2021.

Public officials from the Department of Information and Communications Technology (DICT), Commission on Audit (COA) and Bureau of Customs (BOC) attended the hearings. Attendees from the private sectors included officials of the United Nations Development Programme (UNDP) Philippines, Speedcast International Limited (Speedcast for brevity), Philippine Communications Satellite Corporation (PHILCOMSAT), and other key players in the telecommunications industry. The following resource persons participated during the public hearings, through physical attendance and Zoom video conference, to wit:

- 1) From DICT: Undersecretary Emmanuel Rey Caintic, Assistant Secretary Kristoffer Tiansay, and Division Chief of the Legislative Liaison Division of the Legal Service Atty. Omar Sana;
- 2) From COA: Chairperson Michael Aguinaldo; Atty. Gloria Camora, Attorney V, Legal Affairs Office; Atty. Ridgway Marabe, Acting Division Chief, Legal Affairs Office; Atty. Ralph Bodota, Audit Team Leader; Atty. Vivian Dulawan, Section Chief, Legal and Adjudication Office; and Ms. Lea Petero, Supervising Auditor for DICT;
- 3) From BOC: Atty. Karen Anne E. Yambao of the Legal Service;
- 4) From UNDP Philippines: Resident Representative Selva Ramachandran, Deputy Resident Representative Enrico Gaveglia and Ms. Maria Luisa Isabel Jolingbayan, Team Leader for Institutions and Partnership;
- 5) From Speedcast: Senior Vice-President James Trevelyan;
- 6) From PHILCOMSAT: Ms. Lin Bildner, President and Chief Executive Officer, and Legal Counsel Atty. Lorna Kapunan;
- 7) From PLDT Inc.: Atty. Aileen Regio, First Vice President;
- 8) From DITO Telecommunity: Atty. Adel Tamano, Chief Administrative Officer;
- 9) From Sky Cable Corporation.: Mr. Jon Arayata, Strategic Relations Head;
- 10) From GLOBE Telecom: Atty. Ariel Tubayan, Head of Policy Division;
- 11) From SMART Communications: Mr. Roy Ibay;
- 12) From IOne Resources: Mr. Alberto Catangui, Chief Executive Officer;
- 13) From Ebizolution Company: Mr. Nathaniel Marquez;
- 14) From We Are IT Philippines: Mr. Joseph Maddatu, Chief Executive Officer;
- 15) From Philippine Cable Television Association: Mr. Joel Dabao, President; and
- 16) Former DICT Undersecretary Eliseo Rio Jr.;

STATEMENT OF FACTS

House Resolution No. 1751 called for an inquiry, in aid of legislation, on the alleged irregularities and setbacks on the Free Wi-Fi Internet Access in Public Places Project implemented by the Department of Information and Communications Technology (DICT) that marred the project and gravely affected the delivery of service to the Filipino. It alleged that DICT faced several challenges which slowed down the implementation of the project such as the country's geographical condition and topography, and political issues at the local level, not to mention the problems encountered during the bidding process and initial stages of project implementation. Providing internet connectivity in mountainous areas, remote islands, and areas prone to flooding, typhoons, earthquakes and other natural disasters seemed difficult, and bridging partnership and cooperation with local government units (LGUs) proved challenging as the LGUs have authorities over infrastructures within its territorial jurisdiction pursuant to Republic Act No. 7160, otherwise known as the Local Government Code.

Republic Act No. 10929, otherwise known as "Free Internet Access in Public Places Act", was approved on August 2, 2017. This law was passed to establish a program that will provide free access to internet service in public places throughout the Philippines. It involves the building of infrastructure and setting up of cell sites throughout the country for reliable and efficient internet connection. The DICT was tasked to implement the project.

Countless adverse reports have been brought out relating to the implementation of the Free Wi-Fi For All – Free Public Internet Access Program (FPIAP) of DICT. The government, through the DICT, entered into several procurement contracts and a partnership with the UNDP to accelerate the implementation of the project.

The internet speed test done on June 2021 by OOKLA's Speedtest Global Index, showed that the Philippines ranked 75th out of 137 countries surveyed in mobile internet speed and 62nd out of 181 in fixed broadband internet speed.¹ The Philippines has not taken advantage of the technology and lags behind its neighboring countries in internet speed capability. The cause of this slow internet speed is due mainly to a deficiency in the number of cell sites in the country. The National Telecommunications Commission (NTC)'s latest report to Malacañang showed that the country now has a total of 22,834 cell sites compared to 90,000 cell sites in Vietnam.²

The Free Public Internet Access Program (FPIAP) of DICT

In 2015, the Department of Science and Technology (DOST), through its Information and Communications Technology Office (ICT Office), initiated a project that will provide internet connectivity in public places across the Philippines. The project aimed to accelerate the government's efforts in enhancing internet accessibility that shall provide Filipinos with more economic, social and educational opportunities by reducing the growing digital divide, under the overarching e-Filipino Program of the DOST ICT Office. The budget for the project as authorized in the General Appropriation Act for 2015 was PhP 1.408 Billion.³

Then, the DICT was created under Republic Act No. 10844, otherwise known as the *Department of Information and Communications Technology Act of 2015*, which was signed into law on May 23, 2016. As mandated under the law, the DICT shall be the primary policy, planning, coordinating, implementing, and administrative entity of the government that will plan, develop, and promote the national ICT development agenda. The DICT took over the

¹ [Speedtest Global Index – Internet Speed around the world – Speedtest Global Index](#)

² <https://mb.com.ph/2021/01/22/ph-now-has-23k-cell-sites-still-behind-in-asean>

³ [dict.go.ph/DOST ICT Office Free Wi-Fi Internet Access in Public Places Project](http://dict.go.ph/DOST%20ICT%20Office%20Free%20Wi-Fi%20Internet%20Access%20in%20Public%20Places%20Project).

DOST project and launched the “Pipol Konek” project on June 2016 to provide free internet services across the country. The project targeted the installation of 13,024 internet sites by December 2018. By August 2018, only 3,509 sites had been installed with 1,592 live sites and 1,689 sites awaiting telecommunication links. The project also envisioned 200,000 sites installed by 2026.⁴

The FPIAP is directly in line with the “Internet for All” thrust identified in the Philippine Digital Strategy of 2011-2016. President Rodrigo Duterte during his State of the Nation Address on July 25, 2016, recommended for legislation that Wi-Fi access be provided to the public at no charge.

Republic Act No. 10929, enacted on August 2, 2017 mandates the DICT to be the lead implementing agency in the effective and efficient implementation of FPIAP. The FPIAP aims to provide free access to internet service in public places throughout the country to promote knowledge-building among citizens and enable them to participate and compete in the evolving information age.⁵

When Republic Act No. 10929 was enacted in August 2017, the DICT was just a newly organized agency. The DICT has implemented the FPIAP through procurement contracts with various suppliers, engaged the Philippine International Trading Corporation (PITC) as procurement agent, and partnered with the UNDP through Financing Agreement. The engagement of PITC and the partnership with UNDP were reportedly the DICT’s strategies to accelerate the implementation of the program.

The Partnership of DICT and UNDP

On July 30, 2018, the DICT sent a Letter of Intent to the UNDP to engage the latter as a development partner in the implementation of the Pipol Konek project. The DICT-UNDP partnership will be in accordance with the Standard Basic Assistance Agreement (SBAA) between the Government of the Philippines and UNDP entered on July 21, 1977, and ratified on December 12, 1977. The DICT posited that the agreement partakes the nature of a treaty.⁶

The UNDP’s portfolio of Philippine government partnerships at that time included the following projects, among others:

1. DepEd K to 12 computerization program – delivering IT equipment and solar panels to 3,694 schools nationwide, with project cost at USD 25,045,419.86;
2. DSWD Bottom-Up Budgeting – delivering services including infrastructure to local governments, with project cost at USD 10,493,242.41;
3. DILG Paying the Road to SDGs through Good Local Governance – building an electronic project management system for local governments, with project cost at USD 7,436,332.97; and
4. UNDP-RAPID – A ClimEx.Db console and app-based system that allows LGUs to collect, organize, and manage information on climate change and disaster risk vulnerabilities, with project cost at USD 4,533,895.85.

Considering the UNDP’s track record with large projects, as well as its access to a pool of international bidders, the DICT leadership at that time, believed that the engagement of UNDP in the implementation of FPIAP would allow a faster roll-out of the Pipol Konek project despite the DICT’s manpower and capacity limitations.⁷

⁴ DICT letter dated 24 May 2021, page 1.

⁵ Section 2, Republic Act No. 10929.

⁶ DICT Letter dated 24 May 2021, page 1.

⁷ *Ibid*, page 2.

Mr. Eliseo Rio Jr., former DICT Acting Secretary and Undersecretary, said that the DICT decided to partner with UNDP because of its vast experience in supporting a wide variety of developmental projects worldwide. He said that the DICT followed a set of firm guidelines to ensure that any work done is completed properly without corruption. Mr. Rio also cited that the UNDP has a vast network of satellite providers for Wi-Fi Access Points and that it can select the most cost-effective provider from many parts of the world, asserting that local providers may not be able to compete with the services and cost that foreign providers can offer.⁸

On September 26, 2018, DICT and UNDP entered into the “Financing Agreement Between UNDP and the Government of the Philippines” (DICT-UNDP Agreement), aimed at rolling out Free Wi-Fi sites at selected locations as part of the Pipol Konek project for the benefit of unserved, underserved, and remote communities. The DICT-UNDP Agreement provides that:

1. The Philippine government shall place at the disposal of the UNDP the amount of PhP 1,362,084,618.28 for the project. It will be given through two (2) tranches of PhP 700,000,000.00 on September 25, 2018 and PhP 662,084,618.28 on January 15, 2019;
2. The purpose of the Agreement is to enable DICT to access wider range of internet service providers and technologies to substantially expand the provision of free internet services in public places, especially for disadvantaged groups, meeting minimum quality standards for reliability and speed, specifically the following services:
 - i. Domestic IP Backhaul Services in 6 provinces;
 - ii. Municipal IP Backhaul Services in 403 municipalities, 76 cities, 24 provincial capitals, and 23 DICT field operations office – provincial offices; and
 - iii. Public Access Wi-Fi Network and Services for 66 provinces.
3. The project period will be for 18 months, subject to revision, and target implementation of up to 6,000 Free Wi-Fi sites; and
4. The UNDP will use its National Acceleration Modality to draw international expertise and temporarily apply its procurement system for managed services contracts for designated areas that currently have no or limited access to internet in public places.

Undersecretary Emmanuel Rey Caintic of the DICT testified that the Certificate of Availability of Funds for the project was released on September 27, 2018 at project cost of PhP 1,362,084,618.28. Based from the records, the total amount of USD 25,485,535.59 was transferred to UNDP as follows:

1. USD 12,926,815.76 on October 09, 2018;
2. USD 10,606,606.83 on January 07, 2019; and
3. USD 1,952,113.00 on April 08, 2019.⁹

The DICT-UNDP Pipol Konek project was divided into three (3) phases, with UNDP conducting its bidding activities following its globally accepted rules of procurement, to wit:

1. Phase 1- UNDP conducted the Invitation to Bid on May 23, 2019. It was awarded to Speedcast International Limited (Speedcast for brevity) on October 10, 2019.
2. Phase 2- UNDP conducted the Invitation to Bid on December 11, 2019. It was awarded to Speedcast on May 18, 2020.
3. Phase 3- UNDP conducted the Invitation to Bid on October 5, 2020. It was awarded to PLDT Inc. on April 8, 2021.

⁸ TSN on Committee hearing held on May 25, 2021.

⁹ *Ibid.*

Speedcast, the winning bidder for Phase 1 and 2, is an Australian company, while PLDT Inc., the awardee of Phase 3, is a Filipino company. The contracted amounts were USD 14.4 Million for Phase 1, USD 1.39 Million for Phase 2, and USD 5.8 Million for Phase 3.¹⁰

The project involved the installation of Very Small Aperture Terminals (VSAT) for Internet Access backhauled via satellite on 5,000 sites on Geographically Isolated and Disadvantaged Areas (GIDA) across the country, around 50% of which are areas with intermittent electric source where solar panels will be used for power. It also involved the installation of 1,000 hotspots in State-owned Universities and Colleges for a total installation of 6,000 sites.

Undersecretary Caintic said that the project was expected to: 1) provide free internet at mostly GIDA; 2) capacitate citizens to monitor public internet service; and 3) institute capacity building programs of DICT. Speedcast was contracted to set up 3,000 wi-fi sites for Phase 1 and 2,000 wi-fi sites for Phase 2 using VSAT technology. On the other hand, PLDT Inc. was contracted for Phase 3 to set-up 1,000 hotspots using fiber technology.¹¹

The DICT took no part in the bidding and selection of UNDP's suppliers and service providers, including the awarding of contracts to Speedcast and PLDT.

