Republic of the Philippines
Supreme Court
Manila

EN BANC

MARIA CAROLINA P. ARAULLO, CHAIRPERSON, BAGONG ALYANSANG MAKABAYAN; JUDY M. TAGUIWALO, PROFESSOR, UNIVERSITY OF THE PHILIPPINES DILIMAN, CO-CHAIRPERSON, PAGBABAGO; HENRI KAHN, CONCERNED CITIZENS MOVEMENT; REP. LUZ ILAGAN, GABRIELA WOMEN'S PARTY REPRESENTATIVE; REP. TERRY L. RIDON, KABATAAN PARTYLIST REPRESENTATIVE; REP. CARLOS ISAGANI ZARATE, BAYAN MUNA PARTY-LIST REPRESENTATIVE; RENATO M. REYES, JR., SECRETARY GENERAL OF BAYAN; MANUEL K. DAYRIT, CHAIRMAN, ANG KAPATIRAN PARTY; VENCER MARI E. CRISOSTOMO, CHAIRPERSON, ANAKBAYAN; VICTOR VILLANUEVA, CONVENOR, YOUTH ACT NOW,
Petitioners,

G.R. No. 209287

- versus -

BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; AND FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,
Respondents.

x----------x

AUGUSTO L. SYJUCO JR., Ph.D., **G.R. No. 209135**
Petitioner,

- versus -

FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF DEPARTMENT OF BUDGET AND MANAGEMENT; AND HON. FRANKLIN MAGTUNAO DRILON, IN HIS CAPACITY AS THE SENATE PRESIDENT OF THE PHILIPPINES,
Respondents.
x----------x

MANUELITO R. LUNA, **G.R. No. 209136**
Petitioner,

- versus -

SECRETARY FLORENCIO ABAD, IN HIS OFFICIAL CAPACITY AS HEAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND EXECUTIVE SECRETARY PAQUITO OCHOA, IN HIS OFFICIAL CAPACITY AS ALTER EGO OF THE PRESIDENT,
Respondents.
x----------x

ATTY. JOSE MALVAR VILLEGAS, JR., **G.R. No. 209155**
Petitioner,

- versus -

THE HONORABLE EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; AND THE SECRETARY OF BUDGET AND MANAGEMENT FLORENCIO B. ABAD,
Respondents.
x----------x

PHILIPPINE CONSTITUTION ASSOCIATION (PHILCONSA), REPRESENTED BY DEAN FROILAN M. BACUNGAN, BENJAMIN E. DIOKNO AND LEONOR M. BRIONES,
Petitioners,

G.R. No. 209164

- versus -

DEPARTMENT OF BUDGET AND MANAGEMENT AND/OR HON. FLORENCIO B. ABAD,
Respondents.

x----------x

INTEGRATED BAR OF THE PHILIPPINES (IBP),
Petitioner,

G.R. No. 209260

- versus -

SECRETARY FLORENCIO B. ABAD OF THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM),
Respondent.

x----------x

GRECO ANTONIOUS BEDA B. BELGICA; BISHOP REUBEN M ABANTE AND REV. JOSE L. GONZALEZ,
Petitioners,

G.R. No. 209442

- versus -

PRESIDENT BENIGNO SIMEON C. AQUINO III, THE SENATE OF THE PHILIPPINES, REPRESENTED BY SENATE PRESIDENT FRANKLIN M. DRILON; THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER FELICIANO BELMONTE, JR.; THE EXECUTIVE OFFICE,

REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; THE DEPARTMENT OF BUDGET AND MANAGEMENT, REPRESENTED BY SECRETARY FLORENCIO ABAD; THE DEPARTMENT OF FINANCE, REPRESENTED BY SECRETARY CESAR V. PURISIMA; AND THE BUREAU OF TREASURY, REPRESENTED BY ROSALIA V. DE LEON,

Respondents.

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CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS 1ST VICE PRESIDENT, SANTIAGO DASMARINAS, JR.; ROSALINDA NARTATES, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE CONSOLIDATED UNION OF EMPLOYEES NATIONAL HOUSING AUTHORITY (CUE-NHA); MANUEL BACLAGON, FOR HIMSELF AND AS PRESIDENT OF THE SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES, DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT CENTRAL OFFICE (SWEAP-DSWD CO); ANTONIA PASCUAL, FOR HERSELF AND AS NATIONAL PRESIDENT OF THE DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); ALBERT MAGALANG, FOR HIMSELF AND AS PRESIDENT OF THE ENVIRONMENT AND MANAGEMENT BUREAU **G.R. No. 209517**

EMPLOYEES UNION (EMBEU); AND MARCIAL ARABA, FOR HIMSELF AND AS PRESIDENT OF THE KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG MMDA (KKK-MMDA),

Petitioners,

- versus -

BENIGNO SIMEON C. AQUINO III, PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; PAQUITO OCHOA, JR., EXECUTIVE SECRETARY; AND HON. FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,

Respondents.

x----------x

VOLUNTEERS AGAINST CRIME AND CORRUPTION (VACC), REPRESENTED BY DANTE LA. JIMENEZ,

Petitioner,

- versus -

PAQUITO N. OCHOA, EXECUTIVE SECRETARY, AND FLORENCIO B. ABAD, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,

Respondents.

G.R. No. 209569

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

July 1, 2014

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D E C I S I O N

BERSAMIN, *J.*:

For resolution are the consolidated petitions assailing the constitutionality of the Disbursement Acceleration Program (DAP), National Budget Circular (NBC) No. 541, and related issuances of the Department of Budget and Management (DBM) implementing the DAP.

At the core of the controversy is Section 29(1) of Article VI of the 1987 Constitution, a provision of the fundamental law that firmly ordains that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The tenor and context of the challenges posed by the petitioners against the DAP indicate that the DAP contravened this provision by allowing the Executive to allocate public money pooled from programmed and unprogrammed funds of its various agencies in the guise of the President exercising his constitutional authority under Section 25(5) of the 1987 Constitution to transfer funds out of savings to augment the appropriations of offices within the Executive Branch of the Government. But the challenges are further complicated by the interjection of allegations of transfer of funds to agencies or offices outside of the Executive.

Antecedents

What has precipitated the controversy?

On September 25, 2013, Sen. Jinggoy Ejercito Estrada delivered a privilege speech in the Senate of the Philippines to reveal that some Senators, including himself, had been allotted an additional ₱50 Million each as "incentive" for voting in favor of the impeachment of Chief Justice Renato C. Corona.

Responding to Sen. Estrada's revelation, Secretary Florencio Abad of the DBM issued a public statement entitled *Abad: Releases to Senators Part of Spending Acceleration Program*,[1] explaining that the funds released to the Senators had been part of the DAP, a program designed by the DBM to ramp up spending to accelerate economic expansion. He clarified that the funds had been released to the Senators based on their letters of request for funding; and that it was not the first time that releases from the DAP had been made because the DAP had already been instituted in 2011 to ramp up spending after sluggish disbursements had caused the growth of the gross domestic product (GDP) to slow down. He explained that the funds under

[1] <http://www.dbm.gov.ph/?p=7302> (visited May 27, 2014).

the DAP were usually taken from (1) unreleased appropriations under Personnel Services;[2] (2) unprogrammed funds; (3) carry-over appropriations unreleased from the previous year; and (4) budgets for slow-moving items or projects that had been realigned to support faster-disbursing projects.

The DBM soon came out to claim in its website[3] that the DAP releases had been sourced from savings generated by the Government, and from unprogrammed funds; and that the savings had been derived from (1) the pooling of unreleased appropriations, like unreleased Personnel Services[4] appropriations that would lapse at the end of the year, unreleased appropriations of slow-moving projects and discontinued projects per zero-based budgeting findings;[5] and (2) the withdrawal of unobligated allotments also for slow-moving programs and projects that had been earlier released to the agencies of the National Government.

The DBM listed the following as the legal bases for the DAP's use of savings,[6] namely: (1) Section 25(5), Article VI of the 1987 Constitution, which granted to the President the authority to augment an item for his office in the general appropriations law; (2) Section 49 (*Authority to Use Savings for Certain Purposes*) and Section 38 (*Suspension of Expenditure Appropriations*), Chapter 5, Book VI of Executive Order (EO) No. 292 (*Administrative Code of 1987*); and (3) the General Appropriations Acts (GAAs) of 2011, 2012 and 2013, particularly their provisions on the (*a*) use of savings; (*b*) meanings of *savings* and *augmentation*; and (*c*) priority in the use of savings.

As for the use of unprogrammed funds under the DAP, the DBM cited as legal bases the special provisions on unprogrammed fund contained in the GAAs of 2011, 2012 and 2013.

The revelation of Sen. Estrada and the reactions of Sec. Abad and the DBM brought the DAP to the consciousness of the Nation for the first time, and made this present controversy inevitable. That the issues against the DAP came at a time when the Nation was still seething in anger over Congressional pork barrel – "an appropriation of government spending meant for localized projects and secured solely or primarily to bring money

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2 Labeled as "Personal Services" under the GAAs.

3 Frequently Asked Questions about the Disbursement Acceleration Program (DAP) <http://www.dbm.gov.ph/?page_id=7362> (visited May 27, 2014).

4 See note 2.

5 Zero-based budgeting is a budgeting approach that involves the review/evaluation of on-going programs and projects implemented by different departments/agencies in order to: (a) establish the continued relevance of programs/projects given the current developments/directions; (b) assess whether the program objectives/outcomes are being achieved; (c) ascertain alternative or more efficient or effective ways of achieving the objectives; and (d) guide decision makers on whether or not the resources for the program/project should continue at the present level or be increased, reduced or discontinued. (see NBC Circular No. 539, March 21, 2012).

6 Constitutional and Legal Bases < http://www.dbm.gov.ph/?page_id=7364> (visited May 27, 2014).

to a representative's district"[7] – excited the Nation as heatedly as the pork barrel controversy.

Nine petitions assailing the constitutionality of the DAP and the issuances relating to the DAP were filed within days of each other, as follows: G.R. No. 209135 (Syjuco), on October 7, 2013; G.R. No. 209136 (Luna), on October 7, 2013; G.R. No. 209155 (Villegas),[8] on October 16, 2013; G.R. No. 209164 (PHILCONSA), on October 8, 2013; G.R. No. 209260 (IBP), on October 16, 2013; G.R. No. 209287 (Araullo), on October 17, 2013; G.R. No. 209442 (Belgica), on October 29, 2013; G.R. No. 209517 (COURAGE), on November 6, 2013; and G.R. No. 209569 (VACC), on November 8, 2013.

In G.R. No. 209287 (Araullo), the petitioners brought to the Court's attention NBC No. 541 (*Adoption of Operational Efficiency Measure – Withdrawal of Agencies' Unobligated Allotments as of June 30, 2012*), alleging that NBC No. 541, which was issued to implement the DAP, directed the withdrawal of unobligated allotments as of June 30, 2012 of government agencies and offices with low levels of obligations, both for continuing and current allotments.

In due time, the respondents filed their Consolidated Comment through the Office of the Solicitor General (OSG).

The Court directed the holding of oral arguments on the significant issues raised and joined.

Issues

Under the Advisory issued on November 14, 2013, the presentations of the parties during the oral arguments were limited to the following, to wit:

> Procedural Issue:
>
> A. Whether or not *certiorari*, prohibition, and *mandamus* are proper remedies to assail the constitutionality and validity of the Disbursement Acceleration Program (DAP), National Budget Circular (NBC) No. 541, and all other executive issuances allegedly implementing the DAP. Subsumed in this issue are whether there is a controversy ripe for judicial determination, and the standing of petitioners.
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> Substantive Issues:

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[7] *Belgica v. Executive Secretary Ochoa*, G.R. No. 208566, November 19, 2013.

[8] The Villegas petition was originally undocketed due to lack of docket fees being paid; subsequently, the docket fees were paid.

B. Whether or not the DAP violates Sec. 29, Art. VI of the 1987 Constitution, which provides: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

C. Whether or not the DAP, NBC No. 541, and all other executive issuances allegedly implementing the DAP violate Sec. 25(5), Art. VI of the 1987 Constitution insofar as:

(a) They treat the unreleased appropriations and unobligated allotments withdrawn from government agencies as "savings" as the term is used in Sec. 25(5), in relation to the provisions of the GAAs of 2011, 2012 and 2013;

(b) They authorize the disbursement of funds for projects or programs not provided in the GAAs for the Executive Department; and

(c) They "augment" discretionary lump sum appropriations in the GAAs.

D. Whether or not the DAP violates: (1) the Equal Protection Clause, (2) the system of checks and balances, and (3) the principle of public accountability enshrined in the 1987 Constitution considering that it authorizes the release of funds upon the request of legislators.

E. Whether or not factual and legal justification exists to issue a temporary restraining order to restrain the implementation of the DAP, NBC No. 541, and all other executive issuances allegedly implementing the DAP.

