

CURRENT ISSUES IN THE FACT-FINDING INVESTIGATION OF THE PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) OR “PORK BARREL” FUNDS

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One of the most controversial issues afflicting the Philippines today is the alleged misuse of the Priority Development Assistance Funds (PDAF) or the so-called “pork barrel” funds of the legislators. Billions of pesos were laid to waste due to avarice and extreme hunger for power and wealth by Philippine officials and/or employees. The PDAF had become a widespread conspiracy among officials and employees of the government that placed the country in a bad light. Notwithstanding the grave effects of typhoons and other calamities for the past years that exposed the scarcity of government funds to provide assistance to the citizens, who had suffered tremendously, and the apparent incompetence of a few, if not most, of those responsible for the distribution of relief, these erring public officials had the guts and the “thick face” to squander billions of public funds paid from taxes of the working citizens. It is a pity that the poor had to endure further hardship from the oblivious squandering of public funds.

I. WHAT IS THIS SO-CALLED PDAF OR “PORK BARREL”?

Popularly known as the “Pork Barrel”, the PDAF is a lump sum appropriation in the Annual General Appropriations Act (GAA) intended to fund priority development programmes and projects of the government.¹ Each year, every legislator is allotted pork barrel funds in the annual appropriation allowing them to fund small-scale infrastructure or community projects which fall outside the scope of the national infrastructure programme.² It covers funding for programmes and projects categorized as *soft projects*³ and *hard projects*⁴ or *Various Infrastructure including Local Projects* (VILP) of the Department of Public Works and Highways (DPWH).

Priority programmes and projects of legislators were allocated in a total amount of Seventy Million Pesos (Php70,000,000.00) for each congressional district and party-list Representative, and Two Hundred Million Pesos (Php200,000,000.00) for each Senator. On the part of the congressional district and party-list Representative, the Php70 Million is divided into Thirty Million Pesos (Php30,000,000.00) for soft projects and Forty Million Pesos (Php40,000,000.00) for hard projects. As regards the Senators, their PDAF amounting to Php200 Million is sliced equally for soft and hard projects.⁵

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¹ DBM Website, “PDAF,” electronically published at <<http://pdaf.dbm.gov.ph/index.php>>, and last accessed on 6 Oct. 2014.

² Wikipedia definition of PDAF citing the paper of Representatives Prospero Nograles and Edcel Lagman, “Understanding the Pork Barrel”, electronically published at <http://en.wikipedia.org/wiki/Priority_Development_Assistance_Fund>, and last accessed on 6 Oct. 2014.

³ COA Website, Soft and Hard Projects,” electronically published at <http://coa.gov.ph/GWSPA/2012/SAO_Report2012-03_PDAF.pdf>, and last accessed on 6 Oct. 2014.

⁴ Ibid.

⁵ Commission on Audit’s Special Audits Office Report No. 2012-03.

II. HOW DID THE PDAF SCAM AND THE SUBSEQUENT INVESTIGATION COME INTO BEING?

The PDAF scam emanated from an exposé in the Philippine Daily Inquirer dated 12 July 2013 citing businesswoman Janet Lim Napoles as the mastermind. What seemed to be an illegal detention of principal whistleblower Benhur Luy by PDAF scam queen Napoles and the subsequent successful rescue operation by the National Bureau of Investigation brought into the open the involvement of Napoles into the Fertilizer scam and this PDAF scam.

The NBI conducted its own investigation on the alleged scam and filed the appropriate complaint before the Office of the Ombudsman. Meanwhile, the Office of the Ombudsman, particularly the Field Investigation Office, initiated a fact-finding investigation on the alleged misuse of the PDAF by the legislators. Unlike the wider scope of investigation by the NBI, the FIO focused its fact-finding investigation on the PDAF releases of the legislators for the Calendar Years 2007-2009, which is in harmony with the findings of the Commission on Audit (COA) embodied in the COA-Special Audits Office (COA-SAO) Report No. 2012-03, the Government-wide Performance Audit.