Mr. Rio underscored the legality of the DICT-UNDP Agreement and pointed out that it was based on the SBAA between UNDP and the Philippine government citing Clause 1, Article II of SBAA which states that assistance "*maybe made available by the UNDP to the Government*" upon request consisting, among others, of "*services of advisory experts and consultants*", "*equipment and supplies*", and "*any other form of assistance or form of execution, which may be agreed upon by the Government and UNDP.*"¹²

Mr. Rio also cited the opinion of the Government Procurement Policy Board (GPPB) released in 2015 that the provisions of the 1977 SBAA is in faithful compliance to the country's treaty and international obligations – under the principle of *pacta sunt servanda*. Thus, UNDP procurement using the contributions or funds received from the Philippine government is governed by the UNDP Financial Rules and Regulations. These UNDP rules provide the processes, procedures, rules and regulations that the UNDP may adopt in the conduct of its procurement activities to implement identified UNDP development support services.¹³

Mr. Rio further submitted that the COA Internal Memorandum released in 2015 confirmed the exemption of UNDP Support Services from COA's scope. Finally, he said that the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184, also known as the Government Procurement Reform Law, provides that any treaty or international or executive agreement to which the Philippine government is a signatory affecting the subject matter of the law and its IRR shall be observed.¹⁴

The UNDP submitted that the selection of contractors for the project went through an open and fair international competitive bidding process. For Phase 1, the winning proposal was submitted by Speedcast as lead contractor with PHILCOMSAT as its sub-contractor. The Speedcast and PHILCOMSAT proposal offered a strong combination of international and local expertise. At the time of submission, their bid displayed the best

¹⁰ TSN on Committee hearing held on May 25, 2021.

¹¹ *Ibid.*

¹² *Id.*

¹³ Mr. Rio submission on May 25, 2021.

¹⁴ *Ibid.*

capacity to cover the number of sites required and the ability to reach and work in remote locations.

The procurement and selection process of UNDP

In coordination with DICT, the UNDP conducted detailed market research. The project was designed to solicit “fully-managed” Wi-Fi services and divided into three (3) parallel phases for solicitation: Phase 1 for 3,000 sites, Phase 2 for 2,000 sites, and Phase 3 for 1,000 sites. Both Phase 1 and 2 will be using VSAT technology, while Phase 3 is for fiber optic technology. Per design, the supplier would be paid for the Wi-Fi services provided, as per the agreed service level arrangement and **no equipment was to be purchased or owned by either DICT or UNDP**. This design is in line with the framework currently being used by DICT in the Free Wi-Fi for all National Program.¹⁵

The procurement process undertaken by the DICT-UNDP project were conducted following the UNDP standard procedures on procurement that are publicly available, and which supposedly abide by the principles of fairness, integrity, and transparency. All procurement processes were conducted through an open and fair international competitive bidding process. Bids were received from consortia of national and international bidders and evaluated as per the published criteria in the solicitation document. Technical evaluation was conducted by a panel of technical experts nominated by UNDP, whereas the financial evaluation was done by finance and procurement teams. The DICT participated as a member of the Technical evaluation panel.¹⁶

The UNDP procurement process mandates that in the examination, evaluation and comparison of offers, both price as well as non-price factors were considered. These factors include the following: 1) full lifecycle cost for operation, maintenance and service; 2) delivery and completion time; 3) functional characteristics; 4) terms of payment and guarantee; 5) vendor’s past performance record; and 6) vendor’s overall ability to provide the goods/services required by UNDP. Bids were supposedly objectively evaluated based on the information provided by bidders and included the assessment of their financial capacity through review of previous years audited financial reports.¹⁷

The selected bids of Speedcast for Phase 1 and Phase 2 of the project were found to be technically compliant, most advantageous and presented best value for money among all the bids following the UNDP procurement processes. The UNDP conducted a site validation exercise on a similar size rural broadband project of Speedcast in Malaysia, and the results supported the overall assessment of Speedcast’s workmanship, quality and experience of delivering similar projects which provided services to the public in remote locations.¹⁸

For Phases 1 and 2 of the Project, the winning proposals were submitted by Speedcast as lead contractor with PHILCOMSAT as its sub-contractor. Speedcast will provide overall management and technical direction, internet bandwidth and VSAT equipment, while PHILCOMSAT will be responsible for site surveys, installation of equipment and maintenance of sites. At the time of submission and evaluation, the winning bidder displayed the best capacity to cover the number of sites and the ability to reach and work in remote locations. Their bid supposedly encouraged a high degree of confidence in their ability to deliver a managed internet service for proposed contracts.¹⁹

¹⁵ UNDP submitted statement on June 1, 2021.

¹⁶ *Ibid.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Ibid.*

The participation of Speedcast and PHILCOMSAT in the project

In compliance with the bidden project, Speedcast provided the remote VSAT solution and delivered VSAT hardware, satellite connectivity, and overall management of the technical solution. The complex nature of the project required significant infrastructure and capital expenditure investments by Speedcast, along with network design and management expertise.²⁰

Speedcast contracted PHILCOMSAT as its sub-contractor in the Philippines to provide in-country services including, among others, site surveys, equipment installation, site maintenance, and importation of Speedcast's equipment for the project. Speedcast Senior Vice-President James Trevelyan admitted that Speedcast does not have the license to import to the Philippines thus, contracted the PHILCOMSAT for this activity.

The PHILCOMSAT contracted Cadano Cargo and Transport Services (Cadano for brevity), a Philippine freight forwarding company, as the customs broker for the importation of equipment for the project. The PHILCOMSAT, as the importer of record, and Cadano, as the customs broker, handled the equipment importation and clearances for the Bureau of Customs (BOC).²¹

By July 2020, Mr. Trevelyan said that Speedcast shipped 1,890 sets of equipment to PHILCOMSAT as the importer. He alleged that during the rollout phase of the project, PHILCOMSAT had approximately 1,000 unused sets of equipment in its possession. As of the date of the Committee hearing, Speedcast shipped more than 2,300 sets of equipment to the Philippines. Mr. Trevelyan reported that 882 sites have been formally activated, benefitting more than 350,000 users in remote places who have limited or no access to commercial internet.²²

The PHILCOMSAT submitted the Phase 1 of the project consisted of site surveys and installation of VSAT equipment in 3,000 sites listed in the Master List provided by UNDP 60% of which, or 1,800 sites, were off-grid or solar-powered, and 40% or 1,200 sites were on-grid. However, the implementation within the 10-month project timeframe became unworkable given the faulty Master List, challenges in accessing over half of the sites, and installation difficulties due to the COVID-19 pandemic.²³

The PHILCOMSAT also submitted that the UNDP failed to vet the 3,000 sites in the Master List, almost 60% of which were problematic, inaccessible or unfeasible for installation. This was determined by the PHILCOMSAT when it conducted its site surveys, which findings constrained it to survey additional sites at added costs. The PHILCOMSAT submitted that the UNDP failed to notify, coordinate with, and get approval from the LGUs and prospective site beneficiaries, such that PHILCOMSAT deployment teams were often met with hostility at the sites or the local authorities were unavailable to give the necessary consent for surveying or installation of equipment.²⁴

The PHILCOMSAT further submitted that the imposition of lock-down that started in March 2020 caused delay in site surveys and mobility restrictions on the equipment and installers to the sites. While the UNDP committed to address the matter and obtain travel exemption for PHILCOMSAT's deployment teams, it failed to do so and the "passes" provided by UNDP were not honored by LGUs.²⁵

²⁰ Position Paper of Speedcast dated 24 May 2021.

²¹ *Ibid.*

²² TSN on Committee hearing held on June 1, 2021.

²³ Position Paper of PHILCOMSAT on May 25, 2021.

²⁴ *Ibid.*

²⁵ *Id.*

The PHILCOMSAT disputed the assertion of Speedcast on the availability of equipment for the project, stating that Speedcast ran out of in-country inventory and was short of 1,100 sets of VSAT equipment by the end of December 2020. Thus, the PHILCOMSAT slowed down its deployment of field personnel and restoration work due to unavailability of VSAT spare parts.²⁶

Setbacks on the implementation of the FPIAP

Undersecretary Caintic said that the original contract with UNDP on October 1, 2019 provided that deployment of the internet service to all 3,000 sites would be completed on December 7, 2020. Due to the pandemic, the contract was amended on September 29, 2020 extending the completion date to December 7, 2021. However, DICT cancelled the contract with UNDP due to the delay in the implementation and other issues that burdened the DICT-UNDP project.

1. Speedcast Filing a Petition under Chapter 11 of the US Bankruptcy Law

The PHILCOMSAT asserted that UNDP did not properly vet Speedcast during the bidding process and violated the criteria on the Eligibility and Qualification requirements under the Invitation to Bid of Phase 1 of the project which is required under the UNDP rules that the bidder has not declared bankruptcy, is not involved in bankruptcy or receivership proceedings, and there is no judgment or pending legal action against the vendor that could impair its operations in the foreseeable future.

On April 23, 2020, Speedcast filed a Petition for financial restructuring under Chapter 11 of the US Bankruptcy Law in the United States of America. The UNDP was informed that Speedcast voluntarily filed for balance sheet restructuring under Chapter 11 of the US Bankruptcy law. Then, the DICT was informed about it in a letter dated May 4, 2021. Speedcast updated UNDP on the progress of the restructuring through regular meetings. In a letter dated March 11, 2021, Speedcast informed its customers that it had successfully completed its restructuring process and are under the new ownership of Centerbridge Partners, having received an equity investment of USD 500 Million.

In its Position Paper, Speedcast contended that in contrast to the common understanding of bankruptcy, in which a company stops operation and goes out of business, it initiated a voluntary recapitalization under US Court supervision (commonly called a “Chapter 11” filing). During the process or recapitalization, Speedcast operations and capital investments continued as usual and it continued to transact with its suppliers, customers, and partners.²⁷

The process undertaken by Speedcast under Chapter 11 of the US Bankruptcy Law was supposedly a financial restructuring aimed at reducing funded debt and gaining access to new sources of investment, and Speedcast asserted that this did not affect the implementation of the DICT-UNDP project. There were 613 sites under the project that were installed during the period when Chapter 11 proceedings were on-going. Delays in deployment cannot be attributed to the Chapter 11 proceedings, but rather to the health, safety, and mobility restrictions brought about by the COVID-19 pandemic, coupled with the challenges in reaching the target sites.²⁸

²⁶ *Id.*

²⁷ Position Paper of Speedcast dated May 24, 2021.

²⁸ Position Paper of UNDP dated May 20, 2021.

The PHILCOMSAT maintained that despite the emergence of Speedcast from Chapter 11 proceeding, it still has not received the full payment from Speedcast of its expenses incurred for the 936 activated sites for Phase 1 of the project.²⁹

2. Undervaluation on shipments of telecommunications equipment

On April 30, 2021, the DICT Central Receiving Unit received a letter dated April 12, 2021 from BOC Commissioner Rey Leonardo B. Guerrero regarding the Prior Disclosure Program Application (PDPA) of PHILCOMSAT on the six (6) undervalued shipments of telecommunications equipment imported between January to June 2020. Based on the review of the disclosure, it appeared that the undervaluation was committed by PHILCOMSAT's foreign supplier Speedcast with the assistance of the local customs broker, Cadano. The BOC stated in its letter that it cannot exercise jurisdiction over Speedcast as a foreign entity with no actual and permanent presence in the country, and thus endorsed its findings to DICT for stringent evaluation and implementation of the appropriate measures that may be warranted under applicable laws and regulations.³⁰

The Disposition Form dated April 13, 2021 of BOC contained the agency's report on the verification of the PDPA of PHILCOMSAT. It stated that Speedcast and PHILCOMSAT entered into a Subcontractor Agreement for the implementation of the Free Wi-Fi Internet Access in Public Places Project in the Philippines between the DICT and UNDP, to which Speedcast was the selected contractor of UNDP. The Subcontractor Agreement stipulated that PHILCOMSAT, among other obligations, shall assist Speedcast with the importation into the Philippines of Speedcast-owned telecommunications equipment.

As Speedcast is a non-resident foreign corporation and not engaged in trade and business in the Philippines, it contracted PHILCOMSAT to be the consignee/importer-of-record and to secure the necessary import permits and licenses from concerned Philippine government offices for the importation of Speedcast telecommunications equipment for the project. For its part, PHILCOMSAT allowed Speedcast to use its name as the consignee in the importation documents to be filed with BOC. PHILCOMSAT undertook to advance the payment of the customs clearance charges, import duties and taxes due on the importation.