In its Consolidated Comment, the OSG raised the matter of unprogrammed funds in order to support its argument regarding the President's power to spend. During the oral arguments, the propriety of releasing unprogrammed funds to support projects under the DAP was considerably discussed. The petitioners in G.R. No. 209287 (Araullo) and G.R. No. 209442 (Belgica) dwelled on unprogrammed funds in their respective memoranda. Hence, an additional issue for the oral arguments is stated as follows:

F. Whether or not the release of unprogrammed funds under the DAP was in accord with the GAAs.

During the oral arguments held on November 19, 2013, the Court directed Sec. Abad to submit a list of savings brought under the DAP that had been sourced from (*a*) completed programs; (*b*) discontinued or abandoned programs; (*c*) unpaid appropriations for compensation; (*d*) a certified copy of the President's directive dated June 27, 2012 referred to in NBC No. 541; and (e) all circulars or orders issued in relation to the DAP.[9]

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[9] *Rollo* (G.R. No. 209287), p. 119.

In compliance, the OSG submitted several documents, as follows:

(1) A certified copy of the Memorandum for the President dated June 25, 2012 (*Omnibus Authority to Consolidate Savings/ Unutilized Balances and their Realignment*);[10]

(2) Circulars and orders, which the respondents identified as related to the DAP, namely:

a. NBC No. 528 dated January 3, 2011 (*Guidelines on the Release of Funds for FY 2011*);

b. NBC No. 535 dated December 29, 2011 (*Guidelines on the Release of Funds for FY 2012*);

c. NBC No. 541 dated July 18, 2012 (*Adoption of Operational Efficiency Measure – Withdrawal of Agencies' Unobligated Allotments as of June 30, 2012*);

d. NBC No. 545 dated January 2, 2013 (*Guidelines on the Release of Funds for FY 2013*);

e. DBM Circular Letter No. 2004-2 dated January 26, 2004 (*Budgetary Treatment of Commitments/Obligations of the National Government*);

f. COA-DBM Joint Circular No. 2013-1 dated March 15, 2013 (*Revised Guidelines on the Submission of Quarterly Accountability Reports on Appropriations, Allotments, Obligations and Disbursements*);

g. NBC No. 440 dated January 30, 1995 (*Adoption of a Simplified Fund Release System in the Government*).

(3) A breakdown of the sources of savings, including savings from discontinued projects and unpaid appropriations for compensation from 2011 to 2013

[10] Id. at 190-196. Sec. Abad manifested that the Memorandum for the President dated June 25, 2012 was the directive referred to in NBC No. 541; and that although the date appearing on the Memorandum was June 25, 2012, the actual date of its approval was June 27, 2012.

On January 28, 2014, the OSG, to comply with the Resolution issued on January 21, 2014 directing the respondents to submit the documents not yet submitted in compliance with the directives of the Court or its Members, submitted several evidence packets to aid the Court in understanding the factual bases of the DAP, to wit:

(1) **First Evidence Packet**[11] – containing seven memoranda issued by the DBM through Sec. Abad, inclusive of annexes, listing in detail the 116 DAP identified projects approved and duly signed by the President, as follows:

a. Memorandum for the President dated October 12, 2011 (*FY 2011 Proposed Disbursement Acceleration Program (Projects and Sources of Funds*);

b. Memorandum for the President dated December 12, 2011 (*Omnibus Authority to Consolidate Savings/Unutilized Balances and its Realignment*);

c. Memorandum for the President dated June 25, 2012 (*Omnibus Authority to Consolidate Savings/Unutilized Balances and their Realignment*);

d. Memorandum for the President dated September 4, 2012 (*Release of funds for other priority projects and expenditures of the Government*);

e. Memorandum for the President dated December 19, 2012 (*Proposed Priority Projects and Expenditures of the Government*);

f. Memorandum for the President dated May 20, 2013 (*Omnibus Authority to Consolidate Savings/Unutilized Balances and their Realignment to Fund the Quarterly Disbursement Acceleration Program*); and

g. Memorandum for the President dated September 25, 2013 (*Funding for the Task Force Pablo Rehabilitation Plan*).

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[11] Id. at 523-625.

(2) **Second Evidence Packet**[12] – consisting of 15 applications of the DAP, with their corresponding Special Allotment Release Orders (SAROs) and appropriation covers;

(3) **Third Evidence Packet**[13] – containing a list and descriptions of 12 projects under the DAP;

(4) **Fourth Evidence Packet**[14] – identifying the DAP-related portions of the Annual Financial Report (AFR) of the Commission on Audit for 2011 and 2012;

(5) **Fifth Evidence Packet**[15] – containing a letter of Department of Transportation and Communications (DOTC) Sec. Joseph Abaya addressed to Sec. Abad recommending the withdrawal of funds from his agency, inclusive of annexes; and

(6) **Sixth Evidence Packet**[16] – a print-out of the Solicitor General's visual presentation for the January 28, 2014 oral arguments.

On February 5, 2014,[17] the OSG forwarded the **Seventh Evidence Packet**,[18] which listed the sources of funds brought under the DAP, the uses of such funds per project or activity pursuant to DAP, and the legal bases thereof.

On February 14, 2014, the OSG submitted another set of documents in further compliance with the Resolution dated January 28, 2014, *viz:*

(1) Certified copies of the certifications issued by the Bureau of Treasury to the effect that the revenue collections exceeded the original revenue targets for the years 2011, 2012 and 2013, including collections arising from sources not considered in the original revenue targets, which certifications were required for the release of the unprogrammed funds as provided in Special Provision No. 1 of Article XLV, Article XVI, and Article XLV of the 2011, 2012 and 2013 GAAs; and

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12 Id. at 627-692.
13 Id. at 693-698.
14 Id. at 699-746.
15 Id. at 748-764.
16 Id. at 766-784.
17 Id. at 925.
18 Id. at 786-922.

(2) A report on releases of savings of the Executive Department for the use of the Constitutional Commissions and other branches of the Government, as well as the fund releases to the Senate and the Commission on Elections (COMELEC).

RULING

I.
Procedural Issue:

a) The petitions under Rule 65 are proper remedies

All the petitions are filed under Rule 65 of the *Rules of Court*, and include applications for the issuance of writs of preliminary prohibitory injunction or temporary restraining orders. More specifically, the nature of the petitions is individually set forth hereunder, to wit:

G.R. No. 209135 (Syjuco)	*Certiorari*, Prohibition and *Mandamus*
G.R. No. 209136 (Luna)	*Certiorari* and Prohibition
G.R. No. 209155 (Villegas)	*Certiorari* and Prohibition
G.R. No. 209164 (PHILCONSA)	*Certiorari* and Prohibition
G.R. No. 209260 (IBP)	Prohibition
G.R. No. 209287 (Araullo)	*Certiorari* and Prohibition
G.R. No. 209442 (Belgica)	*Certiorari*
G.R. No. 209517 (COURAGE)	*Certiorari* and Prohibition
G.R. No. 209569 (VACC)	*Certiorari* and Prohibition

The respondents submit that there is no actual controversy that is ripe for adjudication in the absence of adverse claims between the parties;[19] that the petitioners lacked legal standing to sue because no allegations were made to the effect that they had suffered any injury as a result of the adoption of the DAP and issuance of NBC No. 541; that their being taxpayers did not immediately confer upon the petitioners the legal standing to sue considering that the adoption and implementation of the DAP and the issuance of NBC No. 541 were not in the exercise of the taxing or spending power of Congress;[20] and that even if the petitioners had suffered injury, there were plain, speedy and adequate remedies in the ordinary course of law available to them, like assailing the regularity of the DAP and related issuances before the Commission on Audit (COA) or in the trial courts.[21]

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19 *Rollo* (G.R. No. 209287), pp. 1050-1051 (Respondents' Memorandum).
20 Id. at 1044.
21 Id. at 1048.

The respondents aver that the special civil actions of *certiorari* and prohibition are not proper actions for directly assailing the constitutionality and validity of the DAP, NBC No. 541, and the other executive issuances implementing the DAP.[22]

In their memorandum, the respondents further contend that there is no authorized proceeding under the Constitution and the *Rules of Court* for questioning the validity of any law unless there is an actual case or controversy the resolution of which requires the determination of the constitutional question; that the jurisdiction of the Court is largely appellate; that for a court of law to pass upon the constitutionality of a law or any act of the Government when there is no case or controversy is for that court to set itself up as a reviewer of the acts of Congress and of the President in violation of the principle of separation of powers; and that, in the absence of a pending case or controversy involving the DAP and NBC No. 541, any decision herein could amount to a mere advisory opinion that no court can validly render.[23]

The respondents argue that it is the application of the DAP to actual situations that the petitioners can question either in the trial courts or in the COA; that if the petitioners are dissatisfied with the ruling either of the trial courts or of the COA, they can appeal the decision of the trial courts by petition for review on *certiorari*, or assail the decision or final order of the COA by special civil action for *certiorari* under Rule 64 of the *Rules of Court*.[24]

The respondents' arguments and submissions on the procedural issue are bereft of merit.

Section 1, Article VIII of the 1987 Constitution expressly provides:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Thus, the Constitution vests judicial power in the Court and in such lower courts as may be established by law. In creating a lower court, Congress concomitantly determines the jurisdiction of that court, and that

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22 Id. at 1053.
23 Id. at 1053-1056.
24 Id. at 1056.

court, upon its creation, becomes by operation of the Constitution one of the repositories of judicial power.[25] However, only the Court is a constitutionally created court, the rest being created by Congress in its exercise of the legislative power.

The Constitution states that judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable" but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." It has thereby expanded the concept of judicial power, which up to then was confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable.

The background and rationale of the expansion of judicial power under the 1987 Constitution were laid out during the deliberations of the 1986 Constitutional Commission by Commissioner Roberto R. Concepcion (a former Chief Justice of the Philippines) in his sponsorship of the proposed provisions on the Judiciary, where he said:–

> The Supreme Court, like all other courts, has one main function: to settle actual controversies involving conflicts of rights which are demandable and enforceable. There are rights which are guaranteed by law but cannot be enforced by a judicial party. In a decided case, a husband complained that his wife was unwilling to perform her duties as a wife. The Court said: "We can tell your wife what her duties as such are and that she is bound to comply with them, but we cannot force her physically to discharge her main marital duty to her husband. There are some rights guaranteed by law, but they are so personal that to enforce them by actual compulsion would be highly derogatory to human dignity."
>
> This is why the first part of the second paragraph of Section 1 provides that:
>
> > Judicial power includes the duty of courts to settle actual controversies involving rights which are legally demandable or enforceable…
>
> The courts, therefore, cannot entertain, much less decide, hypothetical questions. **In a presidential system of government, the Supreme Court has, also, another important function. The powers of government are generally considered divided into three branches: the Legislative, the Executive and the Judiciary. Each one is supreme within its own sphere and independent of the others. Because of that supremacy power to determine whether a given law is valid or not is vested in courts of justice.**
>
> **Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its**

[25] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Edition, p. 959.

officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question. (Bold emphasis supplied)[26]

Upon interpellation by Commissioner Nolledo, Commissioner Concepcion clarified the scope of judicial power in the following manner:–

MR. NOLLEDO. x x x

The second paragraph of Section 1 states: "Judicial power includes the duty of courts of justice to settle actual controversies…" The term "actual controversies" according to the Commissioner should refer to questions which are political in nature and, therefore, the courts should not refuse to decide those political questions. But do I understand it right that this is restrictive or only an example? I know there are cases which are not actual yet the court can assume jurisdiction. An example is the petition for declaratory relief.

May I ask the Commissioner's opinion about that?

MR. CONCEPCION. The Supreme Court has no jurisdiction to grant declaratory judgments.

MR. NOLLEDO. The Gentleman used the term "judicial power" but judicial power is not vested in the Supreme Court alone but also in other lower courts as may be created by law.

MR. CONCEPCION. Yes.

MR. NOLLEDO. And so, is this only an example?

MR. CONCEPCION. No, I know this is not. The Gentleman seems to identify political questions with jurisdictional questions. But there is a difference.

MR. NOLLEDO. Because of the expression "judicial power"?

MR. CONCEPCION. No. **Judicial power, as I said, refers to ordinary cases but where there is a question as to whether the government had authority or had abused its authority to the extent of lacking jurisdiction or excess of jurisdiction, that is not a political question. Therefore, the court has the duty to decide.**[27]

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[26] I RECORD of the 1986 Constitutional Commission 436 (July 10, 1986).
[27] I RECORD of the 1986 Constitutional Commission, 439 (July 10, 1986).

Our previous Constitutions equally recognized the extent of the power of judicial review and the great responsibility of the Judiciary in maintaining the allocation of powers among the three great branches of Government. Speaking for the Court in *Angara v. Electoral Commission*,[28] Justice Jose P. Laurel intoned:

> x x x In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. **In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several department and among the integral or constituent units thereof**.
>
> x x x x
>
> **The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other department; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution**. x x x [29]

What are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution?

The present *Rules of Court* uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and prohibition, and both are governed by Rule 65. A similar remedy of *certiorari* exists under Rule 64, but the remedy is expressly applicable only to the judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:[30]

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28 63 Phil. 139 (1936).
29 Id. at 157-158.
30 G.R. No. 153852, October 24, 2012, 684 SCRA 410.

