

EN BANC

[G.R. Nos. 212761-62, July 31, 2018]

**SENATOR JINGGOY EJERCITO ESTRADA, PETITIONER, VS.
OFFICE OF THE OMBUDSMAN, HON. SANDIGANBAYAN, FIELD
INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN,
NATIONAL BUREAU OF INVESTIGATION, AND ATTY. LEVITO D.
BALIGOD, RESPONDENTS.**

[G.R. NOS. 213473-74]

**JOHN RAYMUND DE ASIS, PETITIONER, VS. CONCHITA CARPIO
MORALES, IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE
OF THE PHILIPPINES, AND SANDIGANBAYAN, FIFTH DIVISION,
RESPONDENTS.**

[G.R. NOS. 213538-39]

**JANET LIM NAPOLES, PETITIONER, VS. CONCHITA CARPIO
MORALES, IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE
OF THE PHILIPPINES, AND SANDIGANBAYAN, FIFTH DIVISION,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

The present consolidated^[1] petitions for certiorari^[2] filed by petitioners Senator Jinggoy Ejercito Estrada (Estrada), John Raymund de Asis (De Asis), and Janet Lim Napoles (Napoles) assail the Joint Resolution^[3] dated 28 March 2014 and the Joint Order^[4] dated 4 June 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0313 and OMB-C-C-13-0397 finding probable cause to indict them, along with several others, for the crime of Plunder, defined and penalized under Section 2 of Republic Act No. (RA) 7080, as amended, and for violation of Section 3(e) of RA 3019.

The Facts

Petitioners are charged as co-conspirators for their respective participation in the illegal pillaging of public funds sourced from the Priority Development Assistance Fund (PDAF) of Estrada for the years 2004 to 2012. The charges are contained in two (2) complaints, namely: (1) a Complaint for Plunder^[5] filed by the National Bureau of Investigation and Atty. Levito D. Baligod (NBI Complaint) on 16

September 2013, docketed as OMB-C-C-13-0313; and (2) a Complaint for Plunder and violation of Section 3(e) of RA 3019^[6] filed by the Field Investigation Office of the Ombudsman (FIO Complaint) on 18 November 2013, docketed as OMB-C-C-13-0397, both before the Ombudsman. Briefly stated, petitioners were implicated for allegedly committing the following acts:

(a) Estrada, as Senator of the Republic of the Philippines, for: (1) authorizing the illegal utilization, diversion, and disbursement of his allocated PDAF through his endorsement of fraudulent non-governmental organizations created and controlled by Napoles' JLN Corporation (JLN-controlled NGOs); (2) acquiring and receiving significant portions of the diverted PDAF funds as his commission, kickbacks, or rebates in the total amount of P183,793,750.00; and (3) giving unwarranted benefits to Napoles and the JLN-controlled NGOs in the implementation of his PDAF-funded projects, causing undue injury to the government in an amount of more than P278,000,000.00;^[7]

(b) Napoles, as the mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Estrada's PDAF through: (1) the commencement via "business propositions" with Estrada regarding his allocated PDAF; (2) the creation and operation of JLN-controlled NGOs to serve as "conduits" for "ghost" PDAF-funded projects; (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs; (4) the falsification and machinations used in securing funds from the various implementing agencies (IAs) and in liquidating disbursements; and (5) the remittance of Estrada's PDAF for misappropriation; and

(c) De Asis, as driver/messenger/janitor of Napoles, for assisting in the fraudulent processing and releasing of the PDAF funds to the JLN-controlled NGOs through, among others, his designation as President/Incorporator of a JLN-controlled NGO, namely, *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI) and for eventually remitting the PDAF funds to Napoles' control.

The NBI Complaint alleged that, based on the sworn statements of Benhur Luy (Luy) along with several other JLN employees including Marina Sula (Sula) and Merlina Suñas (Suñas) (collectively, the whistleblowers), the PDAF scheme would commence with Napoles and the legislator - in this case, Estrada - discussing the utilization of the latter's PDAF. During this stage, the legislator and Napoles would discuss the list of projects, description or purpose of the projects, corresponding implementing government agency, project cost, and "commission" or "rebate" of the legislator, ranging from 40-60% of the total project cost or the amount stated in the Special Allotment Release Order (SARO). After the negotiations and upon instruction of Napoles, Luy would prepare the so-called "Listing," containing the list of projects allocated by the legislator to Napoles and her NGOs, project title or description, name of the IA under the General Appropriations Act (GAA) Menu, and the project cost. Thereafter, Napoles would submit the "Listing" to the legislator. The legislator would prepare a letter, which incorporated the "Listing" submitted by Napoles, addressed to the Senate President and the Finance Committee Chairperson in the case of a Senator, or to the House Speaker and Chairperson of the Appropriations Committee in the case of a Congressman, who would then endorse such request to the Department of Budget and Management (DBM) for the release of the SARO. Upon receipt by the DBM of a copy of the letter with the endorsement, the legislator