Speedcast agreed to pay PHILCOMSAT the customs clearance, import duties and taxes advanced by the latter on a cost-reimbursement basis. There will be no additional compensation/consideration for the arrangement mentioned in the Subcontractor Agreement. The legal and equitable title and ownership over the imported equipment shall be retained by Speedcast during and after the completion of the DICT-UNDP project.³¹

The PDPA of PHILCOMSAT filed with the BOC stated that PHILCOMSAT was notified by Cadano on July 16, 2020 that the thirteenth shipment under the arrangement with Speedcast was flagged by a BOC examiner at the NAIA Customhouse due to the discovery of a commercial invoice packed with the imported equipment which showed a value higher than what was presented for payment of duties and taxes. PHILCOMSAT immediately resolved the matter by paying the correct (higher) amount of duties and taxes. This incident prompted PHILCOMSAT to conduct an internal review on Speedcast previous shipments under the Subcontractor arrangement. It was discovered that six (6) shipments in 2020 were undervalued based on the quotations on the price of the imported equipment obtained by PHILCOMSAT from Speedcast's supplier in the United States.³²

Speedcast submitted that it became aware of the undervaluation of shipment of the project equipment on July 2020. It asserted that it provided PHILCOMSAT and Cadano

²⁹ Position Paper of PHILCOMSAT submitted on May 25, 2021.

³⁰ BOC letter to DICT Secretary Gregorio B. Honasan II dated April 12, 2021.

³¹ Under Findings in the Disposition Form of BOC dated April 13, 2021, pages 2-3.

³² *Ibid.*

with copies of the commercial invoices from the equipment supplier to enable PHILCOMSAT and Cadano to properly declare the values of the equipment to BOC. PHILCOMSAT and Cadano, as the importer-of-record and broker, respectively, handled the importation of Speedcast's equipment installed or used for the project.

As a consequence, Speedcast engaged its own independent local freight forwarder in the Philippines for its subsequent importations for the project. It alleged that it immediately sought an investigation on the matter by a major international law firm, who was provided with unfettered access to records and individuals appointed by Speedcast for the project so that a complete investigation could be conducted. It also alleged that PHILCOMSAT was invited to participate in the independent investigation and to share relevant documentation but declined to do so.³³

Speedcast submitted to the Committee copies of its letters, through counsels, addressed to the BOC Commissioner dated 29 January 2021 and 13 April 2021 on its own PDPA and tendered payment for any deficiency in customs duties and taxes on its shipment of telecommunications equipment for the project "as it was concerned that the importer of record might not have done so".³⁴

On the other hand, the UNDP submitted that it requires all its contractors to abide by national laws in performing and fulfilling their obligations. In issues related to allegations of mismanagement and other irregularities, the UNDP's policies and procedures on transparency and accountability are "clear, robust and in accordance with international standards".³⁵

The UNDP was informed by PHILCOMSAT on July 21, 2020 regarding the alleged undervalued shipments of telecommunications equipment imported by the contractor between January to June 2020. While no evidence was produced by the PHILCOMSAT, the UNDP contacted Speedcast to take immediate action and solicited PHILCOMSAT to clarify the matter with Speedcast. The UNDP also requested Speedcast to self-report to BOC and comply with national laws. As a precautionary measure and despite absence of evidence, UNDP referred all allegations received to its independent Office of Audit and Investigation (OAI), in accordance with policies and procedures. The matter, together with the BOC letter dated April 12, 2021 that was officially shared by DICT on May 14, 2021, is now under investigation before the OAI and it requested DICT to provide the documents cited in the BOC letter.³⁶

The DICT, for its part, stands by its commitment not to condone any violation of the Philippine laws. On May 3, 2021, the DICT issued Department Order No. 72, series of 2021, constituting the DICT Investigating Task Force (DICT-ITF) to conduct its own independent investigation on the alleged violation of customs and other Philippine laws by Speedcast. The DICT-ITF is currently investigating the alleged violations, in coordination with BOC, and shall submit a report on its findings to the Office of the Secretary.³⁷

3. Site selection and validation process

Under the Pipol Konek Project, the UNDP is to deliver up to 6,000 public sites. The selection of these sites was to be determined by UNDP in agreement with DICT, and governed by principles that carefully balance practical and economic feasibility, as well as ensuring a development impact for the disadvantaged. The Master List was made part of the DICT-UNDP agreement as an Appendix, after it was finalized by both DICT and UNDP. The governing principles in the site selection of sites are as follows:

³³ Position Paper of Speedcast dated May 24, 2021, page 3.

³⁴ *Ibid.*

³⁵ UNDP statement dated 20 May 2021.

³⁶ *Ibid.*

³⁷ DICT Position Paper dated May 24, 2021.

1. Access and technical feasibility – The sites must be accessible and suitable for the available technology solutions. Furthermore, the site must have been verified in terms of physical presence and readiness to accept and manage Wi-Fi.
2. Market Development – While expediency of service delivery is an important consideration, the project will give due consideration to the need to expand the market for Internet Service Providers (ISPs), particularly community owned models. Sites with high potential for community organization, such as schools with strong parent-teacher associations, will therefore be prioritized.
3. Economic Feasibility – The choice of sites should also assure a minimum return of investment for ISPs to ensure economic sustainability. This shall be determined based on proximity of site in relation to existing internet connectivity infrastructure, such as Minimum Point of Presence (MPOP)³⁸, population density, and technology selection.
4. Remoteness versus Impact – While disadvantaged, remote communities will be targeted, the project sites within those communities will be chosen on the basis of maximum reach. Centers where women and girls frequent will be prioritized to ensure that internet connectivity impacts on women positively.

Following these principles, the UNDP submitted that the 4,000 schools under the DepEd-UNDP K to 12 computerization programs are excellent candidates as project sites. This is due to the fact that the schools have already been validated as ideal, both in terms of location, access, and readiness for internet connectivity since all schools have IT equipment and electricity, but no regular internet access. Furthermore, communities have been organized around most of these schools, wherein market development – particularly community managed models, may be tested.

The UNDP submitted that all sites under the project adhered to the guidelines provided for under Republic Act No. 10929 and were selected based on the following criteria:

1. Schools in areas where there are two or more public places within a five-kilometer radius and which already have been provided with ICT equipment under the DepEd-UNDP Computerization Program will be core access points or VSAT sites;
2. Sites that are located in GIDAs or 4th to 6th class municipalities; and
3. Sites which have limited or no internet connection.³⁹

The UNDP also submitted that the initial Master List for the 3,000 sites was prioritized during the bidding process with tentative site information (e.g. coordinates, site name, power profile). The Bid Documents for Phases 1 and 2 state that “*upon completion of full site survey by the contractor, final VSAT sites may change due to new information*”. Companies that applied for the international bid assessed and calculated the cost on site validation and was incorporated in their bid documents.⁴⁰

The UNDP stated that the guiding principle of the project is to maximize the number of connected sites, with the available budget, by deploying the most viable technology in the targeted remote communities. As agreed with DICT, the bandwidth requirements followed the minimum required speed of 2 Mbps under RA No. 10929. The Project requires that the supplier also install solar panels to provide consistent Wi-Fi services at these locations. The geographic characteristics of sites – GIDAs – were clearly communicated and considered during procurement.⁴¹

³⁸ Point Of Presence (POP) is the local access point for an ISP (networkencyclopedia.com).

³⁹ UNDP statement dated 20 May 2021.

⁴⁰ *Ibid.*

⁴¹ *Id.*

The UNDP stated further that the Project requires a robust and participatory site validation and approval process. The final list of sites installation was vetted by concerned provincial LGUs, DICT regional/provincial Clusters and the Project Management Office (PMO) of DICT. All installed sites were subject to review of quality service and acceptance by the UNDP Project Management Team prior to payment. Sites that do not pass service level agreements or do not have the required documentation submitted by the contractor are not approved for payment.⁴²

As of April 30, 2021, 882 free Wi-Fi sites have been installed and activated in public areas, benefitting more than 350,000 users in remote areas, which had limited or no access to commercial internet. The free Wi-Fi service has been advantageous, especially during the COVID-19 pandemic, to low-income communities in provinces such as Isabela, Cagayan, Benguet, Palawan, Davao del Sur, Lanao del Sur and Sorsogon.⁴³

The PHILCOMSAT disputed the statement of the UNDP. It posited that the site selection and validation process was faulty and that the UNDP submitted a flawed Master List of 3,000 sites to Speedcast and PHILCOMSAT without proper vetting. Information on more than 60% of the 3,000 sites was wrong or incomplete, and some of the sites were totally inaccessible. The survey result was fully documented and the PHILCOMSAT submitted its report to Speedcast on April 2020 for forwarding to UNDP.⁴⁴

As of mid-May 2021, 936 remote sites or over 31% of the 3,000 sites for Phase 1 had been activated, with 10 sites already with equipment installed or pending activation while 400 were awaiting deployment of the Wi-Fi equipment. On May 14, 2021, Speedcast was informed by the UNDP of the termination of the contract, thereby the contractor blocked PHILCOMSAT's access to the hub (Speedcast equipment situated in the PHILCOMSAT teleport). The PHILCOMSAT's role was limited to the provision of managed services from its Networking Operating Center (NOC). The PHILCOMSAT was advised to cease activating new sites, effectively ending the Subcontractor Agreement with Speedcast and its involvement in the project.⁴⁵

4. Delays in project implementation

In its statement dated May 20, 2021, the UNDP explained that delays in site activations had been due to mobility limitations and commercial challenges faced by the contractor and its sub-contractor due to the effects of the pandemic. These difficulties were regularly conveyed and discussed with the DICT.

The PHILCOMSAT submitted that the UNDP's consistent delays in acceptance and certification of PHILCOMSAT's activated sites stalled the project. It complained to Speedcast of UNDP's tardiness. Speedcast reported back the "scant" response of UNDP.⁴⁶

In contrast, Speedcast posited that due to lockdowns and travel restrictions brought about by the COVID-19 pandemic, the subcontractor experienced unanticipated challenges in the identification, location, and nature of some extremely remote sites. But it also asserted that most of the delays in the project implementation were attributable to PHILCOMSAT's failures to perform its obligation under the Subcontractor Agreement, including inadequate sourcing of both personnel and equipment and deficiencies in site design.⁴⁷

⁴² *Id.*

⁴³ UNDP Statement submitted on June 1, 2021.

⁴⁴ Position Paper of PHILCOMSAT submitted on July 6, 2021.

⁴⁵ Position Paper of PHILCOMSAT submitted on May 25, 2021.

⁴⁶ *Ibid.*

⁴⁷ Position Paper of Speedcast dated May 24, 2021.

For its part, the DICT maintained that it constantly coordinated with the UNDP and urged it to complete the project. The UNDP indicated that the project timelines had to be recalibrated due to the COVID-19 pandemic. Several meetings were held to discuss the revision of the project timelines. The contract end date for Phase 1 was amended to December 7, 2021, while the contract end date for Phase 2 was amended to July 17, 2022. The UNDP presented several catch-up plans for the implementation of the project.⁴⁸

Despite the fact that the DICT gave the UNDP several opportunities to rectify the situation, it still was not able to meet the project targets. The numerous delays and the inability of the UNDP and its contractor to address the deficiencies led DICT authorities to consider terminating the project.⁴⁹

The DICT submitted that based on PHILCOMSAT's reports, the geographic coordinates for site locations provided by Speedcast were problematic. Some sites were inaccessible and some were found in the middle of bodies of water. These complications further delayed the implementation of the project.⁵⁰

The BOC letter containing allegations on undervaluation by Speedcast of imported equipment for the project prompted the DICT to recommend the termination of the DICT-UNDP Pipol Konek Project.

5. Termination of the DICT-UNDP Pipol Konek Project

On May 14, 2021, the DICT responded to the letter of the UNDP informing that upon further study and after consultation with the Office of the President, the DICT was cancelling all further activities of Phase 1 and the entirety of Phase 2 of the contract. The DICT also sought a full accounting of the costs incurred in the implementation of Phase 1 and the return to DICT of funds previously received by UNDP, less the cost incurred for sites already installed and operating as of April 30, 2021.⁵¹

On May 20, 2021, the DICT wrote the UNDP requesting the return of the funds transferred to UNDP as follows:⁵²

1. From the obligated amount of USD 14.4 Million for Phase 1:
 - a. The immediate return of the amount of USD 12,350,700.00; and
 - b. The accounting of the UNDP of actual costs incurred in activating the wi-fi sites for the period end of 2020 up to April 30, 2021, and upon completed accounting, the deduction of such costs from the amount of USD 2,049,300.00 which shall be temporarily retained by UNDP, the balance of which will be returned to the DICT.
2. The return of the full amount of USD 5,880,000.00 that was obligated for Phase 2.