> In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari* was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.
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> The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of certiorari to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz*:
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> x x x x
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> The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[31]

Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself.[32] The Court expounded on the nature and function of the writ of prohibition in *Holy Spirit Homeowners Association, Inc. v. Defensor*:[33]

> A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. Prohibition is an

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[31] Id. at 420-423.

[32] *Municipal Council of Lemery v. Provincial Board of Batangas*, No. 36201, October 29, 1931, 56 Phil. 260, 266-267.

[33] G.R. No. 163980, August 3, 2006, 497 SCRA 581, 595-596.

> extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions.* This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[34]

Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any

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[34] *Francisco, Jr. v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010, 633 SCRA 470, 494.

assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[35]

Following our recent dispositions concerning the congressional pork barrel, the Court has become more alert to discharge its constitutional duty. We will not now refrain from exercising our expanded judicial power in order to review and determine, with authority, the limitations on the Chief Executive's spending power.

b) Requisites for the exercise of the power of judicial review were complied with

The requisites for the exercise of the power of judicial review are the following, namely: (1) there must be an actual case or justiciable controversy before the Court; (2) the question before the Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[36]

The first requisite demands that there be an actual case calling for the exercise of judicial power by the Court.[37] An actual case or controversy, in the words of *Belgica v. Executive Secretary Ochoa*:[38]

> x x x is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. In other words, "[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence." Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when

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35 *Planas v. Gil*, 67 Phil. 62, 73-74 (1939), with the Court saying:

> It must be conceded that the acts of the Chief Executive performed within the limits of his jurisdiction are his official acts and courts will neither direct nor restrain executive action in such cases. **The rule is non-interference. But from this legal premise, it does not necessarily follow that we are precluded from making an inquiry into the validity or constitutionality of his acts when these are properly challenged in an appropriate proceeding**. xxx **As far as the judiciary is concerned, while it holds "neither the sword nor the purse" it is by constitutional placement the organ called upon to allocate constitutional boundaries, and to the Supreme Court is entrusted expressly or by necessary implication the obligation of determining in appropriate cases the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation. (Sec.2 [1], Art. VIII, Constitution of the Philippines.) In this sense and to this extent, the judiciary restrains the other departments of the government and this result is one of the necessary corollaries of the "system of checks and balances" of the government established**.

36 *Funa v. Villar*, G.R. No. 192791, April 24, 2012, 670 SCRA 579, 593. According to Black's Law Dictionary (Ninth Edition), ***lis mota* is "[a] dispute that has begun and later forms the basis of a lawsuit."**

37 Bernas, *op. cit.*, at 970.

38 Supra note 7.

> the act being challenged has had a direct adverse effect on the individual challenging it. It is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action." "Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions."

An actual and justiciable controversy exists in these consolidated cases. The incompatibility of the perspectives of the parties on the constitutionality of the DAP and its relevant issuances satisfy the requirement for a conflict between legal rights. The issues being raised herein meet the requisite ripeness considering that the challenged executive acts were already being implemented by the DBM, and there are averments by the petitioners that such implementation was repugnant to the letter and spirit of the Constitution. Moreover, the implementation of the DAP entailed the allocation and expenditure of huge sums of public funds. The fact that public funds have been allocated, disbursed or utilized by reason or on account of such challenged executive acts gave rise, therefore, to an actual controversy that is ripe for adjudication by the Court.

It is true that Sec. Abad manifested during the January 28, 2014 oral arguments that the DAP as a program had been meanwhile discontinued because it had fully served its purpose, saying: "In conclusion, Your Honors, may I inform the Court that because the DAP has already fully served its purpose, the Administration's economic managers have recommended its termination to the President. x x x."[39]

The Solicitor General then quickly confirmed the termination of the DAP as a program, and urged that its termination had already mooted the challenges to the DAP's constitutionality, *viz*:

> DAP as a program, no longer exists, thereby mooting these present cases brought to challenge its constitutionality. Any constitutional challenge should no longer be at the level of the program, which is now extinct, but at the level of its prior applications or the specific disbursements under the now defunct policy. We challenge the petitioners to pick and choose which among the 116 DAP projects they wish to nullify, the full details we will have provided by February 5. We urge this Court to be cautious in limiting the constitutional authority of the President and the Legislature to respond to the dynamic needs of the country and the evolving demands of governance, lest we end up straight-jacketing our elected representatives in ways not consistent with our constitutional structure and democratic principles.[40]

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[39] Oral Arguments, TSN of January 28, 2014, p. 14.

[40] Id. at 23. .

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.[41]

The Court cannot agree that the termination of the DAP as a program was a supervening event that effectively mooted these consolidated cases. Verily, the Court had in the past exercised its power of judicial review despite the cases being rendered moot and academic by supervening events, like: (1) when there was a grave violation of the Constitution; (2) when the case involved a situation of exceptional character and was of paramount public interest; (3) when the constitutional issue raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) when the case was capable of repetition yet evading review.[42] Assuming that the petitioners' several submissions against the DAP were ultimately sustained by the Court here, these cases would definitely come under all the exceptions. Hence, the Court should not abstain from exercising its power of judicial review.

Did the petitioners have the legal standing to sue?

Legal standing, as a requisite for the exercise of judicial review, refers to "a right of appearance in a court of justice on a given question."[43] The concept of legal standing, or *locus standi*, was particularly discussed in *De Castro v. Judicial and Bar Council*,[44] where the Court said:

> In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:
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> > **The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct**

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41 *Funa v. Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319.

42 *Funa v. Villar*, supra note 36, at 592; citing *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, 214-215.

43 Black's Law Dictionary, 941 (6th Ed. 1991).

44 G.R. No. 191002, March 17, 2010, 615 SCRA 666.

> **injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of**.

It is true that as early as in 1937, in *People v. Vera*, the Court adopted the *direct injury test* for determining whether a petitioner in a public action had *locus standi.* There, the Court held that the person who would assail the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." *Vera* was followed in *Custodio v. President of the Senate*, *Manila Race Horse Trainers' Association v. De la Fuente*, *Anti-Chinese League of the Philippines v. Felix*, and *Pascual v. Secretary of Public Works.*

Yet, the Court has also held that the requirement of *locus standi*, being a mere procedural technicality, can be waived by the Court in the exercise of its discretion. For instance, in 1949, in *Araneta v. Dinglasan*, the Court liberalized the approach when the cases had "transcendental importance." Some notable controversies whose petitioners did not pass the *direct injury test* were allowed to be treated in the same way as in *Araneta v. Dinglasan*.

In the 1975 decision in *Aquino v. Commission on Elections*, this Court decided to resolve the issues raised by the petition due to their "far-reaching implications," even if the petitioner had no personality to file the suit. The liberal approach of *Aquino v. Commission on Elections* has been adopted in several notable cases, permitting ordinary citizens, legislators, and civic organizations to bring their suits involving the constitutionality or validity of laws, regulations, and rulings.

However, the assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative action rests on the theory that the petitioner represents the public in general. Although such petitioner may not be as adversely affected by the action complained against as are others, it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court *in the vindication of a public right*.

Quite often, as here, the petitioner in a public action sues as a *citizen* or *taxpayer* to gain *locus standi*. That is not surprising, for even if the issue may appear to concern only the public in general, such capacities nonetheless equip the petitioner with adequate interest to sue. In *David v. Macapagal-Arroyo*, the Court aptly explains why:

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. **In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern.** As held by the New York Supreme Court in *People ex rel Case v. Collins*: "**In matter of mere public right, however…the people are the real parties…It is at least the right, if not the duty, of every citizen**

> **to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied**." With respect to taxpayer's suits, *Terr v. Jordan* held that "**the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.**"[45]

The Court has cogently observed in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*[46] that "[s]tanding is a peculiar concept in constitutional law because in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest."

Except for PHILCONSA, a petitioner in G.R. No. 209164, the petitioners have invoked their capacities as taxpayers who, by averring that the issuance and implementation of the DAP and its relevant issuances involved the illegal disbursements of public funds, have an interest in preventing the further dissipation of public funds. The petitioners in G.R. No. 209287 (Araullo) and G.R. No. 209442 (Belgica) also assert their right as citizens to sue for the enforcement and observance of the constitutional limitations on the political branches of the Government.[47] On its part, PHILCONSA simply reminds that the Court has long recognized its legal standing to bring cases upon constitutional issues.[48] Luna, the petitioner in G.R. No. 209136, cites his additional capacity as a lawyer. The IBP, the petitioner in G.R. No. 209260, stands by "its avowed duty to work for the rule of law and of paramount importance of the question in this action, not to mention its civic duty as the official association of all lawyers in this country."[49]

Under their respective circumstances, each of the petitioners has established sufficient interest in the outcome of the controversy as to confer *locus standi* on each of them.

In addition, considering that the issues center on the extent of the power of the Chief Executive to disburse and allocate public funds, whether appropriated by Congress or not, these cases pose issues that are of transcendental importance to the entire Nation, the petitioners included. As such, the determination of such important issues call for the Court's exercise of its broad and wise discretion "to waive the requirement and so remove the impediment to its addressing and resolving the serious constitutional questions raised."[50]

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45 Id. at 722-726.
46 G.R. No. 155001, May 5, 2003, 402 SCRA 612, 645.
47 *Rollo* (G.R. No. 209412), Petition, pp. 3-4.
48 *Rollo* (G.R. No. 209164), p. 5.
49 *Rollo* (G.R. No. 209260), p. 6.
50 *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, note 46 at 645.

II.
Substantive Issues

1.
Overview of the Budget System

An understanding of the Budget System of the Philippines will aid the Court in properly appreciating and justly resolving the substantive issues.

a) Origin of the Budget System

The term "budget" originated from the Middle English word *bouget* that had derived from the Latin word *bulga* (which means bag or purse).[51]

In the Philippine setting, Commonwealth Act (CA) No. 246 (*Budget Act*) defined "budget" as the financial program of the National Government for a designated fiscal year, consisting of the statements of estimated receipts and expenditures for the fiscal year for which it was intended to be effective based on the results of operations during the preceding fiscal years. The term was given a different meaning under Republic Act No. 992 (*Revised Budget Act*) by describing the budget as the delineation of the services and products, or benefits that would accrue to the public together with the estimated unit cost of each type of service, product or benefit.[52] For a forthright definition, budget should simply be identified as the financial plan of the Government,[53] or "the master plan of government."[54]

The concept of budgeting has not been the product of recent economies. In reality, financing public goals and activities was an idea that existed from the creation of the State.[55] To protect the people, the territory and sovereignty of the State, its government must perform vital functions that required public expenditures. At the beginning, enormous public expenditures were spent for war activities, preservation of peace and order, security, administration of justice, religion, and supply of limited goods and services.[56] In order to finance those expenditures, the State raised revenues

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51 Magtolis-Briones, Leonor, *Philippine Public Fiscal Administration*, National Research Council of the Philippines and Commission on Audit, 1983, p. 243.

52 Manasan, Rosario G., *Public Finance in the Philippines: A Review of the Literature*, Philippine Institute for Development Studies Working Paper 81-03, March 1981, p. 37.

53 Magtolis-Briones, *op. cit.*, p. 79.

54 American economist Prof. Philip E. Taylor has tendered the following understanding of the term *budget* (as quoted in Magtolis-Briones, *op. cit.*, p. 243), to wit:

> The budget is the master plan of government. It brings together estimates of anticipated revenues and proposed expenditures, implying the schedule of activities to be undertaken and the means of financing those activities. In the budget, fiscal policies are coordinated, and only in the budget can a more unified view of the financial direction which the government is going to be observed.

55 Id. at 10.

56 Id. at 10-11.

through taxes and impositions.[57] Thus, budgeting became necessary to allocate public revenues for specific government functions.[58] The State's budgeting mechanism eventually developed through the years with the growing functions of its government and changes in its market economy.

The Philippine Budget System has been greatly influenced by western public financial institutions. This is because of the country's past as a colony successively of Spain and the United States for a long period of time. Many aspects of the country's public fiscal administration, including its Budget System, have been naturally patterned after the practices and experiences of the western public financial institutions. At any rate, the Philippine Budget System is presently guided by two principal objectives that are vital to the development of a progressive democratic government, namely: (1) to carry on all government activities under a comprehensive fiscal plan developed, authorized and executed in accordance with the Constitution, prevailing statutes and the principles of sound public management; and (2) to provide for the periodic review and disclosure of the budgetary status of the Government in such detail so that persons entrusted by law with the responsibility as well as the enlightened citizenry can determine the adequacy of the budget actions taken, authorized or proposed, as well as the true financial position of the Government.[59]

b) **Evolution of the Philippine Budget System**

The budget process in the Philippines evolved from the early years of the American Regime up to the passage of the Jones Law in 1916. A Budget Office was created within the Department of Finance by the Jones Law to discharge the budgeting function, and was given the responsibility to assist in the preparation of an executive budget for submission to the Philippine Legislature.[60]

As early as under the 1935 Constitution, a budget policy and a budget procedure were established, and subsequently strengthened through the enactment of laws and executive acts.[61] EO No. 25, issued by President Manuel L. Quezon on April 25, 1936, created the Budget Commission to serve as the agency that carried out the President's responsibility of preparing the budget.[62] CA No. 246, the first budget law, went into effect on January 1, 1938 and established the Philippine budget process. The law also provided a line-item budget as the framework of the Government's

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57 Id. at 11.
58 Id. at 12.
59 Manasan, *op cit*., at. 39; Manasan, *Budget Operations Manual Revised Edition*, Operations Budget Commission (1968), p. 3.
60 Magtolis-Briones, *op cit*., at 80.
61 Id.
62 *http://www.dbm.gov.ph/?page_id=352*. Visited on May 27, 2014.

budgeting system,[63] with emphasis on the observance of a "balanced budget" to tie up proposed expenditures with existing revenues.

