

# Philippines' Commission on Audit (CoA) Key to Unearthing “Pork Barrel” Scandal

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## INTRODUCTION

The “pork barrel system” of lump sum grants to members of the Philippines Congress to fund a list of community-based or small-scale infrastructure projects that would be implemented by local public agencies was revived during President Corazon Aquino’s administration. The system operated under a series of programs, most recently through the Priority Development Assistance Fund (PDAF).

How did the PDAF work in its most recent form? During congressional budget deliberations, a list of development projects was included in the General Appropriations Act (GAA) as eligible for funding under the PDAF. A lump sum was appropriated for the projects to be implemented by various agencies. Up until 2013, each Senator was allocated PHP 200 million (about US\$4.4 million), while each member of the House of Representatives was allocated PHP 70 million (about US\$1.5 million). In practice, the implementing agencies (IAs) served as conduits that diverted the funds to several bogus NGOs. The NGOs were offered as fronts for “ghost projects” by a businesswoman in exchange for kickbacks to members of Congress and government officials. This case became known as the [pork barrel scam](#).

Two unrelated investigations in 2012, one by the National Bureau of Investigations (NBI) and the other by the Commission of Audit (CoA), shed light on the misuse of PDAF by members of Congress, government officials, and NGOs. The NBI conducted an investigation on the illegal detention of Benhur Luy by his employer, businesswoman Janet Napoles, at the same time that CoA was conducting its own audit of the use of the PDAF resources for the years 2007-2009.<sup>1</sup> Approved by the previous CoA chairperson, this audit started in 2010 and took over three years from planning and execution to release of the report. It was undertaken by CoA’s Special Audits Sector (SAO), which is responsible for handling government-wide performance/value-for-money audits, and it covered 58

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<sup>1</sup> Luy was both an employee and a cousin of Janet Napoles. When his parents lost contact with him, they sought help from the NBI. After he was rescued by NBI, he exposed the intricate web of corruption between some members of Congress, public officials, and NGOs associated with Napoles.

percent of the total PDAF releases (equivalent to PHP 8.374 billion) for 2007-2009. Of the PHP 8.374 billion, PHP 6.156 billion was found to have been diverted to nonexistent or seriously deficient projects.

The CoA report, together with Luy (who received whistleblower immunity), provided key information that resulted in: 1) the arrest of three high-ranking senators (one of them later released due to his age and health); 2) the indictment of several other members of Congress, government officials, and NGO practitioners; 3) the Supreme Court's declaration of PDAF as unconstitutional; and 4) the seizure by U.S. Department of Justice of Janet Napoles' daughter's assets in a forfeiture case in California.<sup>2</sup> This groundbreaking investigation attracted wide public and media interest.

## AUDIT REPORT FINDINGS AND RECOMMENDATIONS

The CoA audit report examined: 1) the propriety of PDAF releases by the Department of Budget and Management (DBM), and 2) the efficient use of funds and effective execution of projects by IAs. The audit determined that PDAF resources were neither properly released by DBM nor efficiently and effectively used by the public IAs.

With respect to DBM, the report concluded that: 1) a significant amount of funds lacked a schedule for releases; 2) some legislators exceeded their allocations; and 3) funds were transferred to public IAs that lacked capacity or for projects outside their mandate.

With regard to the public IAs, the audit report found that the funds were used without due regard for existing rules and regulations, allowing substantial amounts to be transferred to NGOs incorporated by the same people and without any law authorizing such transfers, and for projects not eligible under the PDAF. In other words, NGOs were selected on the basis of the endorsement by sponsoring legislators. CoA deemed such transactions "questionable," since the NGOs were either not registered with the Securities and Exchange Commission or used multiple tax identification numbers, or issued fictitious receipts. Moreover, many NGOs and suppliers were unknown or lacked a location.

In sum, poor implementation and shoddy monitoring of the NGOs' projects allowed ineligible expenses to be charged and questionable lists of beneficiaries to be paid. Moreover, the reported projects were not supported with proper documents. The audit report highlighted the lack of compliance with the Government Procurement Reform Act of 2003.

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<sup>2</sup> Approximately 213 legislators from both houses were found to have been involved with the questionable projects. To date, 13 have been charged with criminal actions in graft courts for approximately PHP 1.5 billion.

Among the audit recommendations, the [special report](#) lists the following:

- DBM must ensure that the request for allocation from a legislator is properly within the GAA menu and state that the funds shall not be transferred by IAs to an NGO when there is no appropriation or ordinance authorizing the transfer.
- Public IAs must see that: 1) funds are used only for projects within their mandate and administrative and technical capabilities, 2) NGOs are selected in the manner required under existing rules and regulations, and 3) NGOs comply with laws and regulations governing the disbursement of funds.

