

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF JUSTICE  
MANILA

ANNEX " 5 "

OPERATIVES OF ANTI-HUMAN  
TRAFFICKING DIVISION (AHTRAD),  
*Complainant,*

-versus-

NPS Docket No. XVI-14A-00004

MARK JAYROLD LUCHAVEZ,  
PERFECTO LUCHAVEZ, JR., AND  
THOMAS A. RANDALL,  
*Respondents.*

X-----X

**JOINT COUNTER-AFFIDAVIT**

We, MARK JAYROLD LUCHAVEZ ("Jake") and PERFECTO LUCHAVEZ, JR. ("Toto"), both of legal age, Filipino, and with address at No. 550 Purok Ilang-Ilang 2, Silangang Mayao, Lucena City, after having been sworn to in accordance with law, hereby depose and state that:

1. Respondent Jake is charged with violation of Article 266-A in relation to Article 266-B of R.A. 8353 (The Anti-Rape Law of 1997), while respondent Toto is charged with violation of Section 4 (a) and Section 4-C, par. B of R.A. 10364 (Expanded Anti-Trafficking in Persons Act of 2012). We are likewise charged with violation of Section 9 of RA 10364 in relation to section 6(d) and (H) of R.A. 9028.

2. Complainants allege that:

- a. *On Jaforce3,2014, our office received information from the Homeland Security Integration, United State Embassy in Manila, regarding the orphanage Sankey Samaritan Missions located in Lucena City. The letter alleged that the operation of the orphanage are trafficking adults and minors and are also allegedly sexually abusing the orphans. Acting on the said information, the NBI Anti-Human Trafficking Division*

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initiated an investigation in order to validate the information forwarded to our end.

- b. [REDACTED]; a teacher at the Sankey Mission came to our office and provided information about the alleged sexual abuse and harassment perpetrated by Subject "TOTO" LUCHAVEZ JR. Subject LUCHAVEZ is the executive director of the Sankey Samaritan Missions. Per [REDACTED]' account, orphans [REDACTED] and [REDACTED] confided to her that they were sexually harassed by TOTO LUCHAVEZ. Toto allegedly forced the girls to kiss him on the lips on several occasion.
- c. [REDACTED]; an american volunteer with another children's Shelter called Faith, Hope, and Love, Kid's ranch came to know [REDACTED], a former ward of Sankey Samaritan. According to [REDACTED]; [REDACTED] confided to her that he was raped at the Sankey Mission when he was only 13 years old, and as a result the latter had persistent thoughts of killing and harming himself. [REDACTED] appeared before the NBI and executed an affidavit.
- d. Victim [REDACTED] appeared before the NBI-AHTRAD and corroborated the statement of [REDACTED]; [REDACTED] was stated that when he was 8 years old, her mother died, and his father suffer a stroke and can no longer work. As a result, a relative referred him to the Sankey Samaritan for care and support. He stated that he along with another orphan [REDACTED] were raped by MARK JAYROLD A. LUCHAVEZ aka "JAKE", son of TOTO CHAVEZ, when he was still staying at the Sankey Samaritan. [REDACTED] also stated that her younger sister [REDACTED] is a ward at Sankey and that her sister told her that she was forcibly kissed and embraced by TOTO LUCHAVEZ last month, December 2013. This last incident of abuse involving her sister prompted him to come forward before the NBI. Victim [REDACTED] also stated

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c/o Luchavez, Jr. and Mark Jayrold A. Luchavez

that the wards of the mission are dependent on the officer of the mission for their day to day existence (free food and shelter), as well as tuition for their education, and that this dependency is what makes the kids vulnerable to abuses, and when the abuses do happen, they are reluctant to talk about it for fear of being kicked out of the shelter.