CA No. 246 governed the budget process until the passage on June 4, 1954 of Republic Act (RA) No. 992, whereby Congress introduced performance-budgeting to give importance to functions, projects and activities in terms of expected results.[64] RA No. 992 also enhanced the role of the Budget Commission as the fiscal arm of the Government.[65]

The 1973 Constitution and various presidential decrees directed a series of budgetary reforms that culminated in the enactment of PD No. 1177 that President Marcos issued on July 30, 1977, and of PD No. 1405, issued on June 11, 1978. The latter decree converted the Budget Commission into the Ministry of Budget, and gave its head the rank of a Cabinet member. The Ministry of Budget was later renamed the Office of Budget and Management (OBM) under EO No. 711. The OBM became the DBM pursuant to EO No. 292 effective on November 24, 1989.

c) **The Philippine Budget Cycle[66]**

Four phases comprise the Philippine budget process, specifically: (1) **Budget Preparation**; (2) **Budget Legislation**; (3) **Budget Execution**; and (4) **Accountability**. Each phase is distinctly separate from the others but they overlap in the implementation of the budget during the budget year.

c.1. **Budget Preparation**[67]

The budget preparation phase is commenced through the issuance of a **Budget Call** by the DBM. The **Budget Call** contains budget parameters earlier set by the Development Budget Coordination Committee (DBCC) as well as policy guidelines and procedures to aid government agencies in the preparation and submission of their budget proposals. The **Budget Call** is of two kinds, namely: (1) a **National Budget Call**, which is addressed to all agencies, including state universities and colleges; and (2) a **Corporate Budget Call**, which is addressed to all government-owned and -controlled corporations (GOCCs) and government financial institutions (GFIs).

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63 Id.
64 Magtolis-Briones, *op cit.*, p. 269.
65 *http://www.dbm.gov.ph/?page_id=352.* Visited on March 27, 2014.
66 *http://budgetngbayan.com/the-budget-cycle/.* Visited on March 27, 2014.
67 *http://budgetngbayan.com/budget-101/budget.preparation.*

Following the issuance of the **Budget Call**, the various departments and agencies submit their respective **Agency Budget Proposals** to the DBM. To boost citizen participation, the current administration has tasked the various departments and agencies to partner with civil society organizations and other citizen-stakeholders in the preparation of the **Agency Budget Proposals**, which proposals are then presented before a technical panel of the DBM in scheduled budget hearings wherein the various departments and agencies are given the opportunity to defend their budget proposals. DBM bureaus thereafter review the **Agency Budget Proposals** and come up with recommendations for the Executive Review Board, comprised by the DBM Secretary and the DBM's senior officials. The discussions of the Executive Review Board cover the prioritization of programs and their corresponding support vis-à-vis the priority agenda of the National Government, and their implementation.

The DBM next consolidates the recommended agency budgets into the **National Expenditure Program (NEP)** and a **Budget of Expenditures and Sources of Financing (BESF)**. The **NEP** provides the details of spending for each department and agency by **program, activity or project (PAP)**, and is submitted in the form of a proposed GAA. The **Details of Selected Programs and Projects** is the more detailed disaggregation of key PAPs in the **NEP**, especially those in line with the National Government's development plan. The **Staffing Summary** provides the staffing complement of each department and agency, including the number of positions and amounts allocated.

The **NEP** and **BESF** are thereafter presented by the DBM and the DBCC to the President and the Cabinet for further refinements or re-prioritization. Once the NEP and the BESF are approved by the President and the Cabinet, the DBM prepares the budget documents for submission to Congress. The budget documents consist of: (1) the **President's Budget Message**, through which the President explains the policy framework and budget priorities; (2) the **BESF**, mandated by Section 22, Article VII of the Constitution,[68] which contains the macroeconomic assumptions, public sector context, breakdown of the expenditures and funding sources for the fiscal year and the two previous years; and (3) the NEP.

Public or government expenditures are generally classified into two categories, specifically: (1) **capital expenditures or outlays**; and (2) **current operating expenditures**. **Capital expenditures** are the expenses

[68] Section 22. The President shall submit to the Congress, within thirty days from the opening of every regular session as the basis of the general appropriations bill, a **budget of expenditures and sources of financing**, including receipts from existing and proposed revenue measures.

whose usefulness lasts for more than one year, and which add to the assets of the Government, including investments in the capital of government-owned or controlled corporations and their subsidiaries.[69] **Current operating expenditures** are the purchases of goods and services in current consumption the benefit of which does not extend beyond the fiscal year.[70] The two components of current expenditures are those for **personal services** (PS), and those for **maintenance and other operating expenses** (MOOE).

Public expenditures are also broadly grouped *according to their functions* into: (1) **economic development expenditures** (*i.e.*, expenditures on agriculture and natural resources, transportation and communications, commerce and industry, and other economic development efforts);[71] (2) **social services or social development expenditures** (*i.e.*, government outlay on education, public health and medicare, labor and welfare and others);[72] (3) **general government or general public services expenditures** (*i.e.*, expenditures for the general government, legislative services, the administration of justice, and for pensions and gratuities); [73] (4) **national defense expenditures** (*i.e.*, sub-divided into national security expenditures and expenditures for the maintenance of peace and order);[74] and (5) **public debt**.[75]

Public expenditures may further be classified *according to the nature of funds*, *i.e.*, **general fund**, **special fund** or **bond fund**.[76]

On the other hand, **public revenues** complement public expenditures and cover all income or receipts of the government treasury used to support government expenditures.[77]

Classical economist Adam Smith categorized **public revenues** based on two principal sources, stating: "The revenue which must defray…the necessary expenses of government may be drawn either, first from some

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[69] Section 2(e), P.D. No. 1177 states that **capital expenditures « refer to appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of Government, including investments in the capital of government-owned or controlled corporations and their subsidiaries. »**

[70] Section 2(d), PD 1177 defines **current oprating expenditures as « appropriations for the purchase of goods and services for current consumption or within the fiscal year, including the acquisition of furniture and equipment normally used in the conduct of government operations, and for temporary construction of promotional, research and similar purposes. »**

[71] Manasan, *op.cit.*, at 32.

[72] Id.

[73] Id.

[74] Id.

[75] Id.; see also Banzon Abello, Amelia, *Pattern of Philippine Public Expenditures and Revenue*, UP Institute of Economic Development and Research, p. 2 (1962).

[76] Magtolis-Briones, *op.cit.*, at 383.

[77] Id. at 139.

fund which peculiarly belongs to the sovereign or commonwealth, and which is independent of the revenue of the people, or, secondly, from the revenue of the people."[78] Adam Smith's classification relied on the two aspects of the nature of the State: first, the State as a juristic person with an artificial personality, and, second, the State as a sovereign or entity possessing supreme power. Under the first aspect, the State could hold property and engage in trade, thereby deriving what is called its **quasi-private income** or **revenues**, and which "peculiarly belonged to the sovereign." Under the second aspect, the State could collect by imposing charges on the revenues of its subjects in the form of **taxes**.[79]

In the Philippines, **public revenues** are generally derived from the following sources, to wit: (1) **tax revenues** (*i.e.*, compulsory contributions to finance government activities);[80] (2) **capital revenues** (*i.e.*, proceeds from sales of fixed capital assets or scrap thereof and public domain, and gains on such sales like sale of public lands, buildings and other structures, equipment, and other properties recorded as fixed assets);[81] (3) **grants** (*i.e.*, voluntary contributions and aids given to the Government for its operation on specific purposes in the form of money and/or materials, and do not require any monetary commitment on the part of the recipient);[82] (4) **extra-ordinary income** (*i.e.*, repayment of loans and advances made by government corporations and local governments and the receipts and shares in income of the Banko Sentral ng Pilipinas, and other receipts);[83] and (5) **public borrowings** (*i.e.*, proceeds of repayable obligations generally with interest from domestic and foreign creditors of the Government in general, including the National Government and its political subdivisions).[84]

More specifically, **public** revenues are classified as follows:[85]

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78 Quoted in Banzon Abello, *op.cit.*, at 32-33.

79 Prof. Charles Bastable, a political economist, proposed a similar classification of public revenues in *Public Finance* (3rd Edition (1917), Book II, Chapter I(2), London: McMillan and Co., Ltd.), to wit:

> The widest division of public revenue is into (1) that obtained by the State in its various functions as a great corporation or "juristic person," operating under the ordinary conditions that govern individuals or private companies, and (2) that taken from the revenues of the society by the power of the sovereign. To the former class belong the rents received by the State as landlord, rent charges due to it, interest on capital lent by it, the earnings of its various employments, whether these cover the expenses of the particular function or not, and finally the accrual of property by escheat or absence of a visible owner. Under the second class have to be placed taxes, either general or special, and finally all extra returns obtained by state industrial agencies through the privileges granted by them.

80 Magtolis-Briones, supra at 140.

81 Id. at 141.

82 Id.

83 Id. at 142.

84 Id.

85 *Manual on the New Government Accounting System*, Accounting Policies, Volume I, Chapter 1, Section 17 (For National Government Agencies).

General Income	Specific Income
1. Subsidy Income from National Government 2. Subsidy from Central Office 3. Subsidy from Regional Office/Staff Bureaus 4. Income from Government Services 5. Income from Government Business Operations 6. Sales Revenue 7. Rent Income 8. Insurance Income 9. Dividend Income 10. Interest Income 11. Sale of Confiscated Goods and Properties 12. Foreign Exchange (FOREX) Gains 13. Miscellaneous Operating and Service Income 14. Fines and Penalties-Government Services and Business Operations 15. Income from Grants and Donations	1. Income Taxes 2. Property Taxes 3. Taxes on Goods and Services 4. Taxes on International Trade and Transactions 5. Other Taxes 6. Fines and Penalties-Tax Revenue 7. Other Specific Income

c.2. Budget Legislation[86]

The **Budget Legislation Phase** covers the period commencing from the time Congress receives the **President's Budget**, which is inclusive of the **NEP** and the **BESF**, up to the President's approval of the GAA. This phase is also known as the **Budget Authorization Phase**, and involves the significant participation of the Legislative through its deliberations.

Initially, the **President's Budget** is assigned to the House of Representatives' **Appropriations Committee** on First Reading. The **Appropriations Committee** and its various Sub-Committees schedule and conduct **budget hearings** to examine the PAPs of the departments and agencies. Thereafter, the House of Representatives drafts the **General Appropriations Bill** (GAB).[87]

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86 *http://budgetngbayan.com/budget-101/budget-legislation*.

87 Article VI of the 1987 Constitution provides:

Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall **originate exclusively** in the House of Representatives, but the Senate may propose or concur with amendments.

The **GAB** is sponsored, presented and defended by the House of Representatives' **Appropriations Committee** and **Sub-Committees** in plenary session. As with other laws, the GAB is approved on Third Reading before the House of Representatives' version is transmitted to the Senate.[88]

After transmission, the Senate conducts its own committee hearings on the GAB. To expedite proceedings, the Senate may conduct its committee hearings simultaneously with the House of Representatives' deliberations. The Senate's **Finance Committee** and its **Sub-Committees** may submit the proposed amendments to the GAB to the plenary of the Senate only after the House of Representatives has formally transmitted its version to the Senate. The Senate version of the GAB is likewise approved on Third Reading.[89]

The House of Representatives and the Senate then constitute a panel each to sit in the **Bicameral Conference Committee** for the purpose of discussing and harmonizing the conflicting provisions of their versions of the GAB. The "harmonized" version of the GAB is next presented to the President for approval.[90] The President reviews the GAB, and prepares the **Veto Message** where budget items are subjected to direct veto,[91] or are identified for conditional implementation.

If, by the end of any fiscal year, the Congress shall have failed to pass the GAB for the ensuing fiscal year, the GAA for the preceding fiscal year

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88 Section 26, Article VI of the 1987 Constitution, to wit:

Section 26.

1. Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

2. No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal.

89 Id.

90 Section 27,1, Article VI of the 1987 Constitution, *viz*:

Section 27.

1. Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof, otherwise, it shall become a law as if he had signed it.