Undersecretary Caintic testified that the full amount of USD 5,880,000.00 has already been transferred to DICT's account with the Bureau of Treasury.⁵³

Undersecretary Caintic also testified that DICT is inclined to proceed with the implementation of Phase 3 of the project which was contracted by UNDP to PLDT Inc. on the basis of the project's economic viability. Atty. Aileen Regio, First Vice President of PLDT

⁴⁸ DICT submission dated May 31, 2021.

⁴⁹ *Ibid.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ TSN on the Committee meeting held on June 8, 2021.

Inc., informed the Committee that the Notice to Proceed has not been given thus, Phase 3 has not yet commenced. She also averred that the PLDT Inc. won the contract with a competitive price bid, adding that if there will be no drastic changes in the technology specifications that will require additional facilities, the company can bring down the price rate as it will progressively realize its investment cost on the project.⁵⁴

Aside from the internet services that was expected as Output 1 under the DICT-UNDP Pipol Konek Project, the programs for Capacity Building of the Citizenry and the Capacity Building of DICT as Output 2 and Output 3, respectively, were included in the project. Output 2 of the project will capacitate 6,000 individuals and institutions, and will then be able to avail of internet services. Output 3 will capacitate DICT personnel. Output 2 has a project resource of USD 281,814.72, while Output 3 has USD 220,528.52. The UNDP started to conduct training with assessment session in January 2020. Then in the 2nd and 3rd quarters of 2020, more training sessions will be scheduled. The DICT submitted that the UNDP is undertaking a detailed accounting of the expenditures on the project and will render a report to the DICT.⁵⁵

Present status on the implementation of FPIAP

The DICT-UNDP Pipol Konek Project was one among the projects being undertaken by DICT for its FPIAP. Rather than continue relying mainly on the Pipol Konek Project, the DICT recalibrated its official strategy to one of self-reliance – shoring and building up the department's own institutional capacity to conduct procurement activities and effectively manage the Government's Free Wi-Fi For All program under Republic Act No. 10929.⁵⁶

Undersecretary Caintic said that DICT aims to build a shared infrastructure for a fast, affordable and reliable internet connection so every Filipino can participate and benefit from the digital economy. Part of the digital infrastructure includes the cable landing stations located at Aurora and La Union provinces that are connected to the international internet backbone. The government is developing an Internet Transmission Network that will widen the internet coverage, which is then expected to provide affordable, and reliable internet connection throughout the country. Undersecretary Caintic mentioned that the DICT will lay fiber optic cables in areas where there are none and will create backbone or regional rings to provide more reliable internet connectivity to localities.⁵⁷

On internet connectivity by air transmission, Undersecretary Caintic said that the DICT shall build or collocate existing towers of telecommunication companies to widen internet coverage in the country. For remote or hard-to-reach areas, the DICT will utilize satellite technology to provide internet connectivity. Undersecretary Caintic reported that, as of June 2, 2021, there were already 9,201 live and operational free Wi-Fi sites with more than 6 million unique users. He also provided the Committee a copy of the DICT's five-year development plan to ensure fast and reliable internet connectivity in the country.⁵⁸

Undersecretary Caintic said the target date of completion of the plan is by late 2023 or early 2024. He reported that 58% of geographically disadvantaged areas in the National Capital Region and Regions I, II, III, and IV already have been provided free internet connectivity. He also mentioned that DICT will make sure that the 900 activated sites under the DICT-UNDP project will continue despite the termination of Phase 2 of the project, with the pricing under negotiation with the contractor. Undersecretary Caintic informed the

⁵⁴ *Ibid.*

⁵⁵ DICT letter dated May 24, 2021, page 4-5.

⁵⁶ *Ibid.*

⁵⁷ TSN, Committee meeting held on June 8, 2021.

⁵⁸ *Ibid.*

Committee that the DICT is contemplating on using the unutilized project fund that will be returned by the UNDP on the Free Wi-Fi program of the agency, and on contracting domestic companies to provide Wi-Fi services in the provinces. He assured that the DICT will be more discriminating in the selection of contractors particularly on the requirement of financial capacity.⁵⁹

The current strategy of DICT is to conduct procurement activities for the FPIAP. Because of the need for not just free but also adequate internet speeds, the DICT deployed new Managed Internet Service – VSAT (MIS-VSAT) technology which is faster and costs cheaper than the UNDP's VSAT. The DICT has improved its capacity to contract with and oversee the performance of its Free Wi-Fi contractors and has increased the number of deployed Free Wi-Fi sites to 9,122. Of these, the DICT has deployed 8,240 sites on its own, which is separate, distinct and independent of the 882 sites deployed under the DICT-UNDP Pipol Konek Project.

The DICT, on its own, is able to deploy Free Wi-Fi sites in GIDA, among which are Basilan, Sulu, Tawi-Tawi, as far as Mapun⁶⁰ as well as the Pag-asa Island.⁶¹ The DICT targets to deploy a total of 38,043 sites all over the country by the end of 2022.⁶²

The DICT procured from PHILCOMSAT, We Are IT Philippines (WIT), IOne Resources (IOne), and EBizolution Company (EBiz) the delivery, installation and maintenance, including provision for bandwidth, for 1,035 sites across the Philippines. The PHILCOMSAT will undertake 250 sites in Luzon for PhP 112,500,000.00; WIT for 257 sites also in Luzon for PhP 115,650,000.00; IOne for 215 sites in Visayas for PhP 97,829,000.00; and EBiz for 313 sites in Mindanao for PhP 140,615,250.00. The Purchase Orders for these were made under Republic Act No. 11494, otherwise known as the *Bayanihan to Recover as One Act*, and the corresponding Notice of Award was issued by the DICT on December 18, 2020.

Mr. Alberto Catangui, IOne Chief Executive Officer, said that the five-month contract with DICT involves the installation of 208 cell sites in Visayas area at the internet speed of 35 Megabytes per second (Mbps) downlink and 2 Mbps uplink. The contract was awarded on December 2020 and the company was given 180 days to install the sites. Presently, there are 124 sites installed, but the DICT will commence monthly payments for services only for sites that the agency will accept. The total contract price for the installation and management of 208 sites is PhP 197 Million.

Mr. Nathaniel Marquez of EBiz said that DICT contracted the company under a MIS-VSAT arrangement covering Mindanao areas. The contract involves the installation of 313 sites and the company has already installed 32 sites. Under the five-month contract, monthly payment by DICT will commence only upon acceptance of the installed sites. Mr. Marquez admitted that return of investment may be realized after 10 months of operation thus, renewal of the contract will be sought from DICT.

Mr. Rio contended that the MIS-VSAT arrangements procured by DICT for the 1,035 sites in the total amount of PhP 466,594,250.00 will cover a period of only five (5) months. It resulted to an overpriced cost as it is five times more than the cost of the implementation by the UNDP on the basis of cost per site per year.

The DICT maintained that there was no overpricing in its procurement from PHILCOMSAT, WIT, IONE and EBIZ. Mr. Rio asserted that the cost per site under the DICT-UNDP partnership was PhP 227,000.00 per year, or about PhP 18,916.67 per month,

⁵⁹ *Id.*

⁶⁰ An island municipality on the south-western extreme of the Philippines, located very close to Sabah, Malaysia.

⁶¹ The second largest of the naturally occurring Spratly Island.

⁶² DICT letter dated 24 May 2021, page 6.

while DICT's procured sites cost around PhP 1,080,000.00 per year, or about PhP 90,000.00 per month. On the basis of this oversimplified comparison, Mr. Rio concluded that the procurement of DICT is overpriced by 47%.

The DICT submitted that there are several factors that affect the price of any service. With regard to procured MIS-VSAT, three major differentiators distinguish the UNDP procured sites with those procured by DICT, namely:⁶³

1. Committed information rate (CIR) refers to the bandwidth guaranteed by an ISP to work under normal conditions, in other words, the minimum speed;
2. Maximum information rate (MIR) refers to maximum bandwidth the subscriber unit will be delivered from the wireless access point in reference to broadband wireless; and
3. Number of Access Points– Refers to the number of access point WHICH is a device that creates a Wireless Local Area Network (WLAN) and projects a Wi-Fi signal to a designated area, allowing devices such as mobile phones, tablets, and computers to connect to the WLAN to obtain access to the internet.

The MIS-VSAT arrangements procured by DICT have a significantly higher internet speed. The CIR of the UNDP VSAT was 0.3 Mbps for 1 Access Point while the DICT procured MIS-VSATS have a CIR of 6.3 Mbps with 3 Access Points per site. The DICT submitted that its MIS-VSATS work at a speed that is 20 times faster than that procured under the DICT-UNDP arrangement.⁶⁴

The DICT further submitted that the total access points to be provided by the UNDP's Phase 1 was 3,000 compared to 3,105 access points through the DICT-procured MIS-VSAT. The price per Mbps per month of the UNDP project was PhP 63,826.67, while the DICT procurement is only at PhP 14,285.71 per Mbps per month. The price of bandwidth per year by the DICT's VSAT is only PhP 171,428.57 while UNDP's cost per Mbps per year would reach PhP 765,920.00. Therefore, the cost of DICT procured MIS-VSAT is almost five times cheaper than that of the UNDP project.

COA audit findings

COA provided the Committee with the audit findings of its Cluster 6-Health and Science, National Government Sector, on the Free Wi-Fi program of the government for Calendar Years (CYs) 2017 to 2019. Atty. Michael Aguinaldo, COA Chairperson, said that DICT comments on these were sought. The COA has yet to receive the comments of the DICT before it can proceed to act on its audit findings. The following audit findings⁶⁵ are relevant to the Committee's inquiry:

1. The FPIAP has been ongoing for six (6) years. As of December 31, 2019, a total of PhP 6,702,835,661.39 has been spent for the project, as follows:

Particulars	Amount in PhP	% of Total Disbursement
DICT procurement contracts	1,819,364,722.75	27%
PITC as procurement agent	3,521,386,320.36	53%
DICT-UNDP partnership	1,362,084,618.28	20%
Total	6,702,835,661.39	100%

⁶³ DICT letter dated 31 May 2021, page 3.

⁶⁴ *Ibid.*

⁶⁵ COA submission dated May 21, 2021.

The COA requested for updated figures ending December 31, 2020, but DICT has not submitted.

The DICT was not able to award any procurement contract during CY 2019 as it decided that implementation of FPIAP shall be financed from the Spectrum Users Fees (SUF)⁶⁶ collected by the National Telecommunications Commission (NTC) pursuant to Section 17 of Republic Act No. 10929.⁶⁷ The shift in fund source, from the available budget of DICT to the SUF, has allegedly caused the belated release of Special Allotment Release Order (SARO) that covered various programs, activities and projects (P/A/Ps) of the FPIAP.

2. Nineteen (19) projects with a total cost of PhP 1.236 Billion that commenced implementation from March 2016 to October 2017 were either suspended, delayed or not completed within the contract time, resulting in the non-delivery on time of the desired free Wi-Fi services in 2,891 municipalities and cities classified as underserved and unserved. The lack of meticulous planning and the ineffective coordination with LGUs and private suppliers or service providers may ultimately affect the timely delivery of the envisioned 13,024 live sites at the end of 2017 and the targeted sites of 23,631 sites with a total of PhP 7.2 Billion estimated budget for 2018. Specifically, the following deficiencies were observed:⁶⁸
 - a. Very low performance rate for free Wi-Fi covering the period 2015-2017;
 - b. DICT incurred tremendous delay in the implementation of the project for the subscription of the IP Transport Services-Domestic (IPTD), IP Transport Services-Municipal (IPTM), IP Transport Services-Cities (IPTC), and IP Transport Services-Municipal Centers (IPTM-MC) for 20 projects totaling PhP 1.236 Billion;
 - c. Very low percentage of accomplishment that ranged from 0% to 87.5%; and
 - d. Non-compliance with Section 7, par. 7.1 of the 2016 Revised IRR of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act", on meticulous and judicious planning of the procurement by the procuring entity and failure to conduct effective pre-procurement/pre-bidding conference following Section 20, par. 20.1 of the 2016 Revised IRR.
3. The DICT-UNDP partnership agreement was not advantageous to the government. After evaluation of the Financing Agreement (FA), the following, among others, were noted:⁶⁹
 - a. There is a lack of empirical data that justifies the claim that the DICT lacks the capacity to undertake the procurement and installation of free Wi-Fi in public places;
 - b. The FA and Project Document contained provisions that were ambiguous and provisions that divested control of the project from the DICT; and
 - c. The engagement of UNDP for the project was not cost-effective on the part of the government.

⁶⁶ Spectrum Users Fees or SUF are collected annually from mobile service providers that were assigned frequency bandwidth based on the amount of spectrum used, type of service being offered and economic classification of the areas covered by cell sites.

⁶⁷ Free Public Internet Access Fund (FPIAF) is created and funded from the SUFs collected by NTC and other sources to be identified by DBM. The fund will provide financing for the implementation of the FPIAP and will be under the management of DICT.