- e. The NBI AHTRAD, after taking into consideration the statement made by [REDACTED]; [REDACTED]; and the victim [REDACTED], concluded that the wards of the orphanage are under constant and persistent threat of sexual and psychological abuse from their supposed guardians. And as a result, a rescue operation was planned with the goals of rescuing all the wards staying at the orphanage.
- f. At around 12:00am of January 13, 2014, NBI AHTRAD and IACAT operatives along with Social Welfare Officers from the DSWD assembled at the office of the NBI AHTRAD office for a briefing prior to the conduct of rescue operation. After about an hour, the briefing was concluded and group proceeded to Lucena City to conduct the operation.
- g. On January 13, 2014, at around 6:00 am, NBI-AHTRAD operatives together with the Social Welfare Officers from the DSWD Region 4-A office, proceeded to the Sankey Samaritan Mission Compound located at Purok Ilang-ilang 2, Silangang Mayao, Lucena City.
- h. Rescue inside the Shelter were 31 orphans, consisting of 13 males and 18 females 8 of whom were minors. The orphans were then taken into custody by the DSWD. Apprehended and taken into custody for investigation are the following officers of the Sankey Samaritan Mission Inc., namely: THOMAS A. RANDALL, owner;

10 LUCENA, JR. and MARK VAYROLA A. LUCENA, JR.

*PERFECTO "TOTO" LUCHAVEZ JR, executive director;  
and MARK JAYROLD "JAKE" LUCHAVEZ, board member;*

- i. The rescue operation was conducted in the peaceful and orderly manner in the presence of lawful occupants of Sankey Samaritan Mission Inc., and the Social Welfare Officer from the DSWD.*
- j. Upon conclusion of the operation, subjects and victims were transported to the NBI-AHTRAD office to undergo post-operation processing. Arrested Subjects were duly informed of their constitutional right under the circumstances and were subsequently made to undergo the standard booking procedures.*
- k. During the investigation, statement of the victim were taken establishing of the following:*

*That there were at least three orphans who were raped inside the orphanage by the maintainer or former maintainer of the orphanage. Victim [REDACTED] and [REDACTED] were made to perform fellatio by Subject Mark Jayrold "Jake" Luchavez when the victim were 13 and 11 years olds respectively. Victim [REDACTED] was made to perform fellatio with "mayonnaise" by dorm parent Melvin Garcia when she was 11 or 12 years old.*

*There exist a pattern of continuing sexual abuse and exploitation occurring inside the orphanage's premises with the maintainer, specifically Subject Perfecto "Toto" Luchavez as the sexual predator. (Statements of the victims [REDACTED], [REDACTED], [REDACTED], [REDACTED])*

*The reason for the sexual abuses not being reported to the authorities are that the surrogate parents (maintainers/dorm parents) exercise moral ascendancy over the orphans.*

*Perfecto Luchavez, Jr. and Mark Jayrold H. Luchavez*

*That the orphans fear that exposing what is happening inside the orphanage may lead to them being deprived of material and financial support and curtailment of their educational privileges.*

*That victims' right to communicate to person outside the orphanage were strictly monitored, specifically the use of cellphone and internet.*

*That there exist a continuing and pervasive threat of violence and intimidation (showing and displaying of firearms) coming from executive director of the orphanage, Toto Luchavez.*

*(See Statement of the orphans/victims)*

- l. During the rescue operation Subject Thomas "Uncle Tom" Randall received the undersigned NBI agents and in the process tried to conceal the complicity of Subject Toto Luchavez by stating that the latter is no longer connected with Sankey Samaritan Missions. However, statements made by the victims clearly show that Luchavez still runs the day-to-day operations of the orphanage. Randall was also informed on several occasions by the victims and concerned individuals that sexual abuses were occurring inside the orphanage, but for reasons known only to him, Subject Randall chose to ignore the complaints.*
  
- m. DSWD Regional 4-A, forwarded to the NBI copy of the Registration Certificate and License to Operate of Sankey Samaritan Mission Inc. showing the date of validity from Devember 14, 2009 up to December 13, 2012 only.*
  
- n. Based on the undersigned operatives' observation, offenses have just been committed and these facts were corroborated by the statements of victims and witnesses. Having established probable cause that the above-mentioned Subjects were the persons responsible for the trafficking, abuse, harassment, and exploitation of the*

*rescued victims, therefore, pursuant to section 5(b) of Rule 113 of the Revised Rules on Criminal Procedure, Subjects were placed under arrest.*

3. First and foremost, respondents would like to point out that from the designation of the offenses, as well as careful scrutiny of the entire complaint and its supporting documents, the charges against the respondents cannot be determined with certainty as the provisions of law cited and allegations in the complaint are very vague.