2. The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

91 Id.

shall be deemed re-enacted and shall remain in force and effect until the GAB is passed by the Congress.[92]

c.3. Budget Execution[93]

With the GAA now in full force and effect, the next step is the implementation of the budget. The **Budget Execution Phase** is primarily the function of the DBM, which is tasked to perform the following procedures, namely: (1) to issue the programs and guidelines for the release of funds; (2) to prepare an **Allotment and Cash Release Program**; (3) to release allotments; and (4) to issue disbursement authorities.

The implementation of the GAA is directed by the guidelines issued by the DBM. Prior to this, the various departments and agencies are required to submit **Budget Execution Documents** (**BED**) to outline their plans and performance targets by laying down the **physical and financial plan**, the **monthly cash program**, the **estimate of monthly income**, and the **list of obligations that are not yet due and demandable**.

Thereafter, the DBM prepares an **Allotment Release Program (ARP)** and a **Cash Release Program (CRP).** The **ARP** sets a limit for allotments issued in general and to a specific agency. The **CRP** fixes the monthly, quarterly and annual disbursement levels.

Allotments, which authorize an agency to enter into obligations, are issued by the DBM. **Allotments** are lesser in scope than **appropriations**, in that the latter embrace the **general legislative authority to spend**. **Allotments** may be released in two forms – through a comprehensive **Agency Budget Matrix** (**ABM**),[94] or, individually, by **SARO**.[95]

Armed with either the **ABM** or the **SARO**, agencies become authorized to incur obligations[96] on behalf of the Government in order to

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92 Section 25, 7, Article VI of the 1987 Constitution, thus :

xxxx.

7. If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed re-enacted and shall remain in force and effect until the general appropriations bill is passed by the Congress.

xxxx.

93 *http://budgetngbayan.com/budget-101/budget-execution.*

94 The ABM disaggregates all programmed appropriations for each agency into two main expenditure categories: “not needing clearance” and “needing clearance”; it is a comprehensive allotment release document for all appropriations that do not need clearance, or those that have already been itemized and fleshed out in the GAA.

95 Items identified as “needing clearance” are those that require the approval of the DBM or the President, as the case may be (for instance, lump sum funds and confidential and intelligence funds). For such items, an agency needs to submit a Special Budget Request to the DBM with supporting documents. Once approved, a SARO is issued.

96 Liabilities legally incurred that the Government will pay for.

implement their PAPs. Obligations may be incurred in various ways, like hiring of personnel, entering into contracts for the supply of goods and services, and using utilities.

In order to settle the obligations incurred by the agencies, the DBM issues a **disbursement authority** so that cash may be allocated in payment of the obligations. A **cash or disbursement authority** that is periodically issued is referred to as a **Notice of Cash Allocation** (**NCA**),[97] which issuance is based upon an agency's submission of its **Monthly Cash Program** and other required documents. The **NCA** specifies the maximum amount of cash that can be withdrawn from a government servicing bank for the period indicated. Apart from the NCA, the DBM may issue a **Non-Cash Availment Authority** (**NCAA**) to authorize non-cash disbursements, or a **Cash Disbursement Ceiling** (**CDC**) for departments with overseas operations to allow the use of income collected by their foreign posts for their operating requirements.

Actual disbursement or spending of government funds terminates the **Budget Execution Phase** and is usually accomplished through the **Modified Disbursement Scheme** under wehich disbursements chargeable against the National Treasury are coursed through the government servicing banks.

c.4. Accountability[98]

Accountability is a significant phase of the budget cycle because it ensures that the government funds have been effectively and efficiently utilized to achieve the State's socio-economic goals. It also allows the DBM to assess the performance of agencies during the fiscal year for the purpose of implementing reforms and establishing new policies.

An agency's accountability may be examined and evaluated through (1) **performance targets and outcomes**; (2) **budget accountability reports**; (3) **review of agency performance**; and (4) **audit conducted by the Commission on Audit** (COA).

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97 *Belgica v. Executive Secretary*, *supra* note 7 clarifies the distinction between an NCA and SARO, *viz*:

> A SARO, as defined by the DBM itself in its website, is "[a] specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or is subject to separate approval or clearance by competent authority." **Based on this definition, it may be gleaned that a SARO only evinces the existence of an obligation and not the directive to pay. Practically speaking, the SARO does not have the direct and immediate effect of placing public funds beyond the control of the disbursing authority.** In fact, a SARO may even be withdrawn under certain circumstances which will prevent the actual release of funds. **On the other hand, the actual release of funds is brought about by the issuance of the NCA, which is subsequent to the issuance of a SARO. xxxx**

98 *http://budgetngbayan.com/budget-101/budget-accountability*.

2.
Nature of the DAP as a fiscal plan

a. DAP was a program designed to promote economic growth

Policy is always a part of every budget and fiscal decision of any Administration.[99] The national budget the Executive prepares and presents to Congress represents the Administration's "blueprint for public policy" and reflects the Government's goals and strategies.[100] As such, the national budget becomes a tangible representation of the programs of the Government in monetary terms, specifying therein the PAPs and services for which specific amounts of public funds are proposed and allocated.[101] Embodied in every national budget is government spending.[102]

When he assumed office in the middle of 2010, President Aquino made efficiency and transparency in government spending a significant focus of his Administration. Yet, although such focus resulted in an improved fiscal deficit of 0.5% in the gross domestic product (GDP) from January to July of 2011, it also unfortunately decelerated government project implementation and payment schedules.[103] The World Bank observed that the Philippines' economic growth could be reduced, and potential growth could be weakened should the Government continue with its underspending and fail to address the large deficiencies in infrastructure.[104] The economic situation prevailing in the middle of 2011 thus paved the way for the development and implementation of the DAP as a stimulus package intended to fast-track public spending and to push economic growth by investing on high-impact budgetary PAPs to be funded from the "savings" generated during the year as well as from unprogrammed funds.[105] In that respect, the DAP was the product of "plain executive policy-making" to stimulate the economy by way of accelerated spending.[106] The Administration would thereby accelerate government spending by: (1) streamlining the implementation process through the clustering of infrastructure projects of the Department of Public Works and Highways (DPWH) and the

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99 Fisher, *Presidential Spending Power*, 1975, p. 165.
100 Keefe and Ogul, *The American Legislative Process: Congress and the States*, 1993, p. 359.
101 Magtolis-Briones, *op. cit.*, p. 79.
102 Diokno, *Philippine Fiscal Behavior in Recent History*, The Philippine Review of Economics, Vol. XLVII, No. 1, June 1, 2010, p. 53.
103 World Bank, Philippines Quarterly Update: Solid Economic Fundamentals Cushion External Turmoil, available at http://www.investphilippines.info/arangkada/wp-content/uploads/2011/10/WB-Philippines-Quarterly-Update-Sept2011.pdf (last accessed March 31, 2014).
104 Id.
105 Department of Budget and Management, Frequently Asked Questions About the Disbursement Acceleration Program (DAP), available at http://www.dbm.gov.ph/?page_id=7362 (last accessed, December 3, 2013).
106 Respondent's Consolidated Comment, p.8.

Department of Education (DepEd), and (2) frontloading PPP-related projects[107] due for implementation in the following year.[108]

Did the stimulus package work?

The March 2012 report of the World Bank,[109] released after the initial implementation of the DAP, revealed that the DAP was partially successful. The disbursements under the DAP contributed 1.3 percentage points to GDP growth by the fourth quarter of 2011.[110] The continued implementation of the DAP strengthened growth by 11.8% year on year while infrastructure spending rebounded from a 29% contraction to a 34% growth as of September 2013.[111]

The DAP thus proved to be a demonstration that expenditure was a policy instrument that the Government could use to direct the economies towards growth and development.[112] The Government, by spending on public infrastructure, would signify its commitment of ensuring profitability for prospective investors.[113] The PAPs funded under the DAP were chosen for this reason based on their: (1) multiplier impact on the economy and infrastructure development; (2) beneficial effect on the poor; and (3) translation into disbursements.[114]

b. History of the implementation of the DAP, and sources of funds under the DAP

How the Administration's economic managers conceptualized and developed the DAP, and finally presented it to the President remains unknown because the relevant documents appear to be scarce.

The earliest available document relating to the genesis of the DAP was the memorandum of October 12, 2011 from Sec. Abad seeking the

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107 Public-Private Partnership.

108 Philippines Quarterly Update: Solid Economic Fundamentals Cushion External Turmoil, available at http://www.investphilippines.info/arangkada/wp-content/uploads/2011/10/WB-Philippines-Quarterly-Update-Sept2011.pdf (last accessed March 31, 2014).

109 Respondent's Memorandum, p. 2, citing the Philippines Quarterly Update: From Stability to Prosperity for All, available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/06/12/000333037_20120612011744/Rendered/PDF/698330WP0P12740ch020120FINAL0051012.pdf (last accessed March 31, 2014).

110 The research group IBON International contests this finding, saying that the contribution of the DAP spending was only one-fourth of a percentage point at most during the last quarter of 2011, and a "negligible fraction" for the entire year of 2011. See "DAP did not contribute 1.3 percentage points to growth—IBON," available at http://ibon.org/ibon_articles.php?id=344 (last accessed April 5, 2014).

111 TSN, Oral Arguments, January 28, 2014, p. 12.

112 Diokno, *Philippine Fiscal Behavior in Recent History*, *The Philippine Review of Economics*, Vol. XLVII, No. 1, June 1, 2010, p. 51.

113 Id. at 52.

114 *Rollo* (G.R. No. 209287), p. 539, (Respondent's 1st Evidence Packet).

approval of the President to implement the proposed DAP. The memorandum, which contained a list of the funding sources for ₱72.11 billion and of the proposed priority projects to be funded,[115] reads:

> MEMORANDUM FOR THE PRESIDENT
>
> x x x x
>
> SUBJECT: FY 2011 PROPOSED DISBURSEMENT ACCELERATION PROGRAM (PROJECTS AND SOURCES OF FUNDS)
>
> DATE: OCTOBER 12, 2011
>
> Mr. President, this is to formally confirm your approval of the Disbursement Acceleration Program totaling P72.11 billion. We are already working with all the agencies concerned for the immediate execution of the projects therein.
>
> A. Fund Sources for the Acceleration Program

Fund Sources	**Amount (In million Php)**	**Description**	**Action Requested**
FY 2011 Unreleased Personal Services (PS) appropriations	30,000	Unreleased Personnel Services (PS) appropriations which will lapse at the end of FY 2011 but may be pooled as savings and realigned for priority programs that require immediate funding	Declare as savings and approve/ authorize its use for the 2011 Disbursement Acceleration Program
FY 2011 Unreleased appropriations	482	Unreleased appropriations (slow moving projects and programs for discontinuance)	
FY 2010 Unprogrammed Fund	12,336	Supported by the GFI Dividends	Approve and authorize its use for the 2011 Disbursement Acceleration Program
FY 2010 Carryover Appropriation	21,544	Unreleased appropriations (slow moving projects and programs for discontinuance) and savings from Zero-based Budgeting Initiative	With prior approval from the President in November 2010 to declare as savings and with authority to use for priority projects

[115] Id. at 526-529, (Respondent's 1st Evidence Packet).