Finding sufficient verifiable leads and information to pursue a thorough and in-depth fact-finding investigation, the Honorable Ombudsman created Special Teams for the purpose. These Special Teams were ordered to gather pertinent documentary evidence from different repository government agencies and private entities, as well as sworn testimonies from the alleged beneficiaries or recipients of the projects funded from these PDAF allocations.

Thereafter, the members of the Special Teams issued the necessary legal processes to obtain relevant documents to substantiate the allegation of misuse, and prepared the needed materials in the conduct of validations in the provinces, municipalities, and *barangays* (wards) where the alleged beneficiaries or recipients may be located.

The whole investigation process is not as easy as it may sound. During the course of investigation, a lot of problems were encountered that hindered and/or limited the smooth flow of the investigative activities undertaken. Many of these limiting factors were worked out because they were capable of being solved; however, many of them were just ignored because the field investigators opted to gather pieces of evidence sacrificing their physical security in the process.

III. WHAT ARE THESE LIMITING OR HINDERING FACTORS?

Just like any problem in the investigation of usual graft and corruption cases, the investigators had to deal with the undue delay in the receipt of required documents from repository government agencies and private entities. Notwithstanding constant follow-ups for the submission of the subpoenaed documents, said agencies and entities offered an abundance of excuses. There are corresponding legal remedies to punish the unwarranted refusals and the delays in the compliance, but the fact remains — the timetable for the investigation had been severely affected.

Another evident problem is the limited number of field investigators conducting the validations. The small number of field investigators had to suffer a great deal in covering the different regions throughout the entire Philippines where the projects were supposedly

implemented, and the incredibly large number of alleged beneficiaries or recipients. Lack of personnel means a longer period of time to complete the investigation process. Validation of the alleged recipients is not the sole component of the investigation. What is more taxing in this investigative activity is the acquisition of the pertinent documentary evidence to build up the case because the field investigators had to deal with lawyers of said government agencies and private entities who tried valiantly to decline the submission of the needed data.

While conducting validations in the localities, more predicaments are encountered by the field investigators. One typical problem is the geographical locations of the validation activities. Most of the alleged beneficiaries are located in the remote areas of the provinces. Worse, some of the roads leading to these areas are not even accessible by any motorized vehicle. The field investigators, therefore, had to travel on foot to reach these far-flung areas to be able to accomplish the task. In these places, the field investigators must carry everything they need to conduct their investigation. This is the point where the importance of deep preparation comes in. Preparation may not be a guarantee that the investigators will not encounter setbacks along the way, but it will, at least, lessen the obstructions, if there be any.

In relation to the issue of geographical setting, the investigators had to come to grips with security issues for themselves and the pieces of evidence gathered. In the areas covered by the investigation on the PDAF scam, the investigators' security was at risk due to the presence of private armies and other armed elements. It is not surprising that the politicians, which certainly include the lawmakers, employ private armies for their protection and to perform inexplicable wrongdoings. Instead of becoming the champions of the people, these politicians become the most feared criminals clothed in glamorous and pricey barongs, suits, and other alluring attires. There are also other armed groups which parade different advocacies to justify their deceitful conduct. Other than helping achieve the cause of the Government, these elements proved more inimical to the growth of the economy and welfare of the entire populace. Even with the assistance of the police and other law enforcers in the field validations, the impending risks to the protection of the investigators are always present.

At some point of the investigation, the investigators had to deal with the season or weather. During the period of the investigation, the Philippines was plagued with strong typhoons, flash floods and earthquakes. Many of the alleged beneficiaries or recipients were affected by these inevitable phenomena. When they are grieving, it is really difficult to approach and encourage them to execute sworn affidavits in the event that they received or did not receive at all the packages or kits from the PDAF projects. Other than that, calamities proved to be hefty deterrents against conducting field validations. These calamities add to the difficulty that the areas of investigation are located in rural areas. Waiting for these calamities to die down has affected the time frame and the success of the investigation.

When the investigators came face-to-face with the alleged beneficiaries or recipients of the projects, more problems cropped up. This writer wishes to present at least eight (8) of these problems.

