

PROTECTION OF WITNESSES OF THE “CONGRESSIONAL PORK BARREL SCAM”

*Cristina Belmonte Hernandez**

I. OVERVIEW OF THE PORK-BARREL SCAM¹

One of the highly publicized and most talked about controversies affecting the Philippine government is the Priority Development Assistance Fund (PDAF) scam, commonly known as the “Pork Barrel Scam”. The news about the scam broke in 2014, during the administration of then President Benigno Simeon C. Aquino, III. The arrest of Ms. Janet Lim Napoles as the alleged “Pork Barrel Queen” was a boost to the Aquino administration’s principal advocacy of “Matuwid Na Daan”².

The scam is basically about legislators conspiring with other government officials and private entities to divert public funds for their own use and benefit. Driven by greed, the principal players in the scam were able to devise a scheme where the fictitious transactions of the concerned officials and agencies appeared to be as legitimate undertakings.

The wheel of deception starts from the negotiation between the legislator and Ms. Napoles on the utilization of the former’s PDAF allocation. The two will agree on a list of projects, the specific implementing agency through which the funds will be coursed, the project cost and the commission or “kick-back” that the legislator will eventually receive. The amount of commission ranges between 40%-60% of the project cost or the amount stated in order releasing the fund. After negotiation, Ms. Napoles will now instruct her trusted employee to prepare the so-called project listing which will be adopted by the legislator in requesting the immediate release of his PDAF allocation. The Appropriations Committee in the House of Representative will endorse said request to the Budget Department who will soon issue the corresponding allotment release order addressed to the chosen implementing agency. The Head of the latter, in exchange for a ten percent (10%) share in the project cost, will subsequently release the check to the fake NGO and the proceeds will thereafter be immediately withdrawn.

Ultimately, only the Congressman, Ms. Napoles and their co-conspirators benefitted from the disbursement drawn from the legislator’s Priority Development Assistance Fund allocation. Not a single centavo was spent for the improvement of the legislative district of the Congressman.

II. PENDING CASES IN THE ANTI-GRAFT COURT

The Office of the Ombudsman, filed cases against three (3) senators of the Republic and several other members of the House of Representatives, commonly known as a

* Assistant Special Prosecutor II under the Office of the Special Prosecutor, Office of the Ombudsman, Philippines.

¹ The narration of the scheme was culled from the Joint Resolution of the Office of the Ombudsman, dated 26 September 2014, finding probable cause for violation of Section 3 (e) & Section 4 (b) both of Republic Act No. 3019, Malversation, Direct Bribery and Corruption of Public Official under the Revised Penal Code

² Translated to mean “straight governance”

Congressman. Charges were also filed against officials and employees of other government agencies and private individuals who conspired with the named legislator. This paper will cite the malversation, violation of the anti-graft law and bribery cases filed against a Congressman from the lone district of Cagayan de Oro which is now pending trial with the anti-graft court of the Philippines known as the Sandiganbayan. The writer is a member of the panel of prosecutors handling the said case.

During his term as a Congressman of the lone district of Cagayan de Oro, a province located in the northern part of the Mindanao region, the accused legislator continuously endorsed the implementation of his PDAF-funded livelihood projects to the fake NGO controlled by Ms. Napoles. In 2007, he consented to course his PDAF allocation, with a total amount of Thirty Million Pesos (P30,000,000.00), through an implementing agency called the Technology Resource Center³ (TRC). He also endorsed to TRC, a non-governmental organization, owned and controlled by Ms. Napoles known as Countrywide Agri and Rural Economic Development (CARED) Foundation, as the entity that would allegedly implement the livelihood projects in his district. CARED was supposed to conduct trainings and deliver farm implements and livelihood materials to identified beneficiaries. Unfortunately, no deliveries were made and no trainings were ever conducted.

The Congressman received an accumulated sum of about Twenty Million Eight Hundred Forty-Three Thousand Seven Hundred Fifty Pesos (P20,843,750.00) charged to his PDAF allocation in the years 2004, 2005, 2006 and 2007.

The case is still in the trial stage. The prosecution already presented witnesses from the Department of Budget and Management to confirm the release of the fund charged to the PDAF allocation of the Congressman as well as witnesses from the Commission on Audit to attest to the findings and result of the fraud audit conducted in the utilization of the PDAF. The witness on deck is the former finance officer and trusted employee of the NGO who testified on the details of the fraudulent scheme.

III. THE WHISTLE-BLOWERS

By chance, the scam was exposed when an employee of the fake NGO sought help from law enforcers as he was illegally detained by Ms. Napoles. The case is actually for illegal detention but since the reason for the detention is the employee's familiarity with the workings of the NGO then a disclosure about the scam was inevitable. The individuals involved in the PDAF scam would not have been brought to courts had it not for this employee who blew the whistle against Ms. Janet Lim Napoles and her cohorts.

The detained employee is a close relative of Ms. Napoles herself and the former finance officer of JLN Corporation, a company owned by Ms. Napoles. His liberty was restrained, and he was detained for three (3) months on mere suspicion that he was already making his own hidden transaction with the legislators. Ms. Napoles also feared that since he is a trusted employee and knows almost everything about the workings of the NGO then he might already disclose vital information prejudicial to the interest of Ms. Napoles.

Other whistle-blowers include former female employees of Ms. Napoles whose tasks involved facilitating the registration of the fake NGOs and securing its government licenses

³ The agency is no longer functioning and was dissolved with the advent of the PDAF controversy.

and permits, deposit and cashing of checks as well as fabricating needed documents to expedite the release of the PDAF allocations.