FY 2011 Budget items for realignment	7,748	FY 2011 Agency Budget items that can be realigned within the agency to fund new fast disbursing projects DPWH-3.981 Billion DA – 2.497 Billion DOT – 1.000 Billion DepEd – 270 Million	For information
TOTAL	**72.110**		

B. Projects in the Disbursement Acceleration Program
(Descriptions of projects attached as Annex A)

GOCCs and GFIs	
Agency/Project (SARO and NCA Release)	**Allotment (in Million Php)**
1. LRTA: Rehabilitation of LRT 1 and 2	1,868
2. NHA:	11,050
a. Resettlement of North Triangle residents to Camarin A7	450
b. Housing for BFP/BJMP	500
c. On-site development for families living along dangerous	10,000
d. Relocation sites for informal settlers along Iloilo River and its tributaries	100
3. PHIL. HEART CENTER: Upgrading of ageing physical plant and medical equipment	357
4. CREDIT INFO CORP: Establishment of centralized credit information system	75
5. PIDS: purchase of land to relocate the PIDS office and building construction	100
6. HGC: Equity infusion for credit insurance and mortgage guaranty operations of HGC	400
7. PHIC: Obligations incurred (premium subsidy for indigent families) in January-June 2010, booked for payment in Jul[y] – Dec 2010. The delay in payment is due to the delay in the certification of the LGU counterpart. Without it, the NG is obliged to pay the full amount.	1,496
8. Philpost: Purchase of foreclosed property. Payment of Mandatory Obligations, (GSIS, PhilHealth, ECC), Franking Privilege	644
9. BSP: First equity infusion out of Php 40B capitalization under the BSP Law	10,000
10. PCMC: Capital and Equipment Renovation	280
11. LCOP:	105
a. Pediatric Pulmonary Program	35
b. Bio-regenerative Technology Program (Stem-Cell Research – subject to legal review and presentation)	70
12. TIDCORP: NG Equity infusion	570
TOTAL	**26,945**

NGAs/LGUs		
Agency/Project	**Allotment (SARO) (In Million Php)**	**Cash Requirement (NCA)**
13. DOF-BIR: NPSTAR centralization of data processing and others (To be synchronized with GFMIS activities)	758	758
14. COA: IT infrastructure program and hiring of additional litigational experts	144	144
15. DND-PAF: On Base Housing Facilities and Communication Equipment	30	30
16. DA: a. Irrigation, FMRs and Integrated Community-Based Multi-Species Hatchery and Aquasilvi Farming b. Mindanao Rural Development Project	2,959 1,629 919	2,223 1,629 183
c. NIA Agno River Integrated Irrigation Project	411	411
17. DAR: a. Agrarian Reform Communities Project 2 b. Landowners Compensation	1,293 1,293	1,293 132 5,432
18. DBM: Conduct of National Survey of Farmers/Fisherfolks/IPs	625	625
19. DOJ: Operating requirements of 50 investigation agents and 15 state attorneys	11	11
20. DOT: Preservation of the Cine Corregidor Complex	25	25
21. OPAPP: Activities for Peace Process (PAMANA- Project details: budget breakdown, implementation plan, and conditions on fund release attached as Annex B)	1,819	1,819
22. DOST a. Establishment of National Meterological and Climate Center b. Enhancement of Doppler Radar Network for National Weather Watch, Accurate Forecasting and Flood Early Warning	425 275 190	425 275 150

23. DOF-BOC: To settle the principal obligations with PDIC consistent with the agreement with the CISS and SGS	2,800	2,800
24. OEO-FDCP: Establishment of the National Film Archive and local cinematheques, and other local activities	20	20
25. DPWH: Various infrastructure projects	5,500	5,500
26. DepEd/ERDT/DOST: Thin Client Cloud Computing Project	270	270
27. DOH: Hiring of nurses and midwives	294	294
28. TESDA: Training Program in partnership with BPO industry and other sectors	1,100	1,100
29. DILG: Performance Challenge Fund (People Empowered Community Driven Development with DSWD and NAPC)	250	50
30. ARMM: Comprehensive Peace and Development Intervention	8,592	8,592
31. DOTC-MRT: Purchase of additional MRT cars	4,500	-
32. LGU Support Fund	6,500	6,500
33. Various Other Local Projects	6,500	6,500
34. Development Assistance to the Province of Quezon	750	750
TOTAL	**45,165**	**44,000**

C. Summary

	Fund Sources Identified for Approval (In Million Php)	**Allotments for Release**	**Cash Requirements for Release in FY 2011**
Total	72,110	72,110	70,895
GOCCs		26,895	26,895
NGAs/LGUs		45,165	44,000

For His Excellency's Consideration

(Sgd.) FLORENCIO B. ABAD

[/] APPROVED
[ ] DISAPPROVED

(Sgd.) H.E. BENIGNO S. AQUINO, III
OCT 12, 2011

The memorandum of October 12, 2011 was followed by another memorandum for the President dated December 12, 2011[116] requesting omnibus authority to consolidate the savings and unutilized balances for fiscal year 2011. Pertinent portions of the memorandum of December 12, 2011 read:

> MEMORANDUM FOR THE PRESIDENT
>
> x x x x
>
> SUBJECT: Omnibus Authority to Consolidate Savings/Unutilized Balances and its Realignment
>
> DATE: December 12, 2011
>
> This is to respectfully request for the grant of Omnibus Authority to consolidate savings/unutilized balances in FY 2011 corresponding to completed or discontinued projects which may be pooled to fund additional projects or expenditures.
>
> In addition, Mr. President, this measure will allow us to undertake projects even if their implementation carries over to 2012 without necessarily impacting on our budget deficit cap next year.
>
> BACKGROUND
>
> 1.0 The DBM, during the course of performance reviews conducted on the agencies' operations, particularly on the implementation of their projects/activities, including expenses incurred in undertaking the same, have identified savings out of the 2011 General Appropriations Act. Said savings correspond to completed or discontinued projects under certain departments/agencies which may be pooled, for the following:
>
> 1.1 to provide for new activities which have not been anticipated during preparation of the budget;
>
> 1.2 to augment additional requirements of on-going priority projects; and
>
> 1.3 to provide for deficiencies under the Special Purpose Funds, e.g., PDAF, Calamity Fund, Contingent Fund
>
> 1.4 to cover for the modifications of the original allotment class allocation as a result of on-going priority projects and implementation of new activities
>
> 2.0 x x x x
>
> 2.1 x x x
>
> 2.2 x x x
>
> ON THE UTILIZATION OF POOLED SAVINGS
>
> 3.0 It may be recalled that the President approved our request for omnibus authority to pool savings/unutilized balances in FY 2010 last November 25, 2010.

[116] Id. at 537-540.

4.0 It is understood that in the utilization of the pooled savings, the DBM shall secure the corresponding approval/confirmation of the President. Furthermore, it is assured that the proposed realignments shall be within the authorized Expenditure level.

5.0 Relative thereto, we have identified some expenditure items that may be sourced from the said pooled appropriations in FY 2010 that will expire on December 31, 2011 and appropriations in FY 2011 that may be declared as savings to fund additional expenditures.

5.1 The 2010 Continuing Appropriations (pooled savings) is proposed to be spent for the projects that we have identified to be immediate actual disbursements considering that this same fund source will expire on December 31, 2011.

5.2 With respect to the proposed expenditure items to be funded from the FY 2011 Unreleased Appropriations, most of these are the same projects for which the DBM is directed by the Office of the President, thru the Executive Secretary, to source funds.

6.0 Among others, the following are such proposed additional projects that have been chosen given their multiplier impact on economy and infrastructure development, their beneficial effect on the poor, and their translation into disbursements. Please note that we have classified the list of proposed projects as follows:

7.0 x x x

FOR THE PRESIDENT'S APPROVAL

8.0 Foregoing considered, may we respectfully request for the President's approval for the following:

8.1 Grant of omnibus authority to consolidate FY 2011 savings/unutilized balances and its realignment; and

8.2 The proposed additional projects identified for funding.

For His Excellency's consideration and approval.

(Sgd.)

[/] APPROVED
[ ] DISAPPROVED

(Sgd.) H.E. BENIGNO S. AQUINO, III
DEC 21, 2011

Substantially identical requests for authority to pool savings and to fund proposed projects were contained in various other memoranda from Sec. Abad dated June 25, 2012,[117] September 4, 2012,[118] December 19, 2012,[119] May 20, 2013,[120] and September 25, 2013.[121] The President

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[117] Id. at 549-555.
[118] Id. at 563-568.
[119] Id. at 579-587.
[120] Id. at 601-608.
[121] This memorandum was a request to fund the rehabilitation plan for the Typhoon Pablo-stricken areas in Mindanao amounting to ₱10.534 billion to be sourced from the (i) 2012 and 2013 pooled savings from programmed appropriations, and (ii) revenue windfall collections during the first semester comprising the 2013 Unprogrammed Fund, Respondent's 1st Evidence Packet, p. 609-B.

apparently approved all the requests, withholding approval only of the proposed projects contained in the June 25, 2012 memorandum, as borne out by his marginal note therein to the effect that the proposed projects should still be "subject to further discussions."[122]

In order to implement the June 25, 2012 memorandum, Sec. Abad issued NBC No. 541 (*Adoption of Operational Efficiency Measure – Withdrawal of Agencies' Unobligated Allotments as of June 30, 2012*),[123] reproduced herein as follows:

NATIONAL BUDGET CIRCULAR **No. 541**
July 18, 2012

TO : All Heads of Departments/Agencies/State Universities and Colleges and other Offices of the National Government, Budget and Planning Officers; Heads of Accounting Units and All Others Concerned

SUBJECT : **Adoption of Operational Efficiency Measure – Withdrawal of Agencies' Unobligated Allotments as of June 30, 2012**

1.0 **Rationale**

The DBM, as mandated by Executive Order (EO) No. 292 (Administrative Code of 1987), periodically reviews and evaluates the departments/agencies' efficiency and effectiveness in utilizing budgeted funds for the delivery of services and production of goods, consistent with the government priorities.

In the event that a measure is necessary to further improve the operational efficiency of the government, the President is authorized to suspend or stop further use of funds allotted for any agency or expenditure authorized in the General Appropriations Act. Withdrawal and pooling of unutilized allotment releases can be effected by DBM based on authority of the President, as mandated under Sections 38 and 39, Chapter 5, Book VI of EO 292.

For the first five months of 2012, the National Government has not met its spending targets. In order to accelerate spending and sustain the fiscal targets during the year, expenditure measures have to be implemented to optimize the utilization of available resources.

Departments/agencies have registered low spending levels, in terms of obligations and disbursements per initial review of their 2012 performance. To enhance agencies' performance, the DBM conducts continuous consultation meetings and/or send call-up letters, requesting them to identify slow-moving programs/projects and the factors/issues affecting their performance (both pertaining to internal systems and those which are outside the agencies' spheres of control). Also, they are asked to formulate strategies and improvement plans for the rest of 2012.

Notwithstanding these initiatives, some departments/agencies have continued

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[122] *Rollo* (G.R. No. 209287), p. 555, (Respondent's 1st Evidence Packet).
[123] Id. at 185-189, (Respondent's Manifestation dated December 6, 2013).

to post low obligation levels as of end of first semester, thus resulting to substantial unobligated allotments.

In line with this, the President, per directive dated June 27, 2012 authorized the withdrawal of unobligated allotments of agencies with low levels of obligations as of **June 30, 2012**, both for continuing and current allotments. This measure will allow the maximum utilization of available allotments to fund and undertake other priority expenditures of the national government.

2.0 **Purpose**

2.1 To provide the conditions and parameters on the withdrawal of unobligated allotments of agencies as of June 30, 2012 to fund priority and/or fast-moving programs/projects of the national government;

2.2 To prescribe the reports and documents to be used as bases on the withdrawal of said unobligated allotments; and

2.3 To provide guidelines in the utilization or reallocation of the withdrawn allotments.

3.0 **Coverage**

3.1 These guidelines shall cover the withdrawal of unobligated allotments as of June 30, 2012 of all national government agencies (NGAs) charged against FY 2011 Continuing Appropriation (R.A. No.10147) and FY 2012 Current Appropriation (R.A. No. 10155), pertaining to:

3.1.1 Capital Outlays (CO);

3.1.2 Maintenance and Other Operating Expenses (MOOE) related to the implementation of programs and projects, as well as capitalized MOOE; and

3.1.3 Personal Services corresponding to unutilized pension benefits declared as savings by the agencies concerned based on their updated/validated list of pensioners.

3.2 The withdrawal of unobligated allotments may cover the identified programs, projects and activities of the departments/agencies reflected in the DBM list shown as **Annex A** or specific programs and projects as may be identified by the agencies.

4.0 **Exemption**

These guidelines shall **not** apply to the following:

4.1 NGAs

4.1.1 Constitutional Offices/Fiscal Autonomy Group, granted fiscal autonomy under the Philippine Constitution; and

4.1.2 State Universities and Colleges, adopting the Normative Funding allocation scheme i.e., distribution of a predetermined budget ceiling.

4.2 Fund Sources

4.2.1 Personal Services other than pension benefits;

4.2.2 MOOE items earmarked for specific purposes or subject to realignment conditions per General Provisions of the GAA:

- Confidential and Intelligence Fund;
- Savings from Traveling, Communication, Transportation and Delivery, Repair and Maintenance, Supplies and Materials and Utility which shall be used for the grant of Collective Negotiation Agreement incentive benefit;
- Savings from mandatory expenditures which can be realigned only in the last quarter after taking into consideration the agency's full year requirements, i.e., Petroleum, Oil and Lubricants, Water, Illumination, Power Services, Telephone, other Communication Services and Rent.

4.2.3 Foreign-Assisted Projects (loan proceeds and peso counterpart);

4.2.4 Special Purpose Funds such as: E-Government Fund, International Commitments Fund, PAMANA, Priority Development Assistance Fund, Calamity Fund, Budgetary Support to GOCCs and Allocation to LGUs, among others;

4.2.5 Quick Response Funds; and

4.2.6 Automatic Appropriations i.e., Retirement Life Insurance Premium and Special Accounts in the General Fund.

5.0 **Guidelines**

5.1 National government agencies shall continue to undertake procurement activities notwithstanding the implementation of the policy of withdrawal of unobligated allotments until the end of the third quarter, FY 2012. Even without the allotments, the agency shall proceed in undertaking the procurement processes (i.e., procurement planning up to the conduct of bidding but short of awarding of contract) pursuant to GPPB Circular Nos. 02-2008 and 01-2009 and DBM Circular Letter No. 2010-9.

5.2 For the purpose of determining the amount of unobligated allotments that shall be withdrawn, all departments/agencies/operating units (OUs) shall submit to DBM not later than **July 30, 2012**, the following budget accountability reports as of June 30, 2012;

- Statement of Allotments, Obligations and Balances (SAOB);
- Financial Report of Operations (FRO); and
- Physical Report of Operations.