First, many, if not most, of the alleged beneficiaries are surprisingly illiterate. Simply put, they do not know how to read and write. Worse, some of these recipients do not even have the capability to spell their own names. The exphat had to be done took a great toll on the time and the certainty of the results of the investigation. In fact, this kind of quandary will also cause an adverse effect in the prosecution of the cases to be filed in the courts of law.

Second, the language barrier is one of the most common problems in field validations. Not all of the field investigators are conversant in the dialect spoken in the provinces. Considering that the language of the Philippines is Filipino or Tagalog, all the sworn affidavits were written not only in that vernacular but also in English. It is a heart-rending fact that not all of the alleged beneficiaries understand English and/or Tagalog. It is for this reason that the content and tenor of the sworn affidavits as well as the documents shown to them for reference must be translated into the dialect that they know of before they are asked to sign. This will not only take time but also is a risky process relative to the outcome of the investigation.

Third, due to the considerable number of lawmakers being investigated by the Office of the Ombudsman, it is not far-fetched that the alleged beneficiaries in certain localities may have already been visited by other field investigators. Consequently, a subsequent inquiry into these areas by other field investigators would be rendered inutile because the said beneficiaries become fed up from the constant involvement of their names in the scam of which they do not wish to be a part of. The field investigators could not do anything but swallow their pride while being rebuked by the alleged beneficiaries. They had to try to encourage said beneficiaries to do their part in order to make the lawmakers, *aka* criminals, answer for their unlawful acts. At the end of the day, what is more important is the quality of the outcome of the investigation.

Fourth, out of fear, the alleged beneficiaries and the local government officials remained uncooperative. The field investigators cannot discount fear as an intervening factor. Without a doubt, fear can make a potential witness refuse to lend a hand to the Office of the Ombudsman and other investigating agencies in bringing the erring solons to justice. What is needed to be done is to instill faith in these potential witnesses that the Office of the Ombudsman can accomplish the impossible if only they are willing to perform their part of the bargain.

Fifth, another reason why the alleged beneficiaries and the local government officials refused to execute their sworn affidavits, and issue pertinent documents or assist in locating witnesses, is their affiliation to the respondent lawmakers. Membership in the different political parties in the Philippines is both an age-old practice and a privilege. Other than that, many of the alleged beneficiaries and local government officials are related by affinity or consanguinity to the respondent lawmakers. In view of this, these prospective witnesses declined to execute sworn affidavits or provide the necessary documentary evidence. In some instances, they provided incomplete details of what they actually know relative to the PDAF scam.

Sixth, another important consideration is that the alleged beneficiaries are generally farmers. Most of these farmers, during planting and harvesting season, already proceeded to tend their farms when the investigators visited their homes. The investigators had to devise a scheme to be able to gather these farmers in one location on a particular day and at a time convenient to them.

Seventh, the lawmakers involved in the scam may have anticipated the investigation of anomalies pertaining to their PDAF releases. As such, the names of the beneficiaries that they included in the lists of recipients, that became part of the liquidation documents, belonged to persons who were already old or dying due to illnesses. Besides deprivation of their ability to see and hear, these old and bed-ridden individuals can no longer comprehend

the tenors of the prepared sworn affidavits and other documents for reference. Taking their sworn affidavits would certainly be worthless. It must be noted that it would take a number of years to prosecute the cases to be filed against these erring public officials, so that by the time these old and dying witnesses will be called to testify, they may have already retired from this earth.

Eighth, death of the alleged beneficiaries will render the taking of sworn affidavits impossible. The field investigators have no alternative but to determine the time of death. Fortunately, the deaths occurred before the PDAF projects were allegedly implemented. This goes to show that they had not actually received the kits or packages as appearing in the liquidation documents.

These were some of the setbacks encountered by field investigators in the conduct of the fact-finding investigation of the PDAF scam. While a number of these factors were remedied during the course of the investigation, some of them have been studied in order to preclude the same occurrences in the future.