4. In the case of *People of the Philippines v. Dimaano* (G.R. No. 168168, September 14, 2005), the Supreme Court held:

*For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.*

5. Based on the foregoing, since the complaint filed against us is not sufficient as it violates our right to be informed of the nature of the accusations against us, the complaint filed against us should be dismissed outright.

Co. Luckavez, Jr. and Mark Veyrold A. Luckavez

6. Moreover, from the very facts stated in the complaint filed against us, it is clear that at the time of our arrest on 13 January 2014, the arresting officers were not equipped with an arrest warrant as required under the law despite the fact that the situation did not justify a warrantless arrest.

7. Section 5, Rule 113 of the Rules of Criminal Procedure provides for the instances for permissible warrantless arrests, to wit:

*Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:*

*(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;*

*(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and*

*(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.*

8. In paragraph 14 of the complaint, complainants attempted to justify the warrantless arrest by invoking paragraph (b) of the above-quoted provision. Bare allegations of "offenses have just been committed" and "having established probable cause" deserves no consideration whatsoever.

9. In the case of *People of the Philippines v. Doria* (301 SCRA 668), the Supreme Court explained what constitutes "personal knowledge" on the part of the arresting officers as follows:

*"Personal knowledge" of facts in arrests without a warrant under Section 5 (b) of Rule 113 must be based upon "probable cause" which means an "actual belief or reasonable grounds of suspicion." The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e.,*

*supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.*

10. In the case at hand, complainants herein had no personal knowledge of the facts of the alleged offenses and merely relied on the alleged testimonies of [REDACTED], [REDACTED], and [REDACTED]. It is also worth mentioning that the affidavits of [REDACTED] and [REDACTED] merely contained allegations that are hearsay in nature as these affidavits alleged information that they had no personal knowledge of. Hence, there is no probable cause that would justify a warrantless arrest under Section 5(b) of Rule 113.

11. Complainants allege that as early as 3 January 2014, they already had information that, allegedly, the operators of Sankey are trafficking adults and minors and are also sexually abusing the orphans. Hence, despite the lapse of ten (10) days, complainants did not, assuming that they can, even try to obtain an arrest warrant for our arrest on 13 January 2014.

12. As held in the case of *Valdez v. People of the Philippines* (G.R. No. 170180, November 23, 2007)

*The sacred right against an arrest, search or seizure without valid warrant is not only ancient. It is also zealously safeguarded. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.<sup>1</sup> Any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding. Indeed, while the power to search and seize may at times be necessary to the public welfare, still it must be exercised and the law implemented without contravening the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.<sup>2</sup>*

13. Based on the foregoing, aside from the fact that the complaint violates our right to be informed of the nature of the accusations against us, our arrest on 13 January 2014 was likewise in clear violation of our right against illegal arrests. Not only that, but there was no search warrant served on Sankey during the raid conducted on

<sup>1</sup> 1987 CONST., Art. III, Sec. 2

<sup>2</sup> *People v. Aruta*, 351 Phil. 868 (1998).

10 Luchavez, Jr. and Mark Valdez H. Luchavez

13 January 2014. For all the reasons stated here, therefore, the evidence obtained after our unlawful arrest, which includes the alleged affidavits of the orphans, are inadmissible under the doctrine of the fruit of the poisonous tree.

14. Moreover, it is worth mentioning that since the time of our arrest until the present time, we still have not been apprised of our *Miranda* rights, as provided for under Section 2 of R.A. No. 7438:

*SEC. 2. Rights of Persons Arrested, Detained, or under Custodial Investigation; Duties of Public Officers.*

*a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.*

*b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.*

15. However, even assuming without admitting that the complaint filed against us is sufficient and our arrest on 13 January 2014 was done in accordance with law, the crimes charged against us are utterly without legal and factual basis.