5.3 In the absence of the June 30, 2012 reports cited under item 5.2 of this Circular, the agency's latest report available shall be used by DBM as basis for withdrawal of allotment. The DBM shall compute/approximate the agency's obligation level as of June 30 to derive its unobligated allotments as of same period. Example: If the March 31 SAOB or FRO reflects actual

obligations of P 800M then the June 30 obligation level shall approximate to P1,600 M (i.e., P800 M x 2 quarters).

5.4 All released allotments in FY 2011 charged against R.A. No. 10147 which remained unobligated as of June 30, 2012 **shall be immediately considered for withdrawal**. This policy is based on the following considerations:

5.4.1 The departments/agencies' approved priority programs and projects are assumed to be implementation-ready and doable during the given fiscal year; and

5.4.2 The practice of having substantial carryover appropriations may imply that the agency has a slower-than-programmed implementation capacity **or** agency tends to implement projects within a two-year timeframe.

5.5. Consistent with the President's directive, the DBM shall, based on evaluation of the reports cited above and results of consultations with the departments/agencies, withdraw the unobligated allotments as of June 30, 2012 through issuance of negative Special Allotment Release Orders (SAROs).

5.6 DBM shall prepare and submit to the President, a report on the magnitude of withdrawn allotments. The report shall highlight the agencies which failed to submit the June 30 reports required under this Circular.

5.7 The withdrawn allotments may be:

5.7.1 Reissued for the **original** programs and projects of the agencies/OUs concerned, from which the allotments were withdrawn;

5.7.2 Realigned to cover additional funding for **other existing** programs and projects of the agency/OU; or

5.7.3 Used to augment existing programs and projects of **any agency** and to fund priority programs and projects **not considered** in the 2012 budget but expected to be started or implemented during the current year.

5.8 For items 5.7.1 and 5.7.2 above, agencies/OUs concerned may submit to DBM a Special Budget Request (SBR), supported with the following:

5.8.1 Physical and Financial Plan (PFP);

5.8.2 Monthly Cash Program (MCP); and

5.8.3 Proof that the project/activity has started the procurement processes i.e., Proof of Posting and/or Advertisement of the Invitation to Bid.

5.9 The deadline for submission of request/s pertaining to these categories shall be until the end of the third quarter i.e., **September 30, 2012**. After said cut-off date, the withdrawn allotments shall be pooled and form part of the overall savings of the national government.

5.10 Utilization of the consolidated withdrawn allotments for other priority programs and projects as cited under item 5.7.3 of this Circular, shall be subject to approval of the President. Based on the approval of the President, DBM shall issue the SARO to cover the approved priority expenditures subject to submission by the agency/OU concerned of the SBR and supported with PFP and MCP.

5.11 It is understood that all releases to be made out of the withdrawn allotments (both 2011 and 2012 unobligated allotments) shall be within the approved Expenditure Program level of the national government for the current year. The SAROs to be issued shall properly disclose the appropriation source of the release to determine the extent of allotment validity, as follows:

- For charges under R.A. 10147 – allotments shall be valid up to December 31, 2012; and
- For charges under R.A. 10155 – allotments shall be valid up to December 31, 2013.

5.12 Timely compliance with the submission of existing BARs and other reportorial requirements is reiterated for monitoring purposes.

6.0 **Effectivity**

This circular shall take effect immediately.

(Sgd.) **FLORENCIO B. ABAD**
Secretary

As can be seen, NBC No. 541 specified that the unobligated allotments of all agencies and departments as of June 30, 2012 that were charged against the continuing appropriations for fiscal year 2011 and the 2012 GAA (R.A. No. 10155) were subject to withdrawal through the issuance of negative SAROs, but such allotments could be either: (1) reissued for the original PAPs of the concerned agencies from which they were withdrawn; or (2) realigned to cover additional funding for other existing PAPs of the concerned agencies; or (3) used to augment existing PAPs of any agency and to fund priority PAPs not considered in the 2012 budget but expected to be started or implemented in 2012. Financing the other priority PAPs was made subject to the approval of the President. Note here that NBC No. 541 used terminologies like “realignment” and “augmentation” in the application of the withdrawn unobligated allotments.

Taken together, all the issuances showed how the DAP was to be implemented and funded, that is — (1) by declaring “savings” coming from the various departments and agencies derived from pooling unobligated allotments and withdrawing unreleased appropriations; (2) releasing unprogrammed funds; and (3) applying the “savings” and unprogrammed funds to augment existing PAPs or to support other priority PAPs.

c. **DAP was not an appropriation measure; hence, no appropriation law was required to adopt or to implement it**

Petitioners Syjuco, Luna, Villegas and PHILCONSA state that Congress did not enact a law to establish the DAP, or to authorize the disbursement and release of public funds to implement the DAP. Villegas, PHILCONSA, IBP, Araullo, and COURAGE observe that the appropriations funded under the DAP were not included in the 2011, 2012 and 2013 GAAs. To petitioners IBP, Araullo, and COURAGE, the DAP, being actually an appropriation that set aside public funds for public use, should require an enabling law for its validity. VACC maintains that the DAP, because it involved huge allocations that were separate and distinct from the GAAs, circumvented and duplicated the GAAs without congressional authorization and control.

The petitioners contend in unison that based on how it was developed and implemented the DAP violated the mandate of Section 29(1), Article VI of the 1987 Constitution that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

The OSG posits, however, that no law was necessary for the adoption and implementation of the DAP because of its being neither a fund nor an appropriation, but a program or an administrative system of prioritizing spending; and that the adoption of the DAP was by virtue of the authority of the President as the Chief Executive to ensure that laws were faithfully executed.

We agree with the OSG's position.

The DAP was a government policy or strategy designed to stimulate the economy through accelerated spending. In the context of the DAP's adoption and implementation being a function pertaining to the Executive as the main actor during the **Budget Execution Stage** under its constitutional mandate to faithfully execute the laws, including the GAAs, Congress did not need to legislate to adopt or to implement the DAP. Congress could appropriate but would have nothing more to do during the **Budget Execution Stage**. Indeed, appropriation was the act by which Congress "designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense."[124]As pointed out in *Gonzales v. Raquiza*:[125] '"In a strict sense,

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[124] Blacks' Law Dictionary (6th Ed.) p. 102.
[125] G.R. No. 29627, December 19, 1989, 180 SCRA 254.

appropriation has been defined 'as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury,' while appropriation made by law refers to 'the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors.'"[126]

On the other hand, the President, in keeping with his duty to faithfully execute the laws, had sufficient discretion during the execution of the budget to adapt the budget to changes in the country's economic situation.[127] He could adopt a plan like the DAP for the purpose. He could pool the savings and identify the PAPs to be funded under the DAP. The pooling of savings pursuant to the DAP, and the identification of the PAPs to be funded under the DAP did not involve appropriation in the strict sense because the money had been already set apart from the public treasury by Congress through the GAAs. In such actions, the Executive did not usurp the power vested in Congress under Section 29(1), Article VI of the Constitution.

3.
Unreleased appropriations and withdrawn unobligated allotments under the DAP were not savings, and the use of such appropriations contravened Section 25(5), Article VI of the 1987 Constitution.

Notwithstanding our appreciation of the DAP as a plan or strategy validly adopted by the Executive to ramp up spending to accelerate economic growth, the challenges posed by the petitioners constrain us to dissect the mechanics of the actual execution of the DAP. The management and utilization of the public wealth inevitably demands a most careful scrutiny of whether the Executive's implementation of the DAP was consistent with the Constitution, the relevant GAAs and other existing laws.

a. Although executive discretion and flexibility are necessary in the execution of the budget, any transfer of appropriated funds should conform to Section 25(5), Article VI of the Constitution

We begin this dissection by reiterating that Congress cannot anticipate all issues and needs that may come into play once the budget reaches its

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[126] Id. at 160.

[127] Daniel Tomassi, "Budget Execution," in Budgeting and Budgetary Institutions, ed. Anwar Shah (Washington: The International Bank for Reconstruction and Development/World Bank, 2007), p. 279, available at http://siteresources.worldbank.org/PSGLP/Resources/BudgetingandBudgetaryInstitutions.pdf (last accessed April 9, 2014).

execution stage. Executive discretion is necessary at that stage to achieve a sound fiscal administration and assure effective budget implementation. The heads of offices, particularly the President, require flexibility in their operations under performance budgeting to enable them to make whatever adjustments are needed to meet established work goals under changing conditions.[128] In particular, the power to transfer funds can give the President the flexibility to meet unforeseen events that may otherwise impede the efficient implementation of the PAPs set by Congress in the GAA.

Congress has traditionally allowed much flexibility to the President in allocating funds pursuant to the GAAs,[129] particularly when the funds are grouped to form lump sum accounts.[130] It is assumed that the agencies of the Government enjoy more flexibility when the GAAs provide broader appropriation items.[131] This flexibility comes in the form of policies that the Executive may adopt during the budget execution phase. The DAP – as a strategy to improve the country's economic position – was one policy that the President decided to carry out in order to fulfill his mandate under the GAAs.

Denying to the Executive flexibility in the expenditure process would be counterproductive. In *Presidential Spending Power*,[132] Prof. Louis Fisher, an American constitutional scholar whose specialties have included budget policy, has justified extending discretionary authority to the Executive thusly:

> [T]he impulse to deny discretionary authority altogether should be resisted. There are many number of reasons why obligations and outlays by administrators may have to differ from appropriations by legislators. Appropriations are made many months, and sometimes years, in advance of expenditures. Congress acts with imperfect knowledge in trying to legislate in fields that are highly technical and constantly undergoing change. New circumstances will develop to make obsolete and mistaken the decisions reached by Congress at the appropriation stage. It is not practicable for Congress to adjust to each new development by passing separate supplemental appropriation bills. **Were Congress to control expenditures by confining administrators to narrow statutory details, it would perhaps protect its power of the purse but it would not protect the purse itself. The realities and complexities of public policy require executive discretion for the sound management of public funds.**
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128 Budget Operations Manual (Revised Edition) 1968, Office of the President, Budget Commission.

129 Fujitani and Shirck, *Executive Spending Powers: The Capacity to Reprogram, Rescind, and Impound*. Harvard Law School, Federal Budget Policy Seminar, Briefing Paper No. 8, p. 1, available at http://www.law.harvard.edu/faculty/hjackson/ExecutiveSpendingPowers_8.pdf (last accessed December 3, 2013).

130 Id. at 8.

131 Id.

132 Princeton University Press, 1975, pp. 261-262.

> x x x The expenditure process, by its very nature, requires substantial discretion for administrators. They need to exercise judgment and take responsibility for their actions, but those actions ought to be directed toward executing congressional, not administrative policy. Let there be discretion, but channel it and use it to satisfy the programs and priorities established by Congress.

In contrast, by allowing to the heads of offices some power to transfer funds within their respective offices, the Constitution itself ensures the fiscal autonomy of their offices, and at the same time maintains the separation of powers among the three main branches of the Government. The Court has recognized this, and emphasized so in *Bengzon v. Drilon*,[133] *viz*:

> The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

In the case of the President, the power to transfer funds from one item to another within the Executive has not been the mere offshoot of established usage, but has emanated from law itself. It has existed since the time of the American Governors-General.[134] Act No. 1902 (*An Act authorizing the Governor-General to direct any unexpended balances of appropriations be returned to the general fund of the Insular Treasury and to transfer from the general fund moneys which have been returned thereto*), passed on May 18, 1909 by the First Philippine Legislature,[135] was the first enabling law that granted statutory authority to the President to transfer funds. The authority was without any limitation, for the Act explicitly empowered the Governor-General to transfer any unexpended balance of appropriations for any bureau or office to another, and to spend such balance as if it had originally been appropriated for that bureau or office.

From 1916 until 1920, the appropriations laws set a cap on the amounts of funds that could be transferred, thereby limiting the power to transfer funds. Only 10% of the amounts appropriated for contingent or miscellaneous expenses could be transferred to a bureau or office, and the

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133 G.R. No. 103524, April 15, 1992, 208 SCRA 133, 150.

134 Waldby, Odell, *Philippine Public Fiscal Administration*, Institute of Public Administration, University of the Philippines, 1954, p. 319.

135 The Philippine Commission, which lasted from 1900 to 1916, comprised the Upper House of the Philippines Legislature. The Philippine Assembly, which existed from 1907 to 1916, served in its time as the Lower House of the Philippine Legislature.

transferred funds were to be used to cover deficiencies in the appropriations also for miscellaneous expenses of said bureau or office.

In 1921, the ceiling on the amounts of funds to be transferred from items under miscellaneous expenses to any other item of a certain bureau or office was removed.