⁶⁸ CY 2017 Consolidated Annual Audit Report (CAAR), pages 55-63.

⁶⁹ CY 2018 CAAR, pages 86-97.

4. There was a low rate of implementation of the procurement projects by the DICT, PITC and the UNDP. Evaluation of the status of implementation of the Free Wi-Fi projects showed that only 3,251 or 15% of the target 22,034 total public Wi-Fi hot spots had been activated as of December 31, 2019, summarized as follows:⁷⁰

Particulars	Target number if public Wi-Fi Hotspots to be activated	Number of activated public Wi-Fi Hotspots	Number of public Wi-Fi Hotspots not yet activated	Percentage of completion
DICT procurement contracts	13,024	2,996	10,028	23%
PITC as procurement agent	3,010	255	2,755	8%
DICT-UNDP partnership	6,000	0	6,000	0%
Totals	22,034	3,251	18,783	15%

5. There were delays in the procurement activities on the implementation of the DICT-UNDP partnership. As output indicator, the target was 4,000 public sites connected with Free Public Wi-Fi by the end of CY 2019 and to be increased to 6,000 by the end of CY 2020. However, the Annual Progress Report submitted by the UNDP showed that none of the 4,000 sites were activated as of December 31, 2019. The Report stated that the delays in the delivery of Output 1 (4,000 sites for 2019) were encountered due to the issues raised in the CY 2018 CAAR regarding the DICT-UNDP partnership from July to September 2019 for the provision of free public internet Wi-Fi.⁷¹

Upon inquiry of COA, it was revealed that there had been changes in the scheduled procurement timelines due to the decision of DICT to suspend project activities on August 1, 2019, while the COA queries were being clarified. After notice from the DICT for the continuation of the project, the contract awarding for Phase 1 took place on October 10, 2019. The suspension order also affected the agreed schedules for Phases 2 and 3.⁷²

The COA observed, however, that a comparison between the scheduled procurement timelines and the actual occurrence of the procurement activities showed that even before the August 1, 2019, the supposed date of suspension order, the UNDP was already in delay such as in the issuance of the Request for Proposal (RFP) and Invitation to Bid where a delay of almost one month was noted, as well as in the conduct of subsequent procurement activities, bid evaluation, and award of contract, as shown in the following table:⁷³

⁷⁰ CY 2019 CAAR, pages 120-129.

⁷¹ Position Paper of COA submitted dated May 21, 2021.

⁷² *Ibid.*

⁷³ *Id.*

Procurement Activities	Scheduled Timelines	Actual date of procurement
Issuance of the RFP/Invitation to Bid	April 22, 2019	May 23, 2019
Pre-Bid Conference		May 28, 2019
Response to Queries		May 23 to July 2, 2019
Receipt and opening of offers (Bid closing)		July 9, 2019
Bid Evaluation	June 10, 2019	July 9 to 25, 2019
Contract Review and Award	July 21, 2019	August 5 to October 2, 2019
Approval from UNDP Headquarters		October 3, 2019
Contract finalization and issuance		October 10, 2019
Issuance of Notice to Proceed		November 11, 2019

The COA noted that the delay certainly affected the succeeding procurement activities, such that the UNDP was not able to award the contract on the scheduled date, on July 21, 2019, which was prior to the suspension of project activities by DICT.

The COA Report stated that the DICT-UNDP Project Board (PD) could have monitored any delay at the onset and taken necessary measures to restore the conduct of procurement activities within the scheduled timelines. Apparently, however, the PD failed to efficiently monitor the project implementation because it did not include the status of the installation of live sites, neither did it mention the measures to be taken if the milestones and timeframes stated therein were not complied with. Consequently, project implementation was delayed, which inevitably affected the timely attainment of the target outputs by the UNDP.⁷⁴

The Parties

Concerned government agencies and officials are the parties affected by the subject House Resolution No. 1751. The Committee duly passed upon their respective mandate, function, duties and responsibilities, to wit:

1) Department of Information and Communications Technology

The DICT was created by virtue of Republic Act No. 10844, otherwise known as the *Department of Information and Communications Technology Act of 2015*, enacted on May 23, 2016. The law provides that the DICT shall be the primary policy, planning, coordinating, implementing, and administrative entity of the government that will plan, develop, and promote the national ICT development agenda. The DICT is mandated to lead the nation building through ICT activities, safeguarding of information and the advancement of ICT in the country. Pursuant to the current administration's ICT agenda, the DICT will prioritize the following:

⁷⁴ *Id.*

- a. Development of a National Broadband Plan to accelerate the deployment of fiber optic cables and wireless technologies to improve internet speed;
- b. Provision of Wi-Fi access at no charge in selected public places such as parks, plazas, public libraries, schools, government hospitals, train stations, airports, and seaports; and
- c. Development of a National ICT Portal⁷⁵

Under Republic Act No. 10929, the DICT is mandated to be the lead implementing agency to oversee the effective and efficient implementation of FPIAP.

2) Commission on Audit

Under Article IX-D, Section 2(1) of the Constitution, the Commission on Audit is vested with the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

3) Bureau of Customs

Under Republic Act No. 10863, otherwise known as the *Customs Modernization and Tariff Act*, the Bureau of Customs has the following duties:

- (a) Assessment and collection of customs revenues from imported goods and other dues, fees, charges, fines and penalties accruing under the CMTA;
- (b) Simplification and harmonization of customs procedures to facilitate movement of goods in international trade;
- (c) Border control to prevent entry of smuggled goods;
- (d) Prevention and suppression of smuggling and other customs fraud;
- (e) Facilitation and security of international trade and commerce through an informed compliance program;
- (f) Supervision and control over the entrance and clearance of vessels and aircraft engaged in foreign commerce;
- (g) Supervision and control over the handling of foreign mails arriving in the Philippines for the purpose of collecting revenues and preventing the entry of contraband;

⁷⁵ DICT website (<https://dict.gov.ph>).

(h) Supervision and control on all import and export cargoes, landed or stored in piers, airports, terminal facilities, including container yards and freight stations for the protection of government revenue and prevention of entry of contraband;

(i) Conduct a compensation study with the end view of developing and recommending to the President a competitive compensation and remuneration system to attract and retain highly qualified personnel, while ensuring that the Bureau remains financially sound and sustainable;

(j) Exercise of exclusive original jurisdiction over forfeiture cases under the CMTA; and

(k) Enforcement of the CMTA and all other laws, rules and regulations related to customs administration.

The Committee likewise look into the circumstances of the following private entities:

1) United Nations Development Programme (UNDP)

The UNDP is a development agency of the United Nations. It works in about 170 countries and territories, with the avowed mission to help eradicate poverty, reduce inequalities and exclusion, and build resilience so countries can sustain progress. It plays a critical role in helping countries achieve the UN's Sustainable Development Goals.

For the implementation of the FPIAP, the DICT chose to partner with UNDP given its global experience and expertise in areas such as complex program oversight, its reputation of observing high standards of quality assurance, a capability to design and implement the most appropriate technologies in remote and disadvantaged areas, to establish citizen monitoring mechanisms, and to support DICT in building its systems and capacity.⁷⁶

2) Speedcast Limited International (Speedcast)

Speedcast is a global satellite service provider listed in the Australian Stock Exchange which has substantial operations in the United States of America and forty other countries. It was contracted by the UNDP to provide the public access to Wi-Fi services through VSAT technology on Phase 1 and Phase 2 of the DICT-UNDP Pipol Konek Project.

3) Philippine Communications and Satellite Corporation (PHILCOMSAT)

The PHILCOMSAT, a wholly-owned subsidiary of the Philippine Overseas Telecommunication Corporation (POTC), is an enfranchised and licensed Philippine public telecommunications entity (PTE) of which 35% is owned by the Republic of the Philippines. It was chosen by Speedcast as its sub-contractor for the implementation of Phase 1 and Phase 2 of the DICT-UNDP Pipol Konek Project.

RELEVANT LAWS, RULES AND REGULATIONS

The Committee considered pertinent Constitutional provisions, laws on the development of communication infrastructures, procurement law, and rules and regulations on the disbursement of public funds in examining the facts and various testimonies given during the Committee hearings.

⁷⁶ UNDP written statement dated June 1, 2021.

The Constitution

Article II, Section 24 of the Constitution enunciates that “*the State recognizes the vital role of communication and information in nation building*”.

Article XVI, Section 10, provides that “*the State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country, in accordance with a policy that respects the freedom of speech and of the press.*”

Pursuant to these Constitutional precepts, the State encourages and supports the development of structures and technology for reliable and accessible internet services that will connect the different islands in the Philippines and enable the citizenry to advance globally.

Republic Act No. 10844, otherwise known as the *Department of Information and Communications Technology Act of 2015*

The law created the DICT as the primary policy, planning, coordinating, implementing, and administrative entity of the Executive Branch of the government that will plan, develop, and promote the national ICT development agenda. Among its powers and functions, the law mandates the DICT to establish a free internet service that can be accessed in government offices and public areas using the most cost-effective telecommunications technology, through partnership with private service providers as may be necessary.⁷⁷

Republic Act No. 10929, otherwise known as the *Free Internet Access in Public Places Act*

The caused the formulation of the FPIAP with the DICT as the lead implementing agency that will oversee the effective and efficient implementation of the program. Pursuant thereto, the DICT shall undertake the following activities:

- (a) Within one (1) year from the effectivity of the law, develop a comprehensive plan for the timely and effective implementation and propagation of the FPIAP;
- (b) Coordinate with national government agencies (NGAs), local government units (LGUs), private sector, and concerned organizations to ensure that the comprehensive plan is integrated with the plans and budgets of all agencies mandated to provide free internet access under the law;
- (c) Prescribe policies and regulations, and coordinate the timely and effective implementation of the law;
- (d) Enter into contracts to undertake the implementation of the FPIAP from any source, whether private, government, foreign, or domestic, including official development assistance and bilateral and multilateral loans, subject to existing laws and regulations;
- (f) Ensure that the minimum internet speed per user is two megabits per second (2 Mbps) or as prescribed by the National Broadband Plan, whichever is higher;
- (g) Undertake the creation, establishment, installation, maintenance, and operation of infrastructure, equipment, systems, platforms, applications, and such other FPIAP requirements necessary to effectively provide free internet access in public places throughout the country;

⁷⁷ Republic Act No. 10844, Section 6-II (e).

- (h) Train its personnel, and institute accounting and fiscal practices for the operation of the FPIAP, including in instances where the operation of the Program is outsourced to a qualified private party; and
- (i) Prescribe regulations or subscribe to acceptable standards in the installation, construction, maintenance, and operation of infrastructure and equipment.

However, the law does not prohibit the DICT from providing internet connectivity by installing equipment and establishing infrastructure.⁷⁸

The following are the conditions under the FPIAP:

- (a) No fees shall be collected from users to connect to the public internet access points;
- (b) The free internet service provided shall be separate from the internet service used for backend computer systems and programs, databases, and/or management and information systems in government offices: *Provided*, That the shared use of infrastructure shall not be prohibited; and
- (c) Technical solutions that may limit or restrict access shall only be employed when there is clear and present technical risk or breach that cannot be remedied through ordinary technical solutions: *Provided*, That technical solutions that can likewise maintain or promote ease of access shall be prioritized and pursued.⁷⁹

Section 17 of RA 10929 mandates the creation of the Free Public Internet Access Fund under the management of the DICT to finance the implementation of the FPIAP. The fund shall be sourced from the Spectrum Users Fees (SUF)⁸⁰ collected by the NTC and other sources to be identified by the Department of Budget and Management (DBM).

Republic Act No. 11494, otherwise known as the *Bayanihan to Recover As One Act*

The law listed the different COVID-19 response and recovery interventions. Under Section 4 (ii) of the law, the government shall undertake measures, in partnership with appropriate internet and communication service providers, to accelerate the deployment of critical ICT infrastructure particularly additional cell towers, equipment, software, and wireless technologies throughout the country. These measures are supposed to address the need for digital connectivity, internet speed and stability, and security in E-Commerce, E-Government, to sufficiently support the significant shift of the general public to online services and platforms and to home and mobile communication units for doing work from home, for completing commercial and other transactions, for convening meetings and conducting conferences and seminars and webinars, and for obtaining educational instruction during the COVID-19 pandemic through the DICT.

Republic Act No. 9184, otherwise known as the *Government Procurement Reform Act*

The law mandates that all government procurement shall be governed by the following principles:

- (a) Transparency in the procurement process and in the implementation of procurement contracts.

⁷⁸ Republic Act No. 10929, Section 5.

⁷⁹ *Ibid.* at Section 3.

⁸⁰ *Ibid.* page 18

- (b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.
- (c) Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.
- (d) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- (e) Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications.

