

TWO PLUNDER CASES: A COMPARISON

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It is the second time for Philippine Senator Jose "Jinggoy" Estrada to be accused of plunder. This paper will discuss the cases but no comment or opinion on the merits of the second case is made as the case is presently being tried.

I. THE CRIME OF PLUNDER

Section 2 of Republic Act No. 7080 defines and penalizes the crime of plunder as follows:

Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d)190 hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense.

As laid down in *Joseph Ejercito Estrada vs. Sandiganbayan* (G.R. No. 148560, November 19, 2001), the elements of plunder are:

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;
2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:
 - (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
 - (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;
 - (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of

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Government owned or controlled corporations or their subsidiaries;

- (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines;

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50 million.

II. THE FIRST PLUNDER CASE

In the first plunder case, former president Joseph Estrada was charged with acquiring almost P4 billion ill-gotten wealth from protection money in illegal gambling operations, stock manipulation and kickbacks from tobacco excise taxes. Joseph Estrada's son Jinggoy, who was then the mayor of San Juan district in Metro Manila, and others were charged as conspirators. In its decision promulgated on September 12, 2007, the *Sandiganbayan* (antigraft court) convicted former president Joseph Estrada and acquitted the younger Estrada. In acquitting Jinggoy, the Court stated that:

With respect to Jinggoy Estrada, there was no evidence that the money he turned over to Gov. Singson or the latter's representatives was part of the *jueteng* protection money collected from Bulacan or that he received funds from a certain Viceo. The prosecution did not also rebut the bank certification presented by the defense that Jinggoy Estrada did not have an account with the United Overseas Bank, disproving the testimony of Emma Lim that the deposit slip in the amount said to be part of *jueteng* money was turned over to her by Jinggoy Estrada from his account at the United Overseas Bank. The gaps in the prosecution evidence as to Jinggoy Estrada create uncertainty in the mind of the Court as to the participation of Jinggoy Estrada in the collection and receipt of *jueteng* money.

Then Governor Luis "Chavit" Singson of the province of Ilocos Sur and their close family friend was the principal witness in the plunder charge against the Estradas. He testified that he delivered millions of pesos from *jueteng* operations to the former president and he maintained a ledger for the transactions. Jinggoy was the collector of P3 million protection money every month from the nearby province of Bulacan, through Jessie Viceo, the *jueteng* operator in Bulacan. Jinggoy retained P1 million and gave the rest to Singson, who, in turn, remitted money to Estrada. However, Joseph stopped Jinggoy from keeping a portion of the proceeds so his codename appeared in Singson's ledger only once but he continued receiving protection money, albeit

secretly. Four witnesses testified that upon instructions of Singson, they collected *jueteng* proceeds from Jinggoy on several occasions. One of them testified that Jinggoy, in one instance, issued her a personalized/customized United Overseas Bank check.

The Court took notice of the gaps in the testimony of the prosecution witnesses. It did not believe that Jinggoy Estrada, who is not even from Bulacan, was the collector for Bulacan. None of the witnesses saw Jinggoy Estrada receive *jueteng* collections from Viceo or that he subtracted his share of the collections he received. In the lengthy and detailed ledger, Jinggoy's codename appeared but once despite the supposed numerous instances when he received protection money from illegal gambling. Moreover, the testimony of the bank official who stated that the bank had not issued any customized check to Jinggoy Estrada and that he had no account with the bank was given weight and consideration as his testimony was not rebutted.

III. THE SECOND PLUNDER CASE

Jinggoy Estrada became a senator in 2004. The second plunder case, now pending trial before the *Sandiganbayan*, charges him with the anomalous utilization of his Priority Development Assistance Funds.

A. The Priority Development Assistance Fund (PDAF) and the PDAF Scam

The Priority Development Assistance Fund is a lump-sum appropriation in the annual General Appropriations Act allotted to each member of Congress to fund the priority development programmes and projects of the government, mostly on the local level. Because of the alleged misuse by several members of Congress of their PDAF, it is estimated that the Philippine government was defrauded of P10 billion. The PDAF scam, or pork barrel scam, is a big political scandal that has provoked public outrage. On November 19, 2013, the Supreme Court declared the PDAF unconstitutional.