The former finance officer categorically claimed that the Congressman from Cagayan de Oro actually received money from Ms. Napoles representing his share of the fund as previously agreed upon. Unlike the other legislators where the bribe money was coursed through a middleman, the Congressman from Cagayan de Oro personally received in cash, at the very office of JLN Corporation, his share of the loot.

IV. WITNESS PROTECTION

After going against the interest and giving damaging statements against their former employer, naturally, the whistle-blowers were separated from their usual gainful employment. Worst, there is now a continuing threat to their lives and those of their respective families. Their sources of income became limited and their means would not suffice to secure their own safety. Since the whistle-blowers will stand as material witnesses in the controversial PDAF scam, then the Philippine government must carry the burden of ensuring their continued safety and availability.

On 24 April 1991, the Philippine Congress approved the passage of Republic Act. No. 6981, otherwise known as the “*Witness Protection, Security and Benefit Act*”. The law assigned the implementation of the witness protection, security and benefit programme to the Department of Justice (herein referred to as the Department).

The Department’s Witness Protection Program (herein referred to as the Program)⁴ seeks to encourage a person who has witnessed or has knowledge of the commission of a crime to testify before a court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals and from economic dislocation. The benefits given to the witnesses who are admitted to the programme include the following:

- Security protection and escort services
- Immunity from criminal prosecution and not to be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents or writings produced.
- Secure housing
- Assistance in obtaining a livelihood
- Reasonable travelling expenses and subsistence allowance while acting as a witness
- Free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness.
- Burial benefits of not less than Ten Thousand Pesos (P10,000.00) if the witness is killed because of his participation in the Program
- Free education from primary to college level for the minor or dependent children of a witness who dies or is permanently incapacitated
- Non-removal or demotion at work because of absences due to his being a witness and payment of full salary or wage while as acting as witness.

⁴ Data about the programme is culled from the official website of the Department of Justice

In return, the witness will sign a Memorandum of Agreement setting forth his responsibilities which include the following⁵:

- To testify before and provide information to all appropriate law enforcement officials concerning all appropriate proceedings in connection with or arising from the activities involved in the offence charged
- To avoid the commission of a crime
- To take all necessary precautions to avoid detection by others of the fact concerning the protection provided him under the law
- To comply with legal obligations and civil judgements against him
- To cooperate with respect to all reasonable requests of officers and employees of the Government who are providing protection under the law
- To regularly inform the appropriate programme official of his current activities and address.

Given that the former employees of Ms. Napoles actually participated in the commission of the scam and there is absolute necessity for their testimonies, the whistle-blowers applied for and were actually admitted, as state witnesses, to the Witness Protection Program of the Department of Justice.

V. INSTITUTIONAL ARRANGEMENT

The prosecution of the Malversation, Direct Bribery and Graft cases filed against the Congressman from Cagayan de Oro are being handled by the Office of the Special Prosecutor, the prosecutorial arm of the Office of the Ombudsman. A five-man panel consisting of both senior and junior prosecutors was created immediately after the Information was filed in the anti-graft court on 5 February 2015. As previously mentioned, among the witnesses to be presented at the trial of the case are the former employees, turned whistle-blowers, of JLN Corporation who took an active part in facilitating the unlawful disbursement of the PDAF allocation.

The Office of the Ombudsman has no concrete programme that extends assistance to its own witnesses comparable to that of the Department of Justice. Ironically, the safety and security of the prosecution witnesses are provided for by another agency which is the Department of Justice and not directly by the Office of the Ombudsman.

Whenever there is a need to call them to testify in court then a written request, through the issuance of a Subpoena *Ad Testificandum*, must first be addressed to the Program Director of the Witness Protection Program. The same protocol applies when said witnesses are being called even for just the conduct of case conferences prior to the scheduled appearances in court. Fortunately, there has never been an instance where the Department of Justice failed to present the whistle-blowers in their custody whenever requested by the special prosecutors from the Office of the Ombudsman.

⁵ Republic Act No. 6981, Section 5

VI. THE VALUE OF COOPERATION

Witness protection may be a limiting factor in the successful prosecution of the congressional “pork-barrel” scam. The prosecution panel is always faced with the challenge of bringing the whistle-blowers to court, especially since their material witnesses are in the custody of another agency of the government.

The dynamics between the Office of the Ombudsman and the Department of Justice, particularly on the safety and security of witnesses, proved to be an effective means in ensuring the availability of the whistle-blowers. Proper coordination between the two agencies facilitated the whistle-blower’s consistent attendance in the scheduled court hearings.

In taking the witness stand, the whistle-blowers were able to clearly narrate to the magistrates of the court and to the listening public in general how the grand conspiracy to defraud the government was executed. Their testimonies confirmed that only the privileged few benefitted from the much-needed resources of the government. More importantly, the whistle-blowers strengthen the probability of conviction of all those involved in the scam.

The Office of the Ombudsman may not have all the resources it needs to fulfill its mandate to curb corruption in government. This may also be true for the Department of Justice. Nevertheless, the support given by one agency to the other helps to address the lingering problem of the scarcity of each agency’s resources. Indeed, the collaboration of various government agencies and active cooperation of the witnesses are indispensable in the government’s fight against corruption.

VII. CONCLUDING STATEMENT

The prosecution of the Priority Development Assistance Fund scam can be likened to the biblical battle of David and Goliath. To testify against the highly influential and powerful individuals is like David throwing a stone at the mighty Goliath. The whistle-blowers may appear to be small like David but with the protection given by the government then they can stand taller than Goliath.