The law emphasizes the importance of procurement planning in the judicious disbursement of funds. Section 7 mandates that: *“All procurement should be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.”* The law also provides that *“No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR. xxx”*

The law mandates that all government procurement shall be done through competitive bidding (Sec 10). Section 48 of the law provides the exceptions when the procuring entity may resort to alternative methods of procurement, and these are:

- a. *Limited Source Bidding, otherwise known as Selective Bidding* - a method of procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability to serve the requirements of a particular contract;
- b. *Direct Contracting, otherwise known as Single Source Procurement* - a method of procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;
- c. *Repeat Order.* - a method of procurement that involves direct procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;
- d. *Shopping* - a method of procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary or regular equipment to be procured directly from suppliers of known qualification; or
- e. *Negotiated Procurement* - a method of procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of the law and other instances that shall be specified in the rules and regulation issued to implement it,

whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price to the Government is obtained.

The UNDP Standard Basic Assistance Agreement (SBAA)

The presence of UNDP in the Philippines is governed by the Standard Basic Assistance Agreement (SBAA), which was duly ratified on December 12, 1977 as an international treaty. By the application of the doctrine of incorporation, a treaty forms part of the national laws pursuant to Article II, Section 2 of the Constitution which states that “the Philippines is bound by generally accepted principles of international law which automatically form part of Philippine law by operation of the Constitution.”⁸¹ Under Cf. Clause 1, Article II of the SBAA, assistance “*may be made available by the UNDP to the Government*” upon request consisting, among others, of “*services of advisory experts and consultants*”, “*equipment and supplies*” and “*any other form of assistance or form of execution, which may be agreed upon by the Government and UNDP.*”

In an Opinion released in 2015, the Government Procurement Policy Board (GPPB) recognized the provisions of the 1977 SBAA as in faithful observance of the country’s treaty and international obligations – *pacta sunt servanda*,⁸² such that procurement by UNDP utilizing contributions or funds received from the Philippine government, pursuant to the SBAA is governed by the UNDP Financial Rules and Regulations, which embodies the processes, procedures, rules and regulations that the UNDP may adopt in the conduct of its procurement activities to implement identified UNDP development support services.

Section 4.2 of the 2016 revised rules and regulations for the implementation of Republic Act No. 9184, states that any Treaty or International or Executive Agreement to which the Government of the Philippines is a signatory affecting the subject matter of the Act and the rules and regulations shall be observed. In case of conflict between the terms of the Treaty or International or Executive Agreement and the rules and regulations, the former shall prevail.

ISSUES

- 1. Whether or not the DICT-UNDP Pipol Konek Project was unsuccessful in the implementation of the FPIAP.**
- 2. Whether or not the delay in the implementation of the FPIAP was attended by irregularities.**
- 3. Whether or not government officials and employees involved in the FPIAP committed malfeasance, misfeasance and non-feasance in the performance of their official duties.**

⁸¹Justice Carpio, in his dissent in *Bayan Muna*, 2011; citing Agpalo, *International Law*, 2006.

⁸² PACTA SUNT SERVANDA is a basic international law postulate that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith.' The exacting imperative of this principle is such that a state may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.' (from the concurring opinion of Justice Presbitero Velasco, Jr. in the case of *Magallona v. Ermita*, G.R. No. 187167, August 16, 2011).

DISCUSSION

At the outset, it was emphasized that the Committee on Good Government and Public Accountability, pursuant to its jurisdiction, will study the issue from the perspectives of governance and accountability. Committee Chairperson, Representative Michael Edgar Y. Aglipay stressed that access to the internet has become a basic human right especially during the pandemic when the people heavily relied on technology to go about their daily lives. He mentioned that the government should seriously look into the implementation of the project as it involved PhP 1.3 Billion of public funds and another PhP 500 Million allotted for the project under Republic Act No. 11494, or the Bayanihan To Recover As One Act.

Representative Hector Sanchez posited that the situation the country is presently experiencing due to COVID-19 underscored the urgent need for connectivity whether in homes, schools, workplaces, and in every aspect of life. On the other hand, it also revealed the digital divide and the need to bridge this gap. Representative Sanchez cited a United Nations Resolution that called for the promotion of digital literacy to facilitate the right to education.

Representative Gil “Kabarangay” Acosta Jr. manifested that the right to internet access is akin to the right to clean water and electricity. He said that the Committee should find out whether the intention of Republic Act No. 10929 is being achieved and if the people is benefitting from it.

1. Whether or not the DICT-UNDP Pipol Konek Project was unsuccessful in the implementation of the FPIAP

Mr. Rio submitted that the bidding process was a laborious one that took months to complete. The procurements by DICT in 2020, on the other hand, were done through emergency purchases, without bidding, which was allowed under RA No. 9184 in the light of the pandemic.

He said that the slow process of regular procurement was one reason that the DICT decided to partner with the UNDP in its program of providing satellite free Wi-Fi hotspots to 6,000 remote sites. He stated that this decision was made as a strategy to isolate DICT from corruption and favoritism issues based on the fact that the UNDP had implemented several development programs in the country without any reported anomalies. He maintained that the project was on track even when area lockdowns were imposed on March 15, 2020.

The DICT-UNDP Pipol Konek Project was entered into on September 26, 2018 when the DICT did not yet have the capacity to procure and implement the project on its own. The DICT-UNDP FA was signed by then Acting Secretary Rio.⁸³

Undersecretary Caintic affirmed that the amount of PhP 1.3 Billion appropriated for the DICT-UNDP Project was included in the 2018 General Appropriation Act. He added that the agreement allowed the UNDP to subcontract components of the project, which are not governed by Republic Act No. 9184. The obligation of the government under the agreement is to allocate the PhP 1.3 Billion fund for the Project.

Undersecretary Caintic said that the UNDP subcontracted the Pipol Konek Project to Speedcast, which teamed up with PHILCOMSAT. Ms. Bildner asserted that the PHILCOMSAT did all the work including the installation of the equipment for the project. She stated that of the 3,000 sites identified, only 900 sites were activated due to problems in locating identified sites. Ms. Bildner added that the lockdowns imposed by the government also posed a challenge to the implementation of the project. Finally, there were

⁸³ DICT letter submitted to the Committee dated 31 May 2021, page 1.

instances when PHILCOMSAT was ready to deploy personnel, but the Wi-Fi equipment was insufficient.

Representative Jesus Crispin C. Remulla asked on the rationale of partnering with UNDP for the implementation of the Free Wi-Fi project. Undersecretary Caintic said that the wisdom at the time of the execution of the FA with UNDP was that it would be expeditious. Mr. Rio justified that the DICT-UNDP partnership involved the biggest roll-out of national broadband. The DICT chose the UNDP because of its expertise and track record in handling developmental projects. Representative Remulla opined that the problem with the DICT-UNDP project was - it contracted a foreign entity that the Philippine government has no control over and which was beyond its jurisdiction. He said that Speedcast would not have qualified if Republic Act No. 9184 were applied.

Undersecretary Caintic stated that the DICT-UNDP FA allowed the UNDP to subcontract components of the project which are not governed by Republic Act No. 9184. Corollary, Mr. Rio said that the procurements under the project were conducted following UNDP procurement rules and regulations. Representative Remulla interjected that such procurement rules and regulations are not the same as those of the Philippine which are more stringent.

The current procurement policy in the Philippines is contained in Republic Act No. 9184 and the 2016 revised rules and regulations issued to implement it. The law mandates that all government procurement shall be done through competitive bidding. Although alternative modes of procurement are allowed under the law in exceptional cases, these were not applicable to the procurement made by DICT with UNDP for the Pipol Konek Project. Section 48⁸⁴ provides the exceptions when the procuring entity may resort to alternative methods of procurement namely: a) Limited Source Bidding, b) Direct Contracting, c) Repeat Order, d) Shopping, or e) Negotiated Procurement.

The procurement of DICT with the UNDP did not qualify under any of the enumerated alternative methods of procurement under Republic Act No. 9184. Thus, the Committee is not persuaded by the justifications that the DICT had no capacity then to conduct its own procurement and that the agreement with UNDP was resorted to expedite the procurement process.

Mr. Rio also contended that the DICT-UNDP FA was in accordance with the SBAA, an international treaty, which was duly ratified by the Philippines and thus recognized as part of national legislation. As such, the Philippine government is bound to respect the SBAA.

The Committee acknowledges the assistance rendered by the UNDP to the Philippine government in several of its programs. However, it should be noted that the SBAA is permissive, in that the DICT is not obliged to seek UNDP assistance to conduct the procurement for the FPIAP. Rather, the DICT should have undertaken the creation, establishment, installation, maintenance, and operation of infrastructure, equipment, systems, platforms, applications, and such other FPIAP requirements necessary to effectively provide free internet access in public places throughout the country.⁸⁵

By transferring the implementation of the Pipol Konek Project to UNDP, including the procurement of the services of the contractor that undertook the installation, maintenance and operation of the free Wi-Fi access in public places, the DICT lost its authority over the contractor and its operation. A case in point was the incident involving Speedcast, which was embroiled in cases of undervaluation of shipment of IT equipment to the country. After evaluation of submitted documents, the BOC determined that the contractor was responsible for the undervaluation.

⁸⁴ Republic Act No. 9184.

⁸⁵ Republic Act No. 10929, Section 5(g).

However, as a foreign entity with no actual and permanent presence in the country, BOC submitted that it can neither directly exercise jurisdiction over the contractor, nor impose sanctions against it. The matter was forwarded to the DICT for its evaluation and imposition of sanctions. Until the termination of the Committee hearing, the DICT-ITF constituted to conduct the independent investigation on the alleged violation of customs and other Philippine laws by the contractor has not yet rendered its decision.

Another main reason for the delays in the implementation of the DICT-UNDP Pipol Konek Project is the UNDP's failure to control the perceived conflict between its foreign contractor, Speedcast, and its local sub-contractor PHILCOMSAT. It was observed during the Committee hearings that Speedcast and PHILCOMSAT have several disagreements which UNDP must have resolved internally at first, for the purpose of completing the Project. It must be emphasized that the UNDP selected Speedcast as its contractor; hence, the UNDP should have vetted the sub-contractors of Speedcast, *i.e.* PHILCOMSAT. Consequently, the Project was never able to recover, both from difficulties in its implementation before the pandemic and the challenges posed by COVID-19.

Another point taken by the Committee is that the SBAA was ratified on December 12, 1977, while Republic Act No. 9184 was signed into law on January 10, 2003. On the matter of procurement of government contracts, Republic Act No. 9184 which is the later law will apply.

It is well-entrenched jurisprudence that all treaties should be interpreted in light of their intent. Nothing less than the Vienna Convention on the Law of Treaties to which the Philippines is a signatory provides that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose."⁸⁶

After a lengthy discussion within the DICT and in coordination with the Office of the President, the DICT relayed to UNDP in a letter dated 14 May 2021 the former's decision to cancel the further implementation of Phase 1 and the termination of Phase 2 of the DICT-UNDP Pipol Konek Project. The return of the fund released to UNDP, after proper accounting on expenditures for services already performed, was called upon.

Therefore, the DICT-UNDP Pipol Konek Project was unsuccessful as a component of FPIAP. The contractor failed to complete the installation of Wi-Fi equipment and provide internet services on the 6,000 identified sites within the contracted period and even during the extension period given by DICT.

Representative Aglipay manifested that the DICT-UNDP partnership arrangement was not the best decision and that the government could learn from this experience. Nevertheless, the Committee recognized the efforts of the parties involved in the project to thresh out their disputes and the agreement to return to the Philippine government unutilized funds which were released to UNDP for the project. Moving forward, the government should get the most out of the 882 activated sites and the DICT should fast track the FPIAP.

On the implementation of FPIAP, Undersecretary Caintic said that the country should have its own space segment facility to provide the free Wi-Fi internet access to the people. It will be a utility and there will be recurring expenses to the government for its operation. Undersecretary Caintic said that the government will spend PhP 2 Billion per year for this operation, 75% of which will be the recurring expense for transport. On the allegation that the delay in the implementation of the DICT-UNDP agreement was caused by DICT Secretary Gregorio Honasan II, Undersecretary Caintic said that the Secretary sought the review of the agreement which took only one month and 16 days while the delay in implementation caused by the inaction of UNDP and Speedcast lasted from September 17, 2019 to May 29, 2020.

⁸⁶ Article 31(1), Vienna Convention on the Law of the Treaties.

Undersecretary Caintic also testified that the DICT aims to provide fast, affordable and reliable internet connection for every Filipino to take part in the Digital Economy through the building of infrastructure that shall be shared by all. Included in the digital infrastructure are the cable landing stations located at Aurora and La Union provinces that are connected to the international internet backbone. The government is developing an Internet Transmission Network that will widen internet service coverage. Undersecretary Caintic added that the DICT will lay fiber optic cables to areas where there are none and will create rings of backbone or regional rings to build a more resilient internet connectivity to localities.