## CORRECTIVE MEASURES

The Supreme Court declared the pork barrel system unconstitutional because it did not follow the constitutional guidelines on the use of public funds. Since 2014 there were no more PDAF allocations in the budget. In addition, three high-ranking senators were the first to be taken to court for plunder and put in detention. Also, several other past and present members of Congress, government officials, and NGO staff members have been indicted since 2013. And, officials found liable by CoA were also issued “disallowances,” which are essentially demands for restitution of the funds to the public treasury.

Together with some PDAF public IAs, such as the Department of Social Welfare and Development (DSWD), CoA established new guidelines under which government agencies can partner with NGOs.

## SUBSEQUENT EVENTS

As noted earlier, the audit investigation coincided with the NBI investigation on the illegal detention of Benhur Luy. In March 2103 the NBI rescued Luy from his employer, and he became a whistleblower under the Witness Protection Program. While explaining the reasons of his illegal detention, Luy exposed the PDAF scam. His testimony attracted media attention. As his revelations unfolded, several media outlets started reporting on the case, and a series of articles on the siphoning of millions of pesos from the PDAF appeared in July.

On 16 August 2013 the CoA released the results of its three-year investigation into the PDAF. In response, President Benigno Aquino ordered the Inter-Agency Anti-Graft Coordinating Council to probe the PDAF.<sup>3</sup> The Department of Justice (DOJ) launched an investigation, and the CoA audit became the primary basis for several

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<sup>3</sup>The Council was established in 2000, but after a couple of years it went into inactivity. In this context, the PDAF scam triggered joint action between the CoA, the DoJ, and the Ombudsman (pointing at the relevance of partnering with investigating bodies to follow up on the case).

DOJ investigations and Ombudsman indictments of legislators. DOJ compared witness statements with the documents in CoA's possession, and they matched. After DOJ completed its own investigation, it filed a complaint with the Ombudsman, which conducted its own investigation and found probable cause to pursue charges against members of Congress. Criminal complaints were filed in the Anti-Graft Court.

While members of Congress had called for parallel investigations in both the Senate and the House of Representatives, following the release of the CoA report, the Senate eventually agreed to conduct its own investigation, led by a Blue Ribbon Committee. CoA Chairperson Tan had to testify before Congress.

In late August 2013 a [Million People march](#) in response to the PDAF scandal took place. It was the first protest rally organized through social media and showed public indignation against legislators as a group for their abuse of power and betrayal of public trust.

Until the CoA audit report came out, the Supreme Court had dismissed petitions for the abolition of PDAF because of a lack of concrete evidence. After the report, the Supreme Court ruled the pork barrel system unconstitutional, putting an end to PDAF appropriations for lawmakers. In its [decision](#), the Supreme Court mentioned the audit report and indicated that there now was evidence of the abuse of the pork barrel. The Court expressly noted that the most recent petitions were "spurred in large part by the findings contained in the COA Report and the Napoles controversy."<sup>4</sup>

Also, CoA Chairperson Grace Tan was invited as a "friend of the court," to serve as resource person during oral arguments and was asked to submit a memorandum with recommendations on fixing the system. Indeed, one of her recommendations was cited in the decision, specifically concerning the implementation of a "line-by-line" budgeting scheme, which was observed until 2016 budget.

Meanwhile, the CoA included the audit of PDAF for years 2010-2013 in its audit program for implementing agencies, and similar findings have since been reported, resulting in indictments of legislators, public officials, and NGOs.

There was a chilling effect in the use of public resources by public agencies and NGOs, so that, when Typhoon Haiyan/Yolanda struck, CoA agreed to advise public agencies engaging NGOs during the disaster relief. This was important so the CoA would not be perceived as obstructionist.

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<sup>4</sup>Consequently, the Supreme Court also abandoned its ruling in an earlier case dismissing a similar petition, stating that "the Court now largely benefits from hindsight and current findings on the matter, among others, the CoA Report."

The year 2015 witnessed further developments in the investigation, with hundreds of members of Congress and complicit officials being implicated in the PDAF case. Criminal charges on embezzlement, plunder, and conspiracy have been filed in some cases, and various individuals have been put behind bars.

## FACTORS STRENGTHENING ACCOUNTABILITY

### COORDINATION AND COOPERATION BETWEEN KEY INSTITUTIONS

This cooperation was facilitated through the existence of an Inter-Agency Coordinating Council against Corruption. The CoA, the DOJ, and the Ombudsman were among the members of the Coordinating Council, re-activated during President Benigno Aquino's administration. CoA not only referred the audit report to the DOJ and Ombudsman, but also shared copies of the evidence collected during its audit and helped during the prosecution phase. CoA Chairperson Tan recognized the importance of strategic partnerships with other oversight agencies so the audit findings would not be ignored.