16. Assuming that our understanding of the vague charges against us are correct, the crimes that respondent Jake allegedly committed is Article 266-A of the Revised Penal Code (RPC), as amended by R.A. No. 8353, in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, to wit:

*Article 266-A. Rape: When And How Committed. - Rape is committed:*

*1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:*

*a. Through force, threat, or intimidation;*

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- b. *When the offended party is deprived of reason or otherwise unconscious;*
- c. *By means of fraudulent machination or grave abuse of authority; and*
- d. *When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.*

*2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.*

*Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.*

*Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.*

*When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become reclusion perpetua to death.*

*When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.*

*When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.*

*The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:*

- a. *When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;*

- b. *When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;*
- c. *When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;*
- d. *When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;*
- e. *When the victim is a child below seven (7) years old;*
- f. *When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;*
- g. *When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;*
- h. *When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;*
- i. *When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and*
- j. *When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.*

*Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.*

*Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.*

*When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.*

*When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.*

*When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.*

*Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article.*

17. Based on the foregoing provisions, it is can be seen that under Article 266-A of the RPC, as amended, the crime of rape can be committed in two (2) ways, the first manner under four (4) circumstances, and can be further qualified by any of the ten (10) circumstances listed in Article 266-B of the RPC, as amended.

18. In the case at hand, a certain [REDACTED], a former ward of Sankey Samaritan Missions, Inc. ("Sankey"), accuses respondent Jake of the raping him and another ward, a certain [REDACTED]. According to [REDACTED], they were made to perform fellatio by respondent Jake when he was just 13 years old, while [REDACTED] was 11 years old.

19. As held in the case of *People of the Philippines v. Alfredo* (G.R. No. 188560, December 15, 2010), the Supreme Court explained that:

*On the other hand, the elements of rape under par. 2 of Art. 266-A of the Code, are as follows: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and*

*that the act of sexual assault is accomplished by using force or intimidation, among others.*<sup>3</sup>

20. We would like to point out that at the time the alleged crime was committed, which was about nine (9) years ago, respondent Jake was actually just a minor himself. Hence, it is quite hard to believe that two boys were forced, threatened, or intimidated to perform fellatio by another boy just a few years their senior.

21. Moreover, a scrutiny of the *Sinumpaang Salaysay* of [REDACTED] dated 11 January 2014 shows that [REDACTED] made no mention that he and [REDACTED] were forced to do what [REDACTED] is accusing respondent Jake. For failure of the complainant to allege, at the very least, that the crime of rape was accomplished by using force or intimidation, among others, the charges against respondent Jake should be dismissed.

22. In addition, comparing the *Sinumpaang Salaysay* of [REDACTED] dated 11 January 2014 and that of his sister, [REDACTED], dated 13 January 2013, [REDACTED]'s categorical allegation that what made him decide to come forward is the alleged incident wherein [REDACTED] was forced by respondent Toto to kiss and hug him is belied by [REDACTED]'s very own testimony that she was only "almost kissed" by respondent Toto. Hence, based on the discrepancies of the hearsay statement of [REDACTED] and the statement of [REDACTED] involving personal knowledge, a cloud of doubt has been created as to the credibility of [REDACTED]'s testimony.

24. Hence, based on all of the foregoing, [REDACTED]'s accusations against us should be dismissed for utter lack of merit.

25. On the other hand, we would like to point out that the belated filing of [REDACTED] *Sinumpaang Salaysay* dated 15 January 2014 raises serious questions with regard to the voluntariness of its execution, inevitably affecting its authenticity.

26. Considering the grave allegations that [REDACTED] made in his own affidavit involving [REDACTED] and the fact that the latter was already in the custody of the DSWD along with the other wards who executed their own affidavits on 13 January 2014, we find no logical reason why the complainants would delay the procurement of [REDACTED] testimony if his accusations were really true. Clearly, [REDACTED] affidavit was meant as an afterthought to substantiate a tenuous charge.

<sup>3</sup> Luis B. Reyes, *Revised Penal Code*, 525-526 (16<sup>th</sup> ed., 2006).

27. Moreover, the allegation of [REDACTED] in paragraph 15 of his affidavit that he allegedly feels fear and anxiety whenever he is with either of us is totally contradicted by the fact that he often played basketball with respondent Jake, the most recent instance was only last 10 January 2014. It is quite incomprehensible that a person who has allegedly suffered a very traumatic experience can casually engage in a friendly game with the person who caused said trauma. Hence, based on [REDACTED] aforementioned conduct, it can be safely assumed that there was no traumatic experience to speak of.