On internet connectivity by air transmission, Undersecretary Caintic said that the DICT shall build or collocate existing towers of telecommunication companies (TELCOS) to widen internet service coverage in the entire country. For remote or hard-to-reach areas, the DICT will utilize satellite technology to provide internet connectivity. He reported that as of June 2, 2021, a total of 9,201 live and operational free Wi-Fi sites have been activated and are now being used by more than 6 million unique users. He provided the Committee with a five-year program of DICT for internet connectivity in the country.

2. Whether or not the delay in the implementation of the FPIAP was attended by irregularities

The implementation of the FPIAP has been saddled with several administrative and technical issues. There were challenges during the early stages of implementation particularly the procurement of contractors, such as the: a) slow or limited response in request for information; b) participation by bidders whose previous performance were unsatisfactory; c) incomplete or erroneous submission of bid documents, or non-compliance with technical requirements by bidders which automatically disqualify them from the bidding; d) big project requirements that then required higher financial capacity on the part of the bidders which capacity only big TELCOS or consortia possess, resulting in the small number of interested bidders; e) tedious process involved in the approval of contracts and other pertinent documents; and f) lack of quorum from the Bids and Awards Committee (BAC) and the Technical Working Group (TWG).⁸⁷

Because of these factors, the procurement period took longer than the required number of days for government procurement.⁸⁸

Upon implementation of the program in 2015, more than thirty (30) contracts were awarded to big companies, including two (2) major TELCOS. At least 57% of these contractors requested for a suspension or extension of their contracts due to challenges in securing permits from the LGUs, lack of co-location, request-to-attach or execute joint-pole agreements, not enough manpower to deploy in the coverage areas, and the like. Additionally, the lack of manpower led them to collaborate with the small ISP players at the localities, therefore adding another layer in the coordination and implementation process on the part of the contractor. These led to the delays in the completion of the services, and consequently, the low turn-out of live sites at the targeted areas. It can be surmised that with the same procurement process, the winning bidders may still be the same ones who were awarded contracts by the DICT which consequently may bring about the same kind of performance and the problems that may arise from it.⁸⁹

The DICT considered to undertake other strategies in the implementation of the FPIAP. Partnering with the UNDP for the installation of IT equipment that will provide free Wi-Fi internet access at 6,000 targeted sites was one of these strategies. The DICT entered into a Financing Agreement with UNDP, transferred PhP 1,362,084,618.28 fund to UNDP,

⁸⁷ Cost-Benefit Analysis on the DICT-UNDP Pipol Konek Project.

⁸⁸ *Ibid.*

⁸⁹ *Id.*

and authorized UNDP to procure the contractor for the project. The duration of the project was to be from September 26, 2018 to December 31, 2025.

The project would be executed in three (3) Phases with 3,000 sites for Phase 1, 2,000 sites for Phase 2, and 1,000 sites for Phase 3. Phase 1 was awarded by UNDP to Speedcast on October 10, 2019, Phase 2 to Speedcast on May 18, 2020, and Phase 3 to PLDT on April 8, 2021. The DICT took no part in the bidding and selection of UNDP's suppliers. The DICT likewise had no participation in the selection of Speedcast which engaged PHILCOMSAT as its subcontractor.⁹⁰

Undersecretary Caintic said that former Undersecretary Rio, as then Acting Secretary of DICT, was the signatory to the DICT-UNDP FA. However, the DICT was not privy to the contract between the UNDP and Speedcast and to the Subcontract Agreement between Speedcast and PHILCOMSAT.

However, the DICT admitted that the DICT-UNDP Pipol Konek Project suffered delays in project implementation. Undersecretary Caintic mentioned that extension of deadlines on the completion of the project was permitted by the DICT. There were only 746 sites completed on April 2021 and Phase 2 has not been started by the contractor. Undersecretary Caintic summarized that the implementation of the DICT-UNDP Pipol Konek Project during the period 2020-2021 produced 882 activated sites while the over-all accomplishment by the DICT alone for the FPIAP during the period 2016-2021 produced 8,240 activated sites. On January 7, 2021, the DICT met with UNDP and Speedcast where the latter committed to complete the 5,000 sites by the end of May 2021.⁹¹

Despite the extension of deadlines, the UNDP, its foreign contractor and the local sub-contractor failed to deliver the government project.

The UNDP submitted that delays in site activations were due to mobility restrictions due to the pandemic, and commercial challenges faced by the contractor and its sub-contractor.

On the other hand, Speedcast mentioned that its subcontractor, PHILCOMSAT, and the local subcontractors of PHILCOMSAT, experienced unanticipated challenges in relation to the identification, location, and nature of some extremely remote sites. It maintained that most of the delays were attributable to PHILCOMSAT's failures to perform its obligations under the Subcontract Agreement, including inadequate sourcing of both personnel and equipment and deficiencies in site design.

The PHILCOMSAT countered that the DICT-UNDP Pipol Konek Project suffered several set-backs that included the mismanagement and irregularities by the UNDP Project Administrator and Speedcast. The much-delayed roll-out was hindered by travel restrictions and lockdowns due to COVID-19, compounded by the issue on the undervaluation of shipment of IT equipment for the project and the filing of a petition by Speedcast under Chapter 11 of the US Bankruptcy Law. The PHILCOMSAT also contended that Speedcast ran-out of in-country inventory and has been short of 1,100 sets of VSAT equipment since the end of December 2020 contrary to the claim of Speedcast that it delivered more than 2,300 sets of equipment to the PHILCOMSAT 1,400 of which have not been installed.

The PHILCOMSAT argued that the Master List of target sites was not properly vetted by the UNDP, and that almost 60 % of the sites were problematic, inaccessible or unfeasible for installation. The UNDP failed to notify, coordinate with, and get the approval of concerned LGUs and target site beneficiaries. Furthermore, the UNDP also tarried in

⁹⁰ DICT letter dated May 31, 2021.

⁹¹ TSN on the Committee meeting held on May 25, 2021.

approving and accepting activated sites submitted by the PHILCOMSAT. These failures of UNDP caused delays in the implementation of the project.

Representative Bernadette Herrera-Dy sought a clear presentation of the timeline for the implementation of the project. Undersecretary Caintic stated that the original contract with the UNDP on October 1, 2019 provides that deployment of the internet service to all 3,000 sites should be completed by December 7, 2020. Due to the pandemic, the contract was amended on September 29, 2020, and the period of completion was extended December 7, 2021.

Representative Herrera-Dy inquired on the status of the 882 activated sites and who are currently handling the operation of these sites considering that the DICT has cancelled the contract with the UNDP. She also questioned the justification of releasing the entire amount of PhP 1.3 Billion to the UNDP when the project was supposed to be implemented in phases. She called for a review of the SBAA and a determination of its responsiveness to present conditions.

Upon evaluation of the DICT-UNDP FA, the COA observed certain deficiencies, and the Committee agrees with its observations, principally on the following concerns:

- a) Lack of documentation showing empirical data that DICT lacks the capacity to undertake the specific procurement project;
- b) The FA and Project Document contained provisions that either ambiguous or that divested control of the project from the DICT; and
- c) The engagement of UNDP for the Project was not cost-effective on the part of the Philippine government.

The Free Wi-Fi Program was initiated by the DOST through the e-Filipino Program and has been ongoing for six (6) years. Then the responsibility of continuing the program of providing connectivity in public places was transferred to the DICT when it was created on May 23, 2016. With the enactment of Republic Act No.10929, the FPIAP was formulated and the DICT was designated as the lead implementing agency to oversee the effective and efficient implementation of the program.

The FPIAP is being implemented through procurement contracts with various suppliers. Also under this program, the PITC was engaged to act as the procurement agent. In addition, a partnership with UNDP was established through a Financing Agreement, and four (4) MIS-VSAT with local service providers were procured. The procurement of four (4) MIS-VSAT were under an emergency purchase authorized under the provisions of the *Bayanihan To Recover As One Act*.

The DICT is capable of implementing the FPIAP and conduct the procurement of contractors following the guidelines prescribed under Republic Act No. 9184 to get the most advantageous contract for the Philippine government.

Undersecretary Caintic said the target date of completion of the FPIAP is by late 2023 or early 2024. He reported that 58% of geographically disadvantaged places in the National Capital Region and Regions I, II, III, and IV now have free internet connectivity. He also mentioned that the DICT will make sure that the 900 activated sites under the DICT-UNDP project will continue despite the termination of Phase 2 of the project which is currently under negotiation.

Representative Herrera-Dy posited that the DICT should insist on the return of the interest accrued on the project fund that was released to UNDP and was unutilized for the project. She also held that these unutilized funds should be returned to the National Treasury, and that the DICT should go through the appropriation process to be able to get new funds for the FPIAP. She suggested that the DICT discuss with UNDP the legal and viable options available that will allow the government to use the remaining funds for the project. Undersecretary Caintic stated that the DICT will create a task force to look into the

matter. He also mentioned that the DICT is considering the option of directly contracting PLDT to provide more cell sites and bandwidth capacity to cover more areas in the country.

Undersecretary Caintic averred that if the SUF will be fully utilized for the project as provided for under Section 17 of Republic Act No. 10929, the entire Philippine archipelago will be interconnected in 3 to 4 years. He said that the National Grid Corporation of the Philippines (NGCP) has allotted electric lines for the fiber optics to be laid down by the government.

He also testified that the total collection of SUF from telecommunication companies is about PhP 8 Billion, of which DICT has been given only PhP 2 Billion because of the tight fiscal conditionalities. Representative Sharon Garin manifested that the law should be amended to use the SUF to the fullest and according to the purpose for which it was created.

Representative Adriano Ebcas urged the DICT to tap electric cooperatives to set-up the fiber optics for the Free Wi-Fi project. He said that the island of Camiguin has already set-up fiber optics for the electrification of the entire island. To this, Undersecretary Caintic replied that the DICT intends to install an internet highway which shall be used by local telecommunication companies and electric cooperatives to provide connectivity to local communities.

3. Whether or not acts of malfeasance, misfeasance and non-feasance were committed in the course of the implementation of the FPIAP

The principle of public accountability is well-entrenched in the Constitution. Article XI, Section 1 states that “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, act with patriotism and justice and lead modest lives.”

A public office is the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.⁹²

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. In the performance of official duties, public officers are accountable for their acts, deeds or omission. Public accountability is essential to build public trust and confidence.

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

“t. 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.”

Malfeasance is the performance of some act which ought not be done, misfeasance is the improper performance of some act which might lawfully be done, while nonfeasance is the omission of some act which ought to be performed.⁹³

⁹² “A Treatise on the Law of Public Offices and Officers” by Floyd R. Mechem, cited in *Laurel vs. Desierto*, G.R. No. 145368, April 12, 2002.

⁹³ The Revised Penal Code, Criminal Law Book II by Justice Luis B. Reyes

The DICT committed non-feasance when it transferred the management of and funds for the Pipol Konek Project to the UNDP. Consequently, the DICT failed to timely regulate and monitor the implementation of the project and the performance of the contractor procured by the UNDP. An act of misfeasance was committed when it entered into the Financing Agreement with the UNDP for the implementation of the Project, when DICT could have resorted to procurement on its own as it did with the other suppliers for the implementation of the FPIAP.

Republic Act No. 10929, authorized the DICT to enter into contracts to undertake the implementation of the FPIAP and to arrange funding for the program from any source, whether private, government, foreign, or domestic, including official development assistance and bilateral and multilateral loans, subject to existing laws and regulations. The law also mandated the DICT to undertake the creation, establishment, installation, maintenance, and operation of infrastructure, equipment, systems, platforms, applications, and such other FPIAP requirements necessary to effectively provide free internet access in public places throughout the country. Needless to say, these mandates require the active participation of the DICT to ensure that the law is effectively and efficiently implemented.

The DICT officials responsible for the delays in the implementation of the FPIAP may also be liable under Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. Section 3 of the law states:

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

xxx

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

xxx.”

The DICT officials and employees involved in the execution of the Financing Agreement between DICT and UNDP and the implementation of the Pipol Konek Project failed to comply with the standard prescribed under Section 4 of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees. Subsection (a), Section 4 of Republic Act No. 6713, provides:

**“Section 4. Norms of Conduct of Public Officials and Employees.-
xxx**

(a) *Commitment to public interest.* – Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

xxx.”

As to whether the DICT-UNDP FA was disadvantageous to the Philippine government, the Committee will defer to the determination of the COA which has initiated

the audit on the project. Similarly, the Committee will defer to the jurisdiction of the BOC on the issue pertaining to the reported violation of customs law when shipments of the IT equipment utilized for the DICT-UNDP Pipol Konek Project were undervalued resulting to lesser customs duties.