Businesswoman Janet Lim Napoles was tagged as the mastermind of the PDAF scam by Benhur K. Luy, her second cousin and former personal assistant. After she detained him and agents of the National Bureau of Investigation of the Department of Justice rescued him, Luy reported Napoles' involvement in the scam. Based on testimonial and documentary evidence gathered, the widespread misuse of PDAF allotted to a legislator was committed through a complex scheme with the participation of the legislator, his/her subordinates, the Department of Budget and Management, implementing agencies of the government, and the dummy non-governmental organizations of Napoles. The projects supposed to have been funded by a legislator's PDAF turned out to be inexistent or "ghost" projects and the funds intended for the implementation of the PDAF-funded project are diverted to Napoles and her cohorts, including the legislator.

B. The Charges

On September 16, 2013, the NBI and Secretary of Justice Leila De Lima filed a complaint with the Ombudsman charging Senator Estrada with plunder for acquiring/receiving on various occasions, in conspiracy with his co-respondents, commissions, kickbacks, or rebates, in the total amount of at least Php183,793,750.00 from the "projects" financed by his PDAF from 2004 to 2012. The Field Investigation Office of the Ombudsman, on the other hand, charged Senator

Estrada and other respondents with violating SECTION 3(E) of RA 3019, as amended, for giving unwarranted benefits to private respondent Napoles and certain NGOs in the implementation of his PDAF-funded projects, thus, causing undue injury to the government in the amount of more than Php278,000,000.00. After preliminary investigation, the Ombudsman indicted Sen. Estrada for plunder and several counts of graft, along with other individuals.

C. Evidence for the Prosecution

In their testimonies, Benhur Luy and other trusted employees of Janet Napoles (the whistleblowers) outlined the modus operandi of the PDAF scam. They stated that Sen. Estrada repeatedly received sums of money from Janet Napoles for endorsing her fake NGOs to implement the projects to be funded by his PDAF. Luy related that Sen. Estrada personally transacted with Napoles and in his ledger, he recorded that Sen. Estrada received over P183 million in kickbacks from his PDAF.

Ruby Tuason was former President Joseph Estrada's social secretary and a close friend of Sen. Estrada. She was initially a respondent in the complaint but she turned witness for the prosecution. Tuason states that she personally knows Napoles and she acted as the go-between for Napoles and Sen. Estrada with respect to his PDAF-related arrangements. The amounts for his kickback, usually 50% of the diverted funds, were handed to her by either Luy or Napoles herself. She personally picked up and delivered the money in his office or his home. She also received commission of 5% of the amount.

Aside from Luy and company, Tuason and other witnesses, there are also documentary evidence against Sen. Estrada, namely: (a) the business ledgers prepared by witness Luy, showing the amounts received by Senator Estrada, through Tuason and Labayen, as his "commission" from the so-called PDAF scam; (b) the 2007-2009 COA Report, documenting the results of the special audit undertaken on PDAF disbursements that there were serious irregularities relating to the implementation of PDAF-funded projects, including those sponsored by Estrada; and (c) the reports on the independent field verification conducted in 2013 by the investigators of the Field Investigation Office of the Ombudsman which secured sworn statements of local officials and purported beneficiaries of the inexistent projects.

D. Estrada's Defence

In his defence, Sen Estrada decries political harassment and claims that he has no knowledge or participation in the anomalous transfer of his PDAF allocation; that neither he nor his chief of staff and co-respondent Labayen received any funds from Napoles, her staff or persons associated with NGOs affiliated with or controlled by her; that his association with Napoles did not necessarily mean that he connived with her to divert PDAF disbursements. He denies that he is connected with other respondents and that he authorized them to act on his behalf respecting his PDAF allocations; that the signatures appearing in the PDAF documents are not his, as witness Luy admitted falsifying signatures on some PDAF documents. He claims that as a legislator, he had no hand in the implementation of the projects funded by the PDAF; that his choice of NGO to implement his PDAF projects was only recommendatory and he himself merely relied on recommendations in choosing the NGO.