28. In addition, as stated by Ms. Sheeree Ann Kaw, Sankey's assistant coordinator, in her affidavit attached hereto as **Annex "1"**, [REDACTED] and [REDACTED] are known for their frequent violations of Sankey's house rules. Accordingly, reasonable penalties were imposed on them corresponding to their infractions. As opined by Ms. Kaw, the accusations made by the two young men are probably their way of retaliating against Mr. Luchavez, through his son Jake, for his firm management of Sankey.

29. On the other hand, if our understanding of the vague charges against us is again correct, the crimes allegedly committed by respondent Toto are Section 4 (a) of R.A. No. 9208, as amended by R.A. No. 10364, and Section 4-C, par. B of R.A. 9208, as amended by R.A. No. 10364, which state:

*SEC. 4. Acts of Trafficking in Persons. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:*

- a. To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation;*

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*SEC. 4-C. Accessories. – Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:*

xxx

- b. *By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;*

xxx

30. As explained in the *Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases* (a copy of the material portion of which is attached hereto as **Annex "2"**), there are three interrelated and interdependent elements that must be present for a situation to come into the purview of R.A. No. 9208. These are: *act/s*, *means*, and *exploitative purpose*. Each of these elements must be present and linked to each other: the *act/s* must be achieved by one of the *means* and both must be linked to achieving the *exploitative purpose*.

Trafficking in persons (TIP) involves an *act* of recruitment, transportation, transfer or harboring, or receipt of persons, which can be performed by one offender or a group of offenders. These acts are independent of one another. A single act, or a series of acts, or a combination of these acts, may constitute the first element of TIP.

The *means* employed by the traffickers in the act of recruitment, transportation, transfer, etc., can be any one or a combination of any of the following: threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

In the so-called trafficking continuum, the element of *exploitative purpose* need not be consummated. This element refers to the intention to use the person for an exploitative purpose.

31. Scrutiny of the complaint and its supporting documents show that what has only been alleged in the testimonies of the accusers of respondent Toto in relation to the above-cited penal provisions is that there were a few incidents of alleged "forcible kissing". There was no explanation of the means employed in the alleged acts, as well as the exploitative purpose of respondent Toto.

32. For failure of the complaint and its supporting documents to allege and show that the elements of trafficking in persons are present in the case at hand, the charges against respondent Toto should likewise be dismissed.

33. In fact, on 30 September 2013, as corroborated by Sheeree Ann in her affidavit, [REDACTED] executed an apology letter in the presence of respondent Toto, Sheeree Ann, and Venancio Jumawan, the in-house social worker of Sankey since 1 September 2013, which states:

*Walang katotohanan and lahat ng binibintang sa aking tulad ng, "pag-uutos na buksan ang log book", na ako daw ang pasimuno ng lahat ng kaguluhan, At hindi totoo ang pagbibintang kay Kuya Toto, Ate SheAnn at ni Mama Blesie. Hindi rin totoo na ako ay patitigilin sa pag-aaral.*

*"Patatapusin ako sa pag-aaral ni Kuya Toto at nangangako ako na tutuparin ko ang aking tungkulin na makatapos."*

*Humihingi ako po ng kapatawaran sa mga nagawa kong kasalanan kay Kuya Toto.*

*(Please see Annex "1").*

34. Hence, based on the above-quoted apology letter executed by [REDACTED], one of the primary accusers in the case at hand, admitting that the accusations at that time against respondent Toto were not true, the charges against respondent Toto should be dismissed.

35. Including the above-cited instance, [REDACTED] has had a very colorful history of misbehaving and telling some untrue stories. Hence, it is not surprising that she can easily manufacture blatant lies, such as her accusations against respondent Toto.

36. On the other hand, [REDACTED]'s act of accusing respondent Toto likely arises from the fact that she shares a close friendship with [REDACTED]. Having known [REDACTED] as a troublemaker, it is clearly not beyond her to have influenced [REDACTED] to falsely accuse respondent Toto of committing a similar act in order to support her own baseless accusations.