would give Napoles a copy of the letter with a "received" stamp and Napoles would give the legislator the agreed advance legislator's commission.

Thereafter, Luy and other Napoles' employees would follow-up the release of the SARO from the DBM, by citing the details of the legislator's letter to expedite the release of the SARO. Upon release of the SARO, the DBM would furnish a copy of it to the legislator, who in turn, would give a copy of it to Napoles. Upon receipt of the copy of the SARO, Napoles would order her employees to prepare the balance of the legislator's commission, which would be delivered by Napoles to the legislator or his/her authorized representative.

Napoles, who chose the NGO owned or controlled by her that would implement the project, would instruct her employee to prepare a letter for the legislator to sign endorsing her NGO to the IA. The legislator would sign the letter endorsing Napoles' NGOs to the IAs, based on the agreement with Napoles. The IA would then prepare a Memorandum of Agreement (MOA) between the legislator, the IA, and the selected NGO. Napoles' employee would secure a copy of the MOA. Thereafter, the DBM would release the Notice of Cash Allocation (NCA) to the IA concerned, and the head of the IA would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a 10% share in the project cost.

The succeeding checks would be issued upon compliance with the necessary documentation, i.e. official receipts, delivery receipts, sales invoices, inspection reports, delivery reports, certificates of acceptance, terminal reports, and master lists of beneficiaries. Napoles' employees, upon instruction of Napoles, would pick up the checks and deposit them to the bank accounts of the NGO concerned. Once the funds are in the account of the JLN-controlled NGO, Napoles would call the bank to facilitate the withdrawal of the money, and Napoles' employees would bring the proceeds to the office of JLN Corporation for accounting. Napoles would then decide how much would be left in the office and how much would be brought to her residence in Taguig City. Napoles and her employees would subsequently manufacture fictitious lists of beneficiaries, inspection reports, and similar documents that would make it appear that the PDAF-funded projects were implemented when, in fact, they were not.

Under this *modus operandi*, Estrada, with the help of Napoles and De Asis, among others, funneled his PDAF amounting to around P262,575,000.00^[8] to the JLN-controlled NGOs, specifically *Masaganang Ani Para sa Magsasaka Foundation, Inc.* (MAMFI) and *Social Development Program for Farmers Foundation, Inc.* (SDPFFI), and in return, received "commissions" or "rebates" amounting to P183,793,750.00, through his authorized representative, Pauline Labayen (Labayen) and Ruby Tuason (Tuason).^[9]

On the other hand, the FIO Complaint alleged that Estrada and Labayen, in conspiracy with Napoles and her NGOs, committed plunder through repeated misuse of public funds as shown by the series of SAROs issued to effect releases of funds from the PDAF allocation of Estrada to Napoles' NGOs, and through accumulation of more than P50,000,000.00 in the form of kickbacks.^[10] Estrada likewise violated Section 3(e) of RA 3019 by acting with manifest partiality and evident bad faith in endorsing MAMFI and SDPFFI in violation of existing laws, such as the GAA,

Implementing Rules and Regulations of RA 9184, Government Procurement Policy Board Resolution No. 012-2007 and Commission on Audit (COA) Circular 2007-01.