The cooperation of these three public institutions has been recognized as an important contributing factor in the success of the overall investigation. However, this interagency cooperation and coordination could not have taken place without the leadership of the three individuals heading these three agencies. While appointed by the President, they acted independently, which contributed to their credibility as well as to the legitimacy of their agencies' work. This, in turn, helped rally public support for the investigations, thus reinforcing their autonomy while also providing the "safe" space for their staffs to conduct their work professionally. For this work, the *Daily Inquirer* (a leading newspaper) named CoA head Tan as "[Person of the Year](#)" for 2014, along with the Ombudsman (who has been filing the charges in court) and the then-Secretary of Justice (who filed the complaints before the Ombudsman).

The Congress, however, did not play a key role in the accountability effort. In fact, because many members were accused of misuse of funds, Congress showed hostility to CoA and called its chairperson before the Congress several times, in a failed effort to intimidate her.<sup>5</sup>

The CoA report also highlighted the importance for NGOs to come up with a system for due diligence by their peers in order to prevent the involvement of a least 12 NGOs in pork barrel scandal from tainting the good work many NGOs routinely do.

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<sup>5</sup> As the first batch of senators indicted did not belong to the ruling party, there were allegations that the investigations were politically motivated.

## WHISTLEBLOWERS COMPLEMENTING DATA FROM THE AUDIT

After Benhur Luy exposed the scam and benefitted from the Witness Protection Program, two other co-workers came forward as whistleblowers and provided additional information on Janet Napoles' dealings with members of Congress and public officials through her network of bogus NGOs. The whistleblowers were key for telling the story contained in the thousands of documents and masses of data gathered during the audit.

## THE WATCHDOG ROLE OF THE MEDIA

The role of free media was crucial in making the public aware of the [magnitude of the case](#). Print (the Philippine *Daily Inquirer*) and on-line ([Rappler.com](#)) media, radio, TV, and social media conducted their own investigative reporting and provided a platform for amplifying the witnesses' statements; disseminated COA report findings; covered the trials; and called for rallies through social media. Further, the Philippines Center for Investigative Journalism (PCIJ) helped put this case into a broader context by [reflecting on the pork barrel system](#), in particular on the lack of transparency and accountability.

While CoA findings were in the national media spotlight much more than they would have been without the preceding drama of the kidnapping-turned-whistleblowing case, the CoA had been making headlines with other equally important findings.

## THE RELEASE OF THE AUDIT REPORT TO THE PUBLIC

While other recent CoA reports have been released, the policy and practice of public disclosure and transparency was instituted by the former CoA Chairperson Grace Tan. This audit report was not only cited in the DOJ and Ombudsman investigations, but also by the Supreme Court decision, and it attracted significant interest of the media. Underlying the highly appreciated work of the CoA by other stakeholders is the real autonomy that the CoA has enjoyed for decades reinforced its credibility and reputation.

Because of the weight of the evidence, the amount of funds involved, the personalities of those implicated, and the length and detail of the report itself, the release of this audit report was accompanied by a CoA press conference held by Chairperson Tan. (Most reports are only uploaded to the institutional website.) This press conference was designed to help the journalists who may not have had the time or energy to read through the entire report, and the public release helped prevent the report from being grossly politicized. In fact, the watchdog role of the media is made possible by the publicity surrounding the audit reports, which also paved the way for the social monitoring that leads to increased accountability. For instance, a professor and his students [conducted a](#)

[network analysis](#) which concluded that five NGO networks had participated in questionable transactions with lawmakers beyond those from Napoles.

## OPEN QUESTIONS ABOUT THE CASE'S IMPACT ON POLITICS

Because the case is still under way, with many individuals prosecuted but not yet sentenced, the role of the Judiciary will be crucial during the coming year(s).

As the pork barrel was allegedly used to overcome political gridlock and generate majority legislative support for the programs of the executive branch, the effects on the overall political system are still being assessed. According to some [media reports](#), of the over 100 lawmakers from different political parties mentioned in CoA report, more than 80 were running for various positions in the 2016 elections. Moreover, there are allegations that the pork barrel system may continue under a different scheme during the new administration despite being declared unconstitutional. Also, although Janet Napoles was sentenced to jail for up to 40 years for the illegal detention of Benhur Luy, she has not been convicted of plunder so far.

In a 2015 Philippines Center for Investigative Journalism (PCIJ) article, "[A Long Road to Justice](#)," this leading international investigative journalism outlet pointed out that many individuals had been indicted but not convicted and that many more had not even reached court trials. In outlining some of the challenges ahead, it's important to note that the Ombudsman Office has just a single prosecution team, while each accused senator can hire a battery of highly paid lawyers. As a result, defense teams are being accused of using tactics