To allow the Committee to form its conclusions on an issue already before the COA and BOC would pose the possibility of a legislative committee and a quasi-judicial body arriving at conflicting decisions. If the Committee's findings were to be reached before the issues could be resolved by the quasi-judicial bodies that have already acquired jurisdiction over the issues, the possibility of the former to influence these findings and bear on the ultimate decision of the quasi-judicial bodies cannot be discounted.

FINDINGS AND CONCLUSION

Premises considered, after a thorough and careful deliberation pursuant to House Resolution No. 1751, the Committee found and concluded as follows:

1. The DICT-UNDP Pipol Konek Project failed to complete the 6,000 sites at targeted locations and provide the free Wi-Fi internet access thereon during the period agreed upon and even after the deadlines were extended.
2. UNDP was not able to resolve the issues between its foreign contractor, Speedcast, and local sub-contractor, PHILCOMSAT, which led to the delays in the implementation of the Pipol Konek Project.
3. DICT, in coordination with the Office of the President, decided to terminate the DICT-UNDP FA and cancel further implementation of the Pipol Konek Project.
4. The UNDP returned the full amount allotted for Phase 2 of the Pipol Konek Project as it never commenced the implementation thereon. As regards the fund for Phase 1 in the amount of USD 14,400,000.00, UNDP shall immediately return the amount of USD 12,350,700.00 and will temporarily retain the amount of USD 2,049,300.00 so that it can account and deduct the costs for actual services already rendered in the activated Free Wi-Fi sites accepted by UNDP from Speedcast from end of 2020 to April 30, 2021 when the operation of the sites was terminated. UNDP will submit a full detail on the amount released to it by DICT for the project and shall be subjected to appropriate auditing and accounting processes.
5. The causes of the delay in the implementation of the Pipol Konek Project were as follows:
 - a. Lack of meticulous and judicious planning coupled with ineffective coordination with concerned LGUs, private suppliers and service providers;
 - b. Failure to comply with Republic Act No. 9184 and its 2016 RIRR on the conduct of an effective pre-procurement/pre-bidding conference;
 - c. Deficiencies and irregularities in the DICT-UNDP Financing Agreement;
 - d. Challenges in the implementation of the DICT-UNDP Pipol Konek Project brought about by COVID-19 pandemic;
 - e. Problems encountered during validation of target sites for the project;
 - f. Lockdown and mobility restrictions that hampered the installation of IT equipment to target sites;
 - g. Inadequate provision of IT equipment and lack of personnel at target sites;
 - h. Controversies surrounding the undervaluation of shipments of IT equipment utilized for the project; and
 - i. Reported filing of a petition under Chapter 11 of the US Bankruptcy Law by the contractor for the DICT-UNDP Pipol Konek Project.

6. The DICT-UNDP partnership was not the best option to implement the FPIAP.
7. The DICT committed non-feasance when it transferred the management of and funds for the Pipol Konek Project to the UNDP. Also, the DICT committed misfeasance when it entered into the Financing Agreement with the UNDP for the implementation of the Project, when DICT could have resorted to procurement on its own as it did with the other suppliers for the implementation of the FPIAP.
8. The DICT should have used the guidelines under RA No. 9184 to procure the services of contractors for the project. Indeed, the law, if utilized would have allowed the DICT to secure the most advantageous terms and conditions. The assertion therefore that the DICT did not have the capability to select its own service contractors and directly handle the implementation of the project is baseless and ill-conceived.

RECOMMENDATIONS

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

1. The review by the DICT of SBAA to determine its applicability to the present conditions and circumstances of the Philippines and ensure that it will not run counter to existing laws, rules and regulations.
2. The formulation of a clear policy on proper coordination among DICT, concerned government agencies, LGUs and private companies and service providers for an effective and efficient implementation of the FPIAP.
3. The institution by DICT of a clear-cut procedure in the implementation of the FPIAP beginning from planning, identification of project site and administrative requirements for the project to actual implementation, to ensure that all the requirements and processes are complied with, as prescribed by law, and a thorough evaluation of the contractor, suppliers and service providers, whether local or foreign companies, is conducted prior to contract awarding. The guidelines may include a provision allowing electric cooperatives to provide digital interconnection in remote and isolated areas.
4. The examination of the implementation of Republic Act No. 10929, particularly with regard to Section 17 on Free Public Internet Access Fund, in order to formulate measures that shall result in the more efficient utilization of the as intended by law.
5. The review of existing laws for the purpose of crafting a legislative measure that shall require non-government foreign or international organizations to be held as the accountable Project Manager for projects entered into with the government involving more than PhP 100 Million. The condition in selecting such Project Manager must not be solely based on the experience gained abroad by said international organization since these do not necessarily apply to the Philippines setting. It is likewise recommended that a clearance be first obtained from the Office of the President before awarding the project to an international organization. In addition, there must be a joint committee to ensure proper controls during implementation, including among others, concerned local officials and their foreign counterparts. Adopting these safeguards will be more favorable to the government than ceding total control of a publicly-financed project to a foreign party.

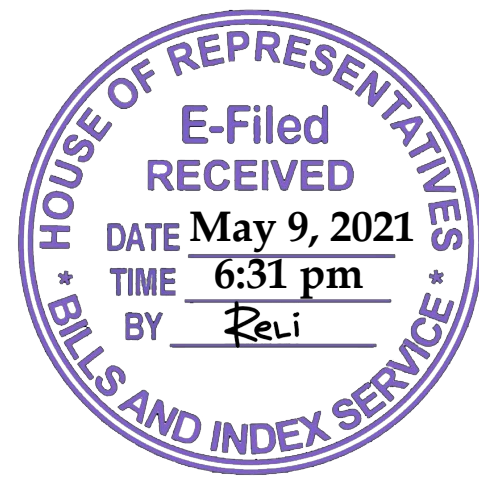
6. The filing of appropriate charges against public officials and private entities or individuals involved in the reported undervaluation of imported IT equipment for the DICT-UNDP Pipol Konek Project.
7. The filing of appropriate charges for violations of Section 3 (e) of RA No. 3019, on corrupt practices of public officers and Section 4 (a) of R.A. No. 6713 in relation to the violation of R.A. No. 10929 on the implementation of the FPIAP, against former DICT Undersecretary Eliseo Rio Jr. as signatory to the DICT-UNDP Financing Agreement.

Finally, the Committee recommends that a copy of this Committee Report be furnished to the DICT, COA, BOC, DBM, Department of Justice and the Office of the Ombudsman for their information and appropriate action.

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE RESOLUTION NO. 1751



Introduced by Representatives Michael Edgar Y. Aglipay, Gil “Kabarangay” A. Acosta Jr., Angelo Marcos Barba, Maximo Y. Dalog Jr. and Hector S. Sanchez

RESOLUTION
CALLING FOR AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED IRREGULARITIES AND SETBACKS ON THE FREE WI-FI INTERNET ACCESS IN PUBLIC PLACES PROJECT IMPLEMENTED BY THE DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (DICT) THAT MARRED THE PROJECT AND GRAVELY AFFECTED THE DELIVERY OF SERVICE TO THE FILIPINO PEOPLE

WHEREAS, Section 24, Article II of the Constitution enunciated that “the State recognizes the vital role of communication and information in nation building”. Thus, the State encourages and supports the development of structures and technology for reliable and accessible internet services that will connect the different islands in the Philippines and enable the citizenry to advance globally.

WHEREAS, the Department of Science and Technology (DOST), through its Information and Communications Technology Office (ICT Office), in 2015 embarked on a project that will provide internet connectivity in public places across the Philippines. The project aimed to accelerate the government’s efforts in enhancing internet accessibility for Filipinos to accelerate economic, social and educational opportunities and reducing the growing digital divide under the overarching e-Filipino Program of the DOST ICT Office. The budget for the project as authorized in the General Appropriation Act for 2015 was Php 1.408 Billion.¹

WHEREAS, the Department of Information and Communications Technology (DICT) was created under Republic Act No. 10844, otherwise known as the “Department of Information and Communications Technology Act of 2015”, signed into law on May 23, 2016. The DICT is the primary policy, planning, coordinating, implementing, and administrative entity of the executive branch of the government that will plan, develop, and promote the national ICT development agenda.

WHEREAS, Republic Act No. 10929, otherwise known as “Free Internet Access in Public Places Act”, was approved on August 2, 2017 aimed to establish a program that will provide free access to internet service in public places throughout the Philippines, to promote knowledge-building among citizens and enable them to participate and compete in the evolving information and communication age. The

¹ dict.go.ph/DOST ICT Office Free Wi-Fi Internet Access in Public Places Project

DICT is mandated to lead the implementation of this program and will oversee the effective and efficient implementation of the Act.

WHEREAS, RA No. 10929 outlined the Free Public Internet Access Program that will provide free access to internet service in public places throughout the country particularly at the national and local government offices; public basic education institutions; state universities and colleges, and Technical Education and Skills Development Authority (TESDA) technology institutions; public hospitals, health centers and rural health units; public parks, plazas, libraries and barangay reading centers; public airports and seaports; and public transport terminals.²

WHEREAS, DICT faced several challenges that slowed the implementation of the Free Public Internet Access Project. The prevailing technology in the Philippines for internet connectivity is fiber optic cables which proved to be inappropriate for mountainous areas, remote islands, and areas prone to flooding, typhoons, earthquakes and other natural disasters. The DICT also encountered problem during the bidding process and initial stages of project implementation. There is also the political issue to contend with as local government units are authorized under the Republic Act No. 7160, otherwise known as the Local Government Code, for the installation of Wi-Fi facilities.

WHEREAS, the DICT partnered with the United Nations Development Program (UNDP) to accelerate the implementation of the Free Public Internet Access Project. The UNDP is tasked to assist in the roll-out of the free Wi-Fi services across the country and aid in the capacity building initiatives of stakeholders involved in the project management. It is also involved in the exploration of international partners through proposed convergence initiatives.

WHEREAS, the DICT-UNDP partnership commenced on September 26, 2018 and will end on December 31, 2022. The total resources required for the undertaking was Php 1,391,084,618.28 with the amount of Php 1,362,084,618.28 contributed by DICT.

WHEREAS, the UNDP engaged SpeedCast International Limited (SpeedCast for brevity), a multi-national firm, to import telecommunication equipment for the Free Public Internet Access Project.

WHEREAS, there were reports on the involvement of UNDP and SpeedCast to controversies affecting the implementation of the Free Public Internet Access Project and that DICT has yet to act on these controversies. It was alleged that SpeedCast committed technical smuggling of telecommunication equipment for the project and bribed Customs inspectors to undervalue the importations. It was also reported that SpeedCast declared bankruptcy while the project was rolling. Speedcast purportedly refused to pay its sub-contractor, the Philippine Communications Satellite Corporation (Philcomsat for brevity) which is 35% owned by the Philippines. In the same report, delays in the implementation of Phase 1 of the project was attributed to 1) flawed UNDP Masterlist of 3,000 internet sites with hundreds of sites with faulty or

² Sections 3 and 4, RA No. 10929

missing data; 2) wrong power information; 3) sites in private homes; and 4) sites under LGUs that were not informed of the free Wi-Fi project. ³

WHEREAS, the Commission on Audit (COA) reported that the financing terms for the Free Public Internet Access Project granted the UNDP full control over the project instead to the DICT which is the implementing agency of the project. State auditors flagged the government's project stating that the contract gave the UNDP more power over the project than it legally permitted. Stated in the COA report, the ownership of equipment, supplies, and other property financed from the contribution to the project shall vest in UNDP. Thus, the entire infrastructure of the project will become part of the UNDP's assets.

WHEREAS, the COA report stated that the financial agreement between DICT and UNDP for the implementation of the Free Public Internet Access Project gave the latter the power to ask for more funding in case of unforeseeable events. By entering into such agreement, DICT has bound the government to produce additional funds to be made available to the UNDP which are not yet appropriated by Congress.

WHEREAS, premises considered, it is imperative that Congress, in the exercise of its oversight functions, carefully review the implementation of the Free Internet Access in Public Places Act; ensure proper utilization of funds allocated to the project; and, exact accountability in government.

NOW, THEREFORE, BE IT RESOLVED, that the House of Representatives, through the Committee on Good Government and Public Accountability, to conduct an inquiry, in aid of legislation, on the alleged irregularities and setbacks on the Free Wi-Fi Internet Access in Public Places Project implemented by the Department of Information and Communications that marred the project and gravely affected the delivery of service to the Filipino people.

Adopted,



MICHAEL EDGAR Y. AGLIPAY

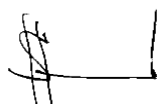
GIL "KABARANGAY" A. ACOSTA JR.,



ANGELO MARCOS BARBA



MAXIMO Y. DALOG JR.



HECTOR S. SANCHEZ

³ tribune.net.ph published on April 30, 2021: "Philcomsat blames UNDP"