37. Furthermore, we would like to point out that the handwritten letters that were allegedly executed by [REDACTED] and [REDACTED], which were used as one of the basis for the filing of this complaint, should, assuming without admitting that they are authentic, be declared

inadmissible for violating the confidential nature of these documents and as fruits of the poisonous tree, having been obtained after the unlawful raid conducted by the complainant. [REDACTED], who admittedly took these letters out of the premises of the orphanage, had no authority to release these letters to the public, as it is basic procedure that any information related to the orphans of Sankey should be given to the in-house social worker only and should not be revealed to anyone else.

38. Assuming that our understanding of the vague charges against us are correct, the charge against both of us for alleged violation of Section 6 (d) and (h) of R.A. No. 9208, as amended by R.A. 10364, should likewise be dismissed for failure of the complainants to show that the crime of trafficking in persons has been committed. The stated provisions provides:

*Section 6. Qualified Trafficking in Persons. - The following are considered as qualified trafficking:*

xxx

*d. When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;*

xxx

*h. When the offender commits one or more violations of Section 4 over a period of sixty (60) or more days, whether those days are continuous or not.*

xxx

39. With regard to the allegations made by the affiants regarding their awareness of other abuses against the other children that have happened in Sankey, the information given by these affiants should not be taken into consideration because of the fact that what they have alleged information that were only acquired by them through the grapevine and nothing else.

40. On the other hand, to address the other random allegations in relation to respondent Toto's firm management styles, it would be an injustice to him if he would be faulted for his strict implementation of Sankey's house rules. Respondent Toto's reasonable methods of

managing the orphanage, which some of the wards and other meddlesome persons might unreasonably think to be abusive, are done with the purest intentions of nurturing the wards to become responsible individuals in the future.

41. It is our firm belief that the filing of this complaint has been orchestrated by Joe Mauk, [REDACTED], Miriam Mauk, and [REDACTED]. This belief is supported by the following facts:

a. On 16 November 2013, Joe, [REDACTED], and Miriam forcibly entered the Sankey premises, accompanied by heavily-armed men. They manifested that they would be taking over the management of Sankey because of reports regarding alleged abuses committed against the orphans. However, due to the actions of respondent Toto of calling the military and the police to help with the situation, the group immediately left.

b. Joe, [REDACTED], Miriam, and [REDACTED] were also active participants in the unlawful raid conducted by the NBI on the dreadful day of 13 January 2014.

c. [REDACTED] has been holding a grudge against respondent Toto since her separation from the Sankey management because of the former's discriminatory conduct towards the latter during [REDACTED] tenure in Sankey from 2000 to 2002.

d. [REDACTED] and [REDACTED], the very people who initiated the filing of this complaint against us, are both suspiciously connected to [REDACTED].

i. [REDACTED] took care of [REDACTED] after he was removed from Sankey; and

ii. [REDACTED] volunteers at the Kids' Ranch, which is owned and operated by [REDACTED].

e. On the other hand, it also known to all those involved in the operations of Sankey that Joe himself despises respondent Toto for having a very strong personal and professional relationship with Joe.

f. [REDACTED], the other person who initiated the filing of this complaint against us, also shares a suspicious relationship

with Miriam and Joe. [REDACTED] is actually the childhood friend of Miriam, who is the daughter of Joe, and Joe is the Pastor of the religious congregation to which [REDACTED] belongs.

42. The declarations made by us in this Joint Counter-Affidavit are true and correct of our own personal knowledge and that we fully understand the contents hereof, as they have been fully explained to us in our native language.

AFFIANTS FURTHER SAYETH NONE.

IN WITNESS WHEREOF, we have hereunto placed our hands this 22<sup>nd</sup> day of January 2014.

  
**MARK JAYROL LUCHAVEZ**  
*Affiant*

  
**PERFECTO LUCHAVEZ, JR.**  
*Affiant*

**CERTIFICATION**

We hereby certify that we have personally examined the affiants and that we are satisfied that he voluntarily executed and understood their Joint Counter-Affidavit.

SUBSCRIBED AND SWORN to before me  
this 22<sup>nd</sup> day of January, 2014  
in the City of Manila, Philippines

  
**JAYVEE LAURENCE B. BANDONG**  
*Prosecution Attorney*

**MARK ROLAND S. ESTEPA**  
*Assistant State Prosecutor*