Both the NBI Complaint and the FIO Complaint cited the COA Special Audit Office Report No. 2012-2013 (COA report) in illustrating the PDAF allotments of Estrada in 2007-2009:

SARO Number	Amount (P)	IA	NGO
08-06025	16.490 million	National Agribusiness Corporation (NABCOR)	MAMFI
09-02770	9.700 million		
08-01697	24.250 million ^[11]		
08-03116	18.915 million ^[12]		
09-01612	19.400 million	National Livelihood Development Corporation (NLDC)	
09-02769	29.100 million		
G-09-07076	30.070 million		
G-09-07579	24.250 million		
08-06025	19.400 million	NABCOR	SDPFFI
G-09-07579	24.250 million	NLDC	
F-09-09579	24.250 million		
08-01698	22.500 million	Technology Resource Center (TRC)	
TOTAL	P262.575 million^[13]		

The COA Report also made the following observations applicable to all of the PDAF disbursements of Estrada for 2007-2009: (1) the implementation of most livelihood projects was undertaken by the NGOs, not the IAs, in violation of existing laws; (2) the selection of NGOs and implementation of the projects were not compliant with existing regulations; (3) the selected NGOs, their suppliers and beneficiaries are unknown, or could not be located at their given addresses, or submitted questionable documents, or failed to liquidate or fully document the utilization of funds; and (4) irregularities manifested in the implementation of the livelihood projects, such as multiple attendance of the same beneficiaries to the same or similar trainings and multiple receipt of the same or similar kits.^[14]

Pursuant to the Orders of the Ombudsman directing the petitioners and their co-respondents in the complaints to submit their counter-affidavits, Estrada submitted his separate Counter-Affidavits to the NBI Complaint on 8 January 2014, and to the FIO Complaint on 16 January 2014. De Asis failed to submit his counter-affidavit to the NBI Complaint, while Napoles failed to submit her counter-affidavit to both complaints. The petitioners' co-respondents filed their respective counter-affidavits

between 9 December 2013 and 14 March 2014.

In both his Counter-Affidavits,^[15] Estrada denied having received, directly or indirectly, any amount from Napoles, or any person associated with her, or any NGO owned or controlled by her, and having amassed, accumulated, or acquired ill-gotten wealth. He further denied instructing or directing any of his staff to commit and/or participate in any irregular and unlawful transaction involving his PDAF allocations.

Estrada claimed that he committed no intentional or willful wrongdoing in his choice of NGOs to implement the PDAF projects, and he had no knowledge or notice of any relationship between the NGOs that implemented the projects and Napoles. He further claimed that the "letters where (a) [he] requested certain livelihood programs and projects to be implemented by certain [NGOs] and those where (b) [he] authorized [his] staff to follow[-]up, supervise, sign, and act in [his] behalf to ensure the proper and timely implementation of these projects do not show that [he] authorized the performance of any illegal activity."^[16] Answering the charge against him for violation of Section 3(e) of RA 3019, he alleged that there was no manifest partiality or evident bad faith in endorsing the NGOs to implement the PDAF projects, since he only endorsed the NGOs accredited and selected by the IAs, and his act of endorsement was merely recommendatory and not deemed irregular or in violation of law.^[17]

On 28 March 2014, the Ombudsman issued the assailed Joint Resolution finding probable cause to charge petitioners and several other respondents in the NBI and FIO Complaints for one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

After considering the testimonial and documentary evidence, the Ombudsman concluded that petitioners conspired with the DBM personnel, and the heads of the IAs, specifically NABCOR, NLDC, and TRC, in amassing ill-gotten wealth by diverting the PDAF of Estrada from its intended project recipients to JLN-controlled NGOs, specifically MAMFI and SDPFFI. Estrada, in particular, took advantage of his official position and amassed, accumulated, and acquired ill-gotten wealth by receiving money from Napoles, through Tuason and Labayen, in the amount of P183,793,750.00 in exchange for endorsing JLN-controlled NGOs to the IAs of his PDAF-funded projects. De Asis, for his part, participated in the conspiracy by facilitating the transfer of the checks from the IAs and depositing the same to the bank accounts of the JLN-controlled NGOs. Furthermore, the Ombudsman found that petitioners, among others, acting in concert are manifestly partial, and in evident bad faith in violation of Section 3(e) of RA 3019 in relation to Estrada's PDAF releases, coursed through NABCOR, NLDC, TRC, MAMFI, and SDPFFI.

The motions for reconsideration were denied in the Joint Order issued by the Ombudsman on 4 June 2014.

Following the denial of the petitioners' motions for reconsideration, the Ombudsman filed several Informations before the Sandiganbayan, charging petitioners with one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

Thus, Estrada, De Asis, and Napoles filed their separate petitions for certiorari assailing the Joint Resolution and Joint Order of the Ombudsman before this Court.