During the Commonwealth period, the power of the President to transfer funds continued to be governed by the GAAs despite the enactment of the Constitution in 1935. It is notable that the 1935 Constitution did not include a provision on the power to transfer funds. At any rate, a shift in the extent of the President's power to transfer funds was again experienced during this era, with the President being given more flexibility in implementing the budget. The GAAs provided that the power to transfer all or portions of the appropriations in the Executive Department could be made in the "interest of the public, as the President may determine."[136]

In its time, the 1971 Constitutional Convention wanted to curtail the President's seemingly unbounded discretion in transferring funds.[137] Its Committee on the Budget and Appropriation proposed to prohibit the transfer of funds among the separate branches of the Government and the independent constitutional bodies, but to allow instead their respective heads to augment items of appropriations from savings in their respective budgets under certain limitations.[138] The clear intention of the Convention was to further restrict, not to liberalize, the power to transfer appropriations.[139] Thus, the Committee on the Budget and Appropriation initially considered setting stringent limitations on the power to augment, and suggested that the augmentation of an item of appropriation could be made "by not more than ten percent if the original item of appropriation to be augmented does not exceed one million pesos, or by not more than five percent if the original item of appropriation to be augmented exceeds one million pesos."[140] But two members of the Committee objected to the ₱1,000,000.00 threshold, saying that the amount was arbitrary and might not be reasonable in the future. The Committee agreed to eliminate the ₱1,000,000.00 threshold, and settled on the ten percent limitation.[141]

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136 Waldby, *op. cit*., pp. 321-322.

137 In his Sponsorship Speech, Delegate Honesto Mendoza, the Chairman of the Committee on Budget and Appropriations of the 1971 Constitutional Convention, stated that it was deemed "absolutely necessary to remove the anomaly of illegal fund transfers of public funds to projects or purposes not contemplated by law."

138 Minutes of the Meeting, Commission on Budget and Appropriations, 1971 Constitutional Convention, November 4, 1971, p. 18.

139 Minutes of the Meeting, Commission on Budget and Appropriations, 1971 Constitutional Convention, January 13, 1972, p. 10.

140 Id. at 9.

141 Id. at 10-11.

In the end, the ten percent limitation was discarded during the plenary of the Convention, which adopted the following final version under Section 16, Article VIII of the 1973 Constitution, to wit:

> (5) No law shall be passed authorizing any transfer of appropriations; however, the President, the Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may by law be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

The 1973 Constitution explicitly and categorically prohibited the transfer of funds from one item to another, unless Congress enacted a law authorizing the President, the Prime Minister, the Speaker, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions to transfer funds for the purpose of augmenting any item from savings in another item in the GAA of their respective offices. The leeway was limited to augmentation only, and was further constricted by the condition that the funds to be transferred should come from savings from another item in the appropriation of the office.[142]

On July 30, 1977, President Marcos issued PD No. 1177, providing in its Section 44 that:

> Section 44. *Authority to Approve Fund Transfers.* **The President shall have the authority to transfer any fund appropriated for the different departments, bureaus, offices and agencies of the Executive Department which are included in the General Appropriations Act, to any program, project, or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment.**
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> The President shall, likewise, have the authority to augment any appropriation of the Executive Department in the General Appropriations Act, from savings in the appropriations of another department, bureau, office or agency within the Executive Branch, pursuant to the provisions of Article VIII, Section 16 (5) of the Constitution.

In *Demetria v. Alba*, however, the Court struck down the first paragraph of Section 44 for contravening Section 16(5) of the 1973 Constitution, ruling:

> Paragraph 1 of Section 44 of P.D. No. 1177 unduly over-extends the privilege granted under said Section 16. It empowers the President to indiscriminately transfer funds from one department, bureau, office or agency of the Executive Department to any program, project or activity of any department, bureau or office included in the General Appropriations Act or approved after its enactment, **without regard as to whether or not**

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142 *Demetria v. Alba*, No. L-71977, February 27, 1987, 148 SCRA 208.

> **the funds to be transferred are actually savings in the item from which the same are to be taken, or whether or not the transfer is for the purpose of augmenting the item to which said transfer is to be made**. It does not only completely disregard the standards set in the fundamental law, thereby amounting to an undue delegation of legislative powers, but likewise goes beyond the tenor thereof. Indeed, such constitutional infirmities render the provision in question null and void.[143]

It is significant that *Demetria* was promulgated 25 days after the ratification by the people of the 1987 Constitution, whose Section 25(5) of Article VI is identical to Section 16(5), Article VIII of the 1973 Constitution, to wit:

> Section 25. x x x
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> x x x x
>
> 5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.
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The foregoing history makes it evident that the Constitutional Commission included Section 25(5), *supra*, to keep a tight rein on the exercise of the power to transfer funds appropriated by Congress by the President and the other high officials of the Government named therein. The Court stated in *Nazareth v. Villar*:[144]

> In the funding of current activities, projects, and programs, the general rule should still be that the budgetary amount contained in the appropriations bill is the extent Congress will determine as sufficient for the budgetary allocation for the proponent agency. The only exception is found in Section 25 (5), Article VI of the Constitution, by which the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions are authorized to transfer appropriations *to augment* any item in the GAA for their respective offices from the savings in other items of their respective appropriations. The plain language of the constitutional restriction leaves no room for the petitioner's posture, which we should now dispose of as untenable.
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> It bears emphasizing that the exception in favor of the high officials named in Section 25(5), Article VI of the Constitution limiting the authority to transfer savings only to augment another item in the GAA is

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143 Id. at 214-215.

144 G.R. No. 188635, January 29, 2013, 689 SCRA 385, 402-404.

strictly but reasonably construed as exclusive. As the Court has expounded in *Lokin, Jr. v. Commission on Elections*:

> When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.
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> The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. Consequently, the existence of an exception in a statute clarifies the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction.

Accordingly, we should interpret Section 25(5), *supra*, in the context of a limitation on the President's discretion over the appropriations during the **Budget Execution Phase**.

b. Requisites for the valid transfer of appropriated funds under Section 25(5), Article VI of the 1987 Constitution

The transfer of appropriated funds, to be valid under Section 25(5), *supra,* must be made upon a concurrence of the following requisites, namely:

(1) There is a law authorizing the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions to transfer funds within their respective offices;

(2) The funds to be transferred are savings generated from the appropriations for their respective offices; and

(3) The purpose of the transfer is to augment an item in the general appropriations law for their respective offices.

b.1. First Requisite –GAAs of 2011 and 2012 lacked valid provisions to authorize transfers of funds under the DAP; hence, transfers under the DAP were unconstitutional

Section 25(5), *supra*, not being a self-executing provision of the Constitution, must have an implementing law for it to be operative. That law, generally, is the GAA of a given fiscal year. To comply with the first requisite, the GAAs should expressly authorize the transfer of funds.

Did the GAAs expressly authorize the transfer of funds?

In the 2011 GAA, the provision that gave the President and the other high officials the authority to transfer funds was Section 59, as follows:

> Section 59. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions enjoying fiscal autonomy, and the Ombudsman are hereby authorized to augment **any item in this Act** from savings in other items of their respective appropriations.

In the 2012 GAA, the empowering provision was Section 53, to wit:

> Section 53. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions enjoying fiscal autonomy, and the Ombudsman are hereby authorized to augment **any item in this Act** from savings in other items of their respective appropriations.

In fact, the foregoing provisions of the 2011 and 2012 GAAs were cited by the DBM as justification for the use of savings under the DAP.[145]

A reading shows, however, that the aforequoted provisions of the GAAs of 2011 and 2012 were textually unfaithful to the Constitution for not carrying the phrase "*for their respective offices*" contained in Section 25(5), *supra*. The impact of the phrase "*for their respective offices*" was to authorize only transfers of funds within their offices (*i.e.*, in the case of the

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[145] Constitutional and Legal Bases < http://www.dbm.gov.ph/?page_id=7364> (visited March 27, 2014)

President, the transfer was to an item of appropriation within the Executive). The provisions carried a different phrase ("*to augment any item in this Act*"), and the effect was that the 2011 and 2012 GAAs thereby literally allowed the transfer of funds from savings to augment *any item* in the GAAs even if the item belonged to an office outside the Executive. To that extent did the 2011 and 2012 GAAs contravene the Constitution. At the very least, the aforequoted provisions cannot be used to claim authority to transfer appropriations from the Executive to another branch, or to a constitutional commission.

Apparently realizing the problem, Congress inserted the omitted phrase in the counterpart provision in the 2013 GAA, to wit:

> Section 52. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions enjoying fiscal autonomy, and the Ombudsman are hereby authorized to use savings in their respective appropriations to augment actual deficiencies incurred for the current year in any item **of their respective appropriations**.

Even had a valid law authorizing the transfer of funds pursuant to Section 25(5), *supra*, existed, there still remained two other requisites to be met, namely: that the source of funds to be transferred were savings from appropriations within the respective offices; and that the transfer must be for the purpose of augmenting an item of appropriation within the respective offices.

b.2. Second Requisite – There were no savings from which funds could be sourced for the DAP

Were the funds used in the DAP actually savings?

The petitioners claim that the funds used in the DAP — the unreleased appropriations and withdrawn unobligated allotments — were not actual savings within the context of Section 25(5), *supra*, and the relevant provisions of the GAAs. Belgica argues that "savings" should be understood to refer to the excess money after the items that needed to be funded have been funded, or those that needed to be paid have been paid pursuant to the budget.[146] The petitioners posit that there could be savings only when the PAPs for which the funds had been appropriated were actually implemented and completed, or finally discontinued or abandoned. They insist that savings could not be realized with certainty in the middle of the fiscal year;

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[146] *Rollo* (G.R. No. 209442), p. 7.

and that the funds for "slow-moving" PAPs could not be considered as savings because such PAPs had not actually been abandoned or discontinued yet.[147] They stress that NBC No. 541, by allowing the withdrawn funds to be reissued to the "original program or project from which it was withdrawn," conceded that the PAPs from which the supposed savings were taken had not been completed, abandoned or discontinued.[148]

The OSG represents that "savings" were "appropriations balances," being the difference between the appropriation authorized by Congress and the actual amount allotted for the appropriation; that the definition of "savings" in the GAAs set only the parameters for determining when savings occurred; that it was still the President (as well as the other officers vested by the Constitution with the authority to augment) who ultimately determined when savings actually existed because savings could be determined only during the stage of budget execution; that the President must be given a wide discretion to accomplish his tasks; and that the withdrawn unobligated allotments were savings inasmuch as they were clearly "portions or balances of any programmed appropriation…free from any obligation or encumbrances which are (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized…"

We partially find for the petitioners.

In ascertaining the meaning of savings, certain principles should be borne in mind. The **first principle** is that Congress wields the power of the purse. Congress decides how the budget will be spent; what PAPs to fund; and the amounts of money to be spent for each PAP. The **second principle** is that the Executive, as the department of the Government tasked to enforce the laws, is expected to faithfully execute the GAA and to spend the budget in accordance with the provisions of the GAA.[149] The Executive is expected to faithfully implement the PAPs for which Congress allocated funds, and to limit the expenditures within the allocations, unless exigencies result to deficiencies for which augmentation is authorized, subject to the conditions provided by law. The **third principle** is that in making the President's power to augment operative under the GAA, Congress recognizes the need for flexibility in budget execution. In so doing, Congress diminishes its own power of the purse, for it delegates a fraction of its power to the Executive. But Congress does not thereby allow the Executive to override its authority over the purse as to let the Executive exceed its delegated authority. And the **fourth principle** is that savings should be actual. "Actual" denotes

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147 *Rollo* (G.R. No. 209260), p. 17; (G.R. No. 209517), p. 19; (G.R. No. 209155), p. 11; (G.R. No. 209135), p. 13.

148 *Rollo* (G.R. No. 209287), p. 6; (G.R. No. 209517), p. 19; (G.R. No. 209442), p. 23.

149 Section 17, Article VII of the 1987 Constitution provides:

Section 17. The President shall have control of all the executive departments, bureaus, and offices. **He shall ensure that the laws be faithfully executed**.

something that is real or substantial, or something that exists presently in fact, as opposed to something that is merely theoretical, possible, potential or hypothetical.[150]

The foregoing principles caution us to construe savings strictly against expanding the scope of the power to augment. It is then indubitable that the power to augment was to be used only when the purpose for which the funds had been allocated were already satisfied, or the need for such funds had ceased to exist, for only then could savings be properly realized. This interpretation prevents the Executive from unduly transgressing Congress' power of the purse.

The definition of "savings" in the GAAs, particularly for 2011, 2012 and 2013, reflected this interpretation and made it operational, *viz*:

> Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) **still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized**; (ii) **from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay**; **and (iii) from appropriations balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost**.

The three instances listed in the GAAs' aforequoted definition were a sure indication that savings could be generated only upon the purpose of the appropriation being fulfilled, or upon the need for the appropriation being no longer existent.

The phrase "*free from any obligation or encumbrance*" in the definition of savings in the GAAs conveyed the notion that the appropriation was at that stage when the appropriation was already obligated and the appropriation was already released. This interpretation was reinforced by the enumeration of the three instances for savings to arise, which showed that the appropriation referred to had reached the agency level. It could not be otherwise, considering that only when the appropriation had reached the agency level could it be determined whether (a) the PAP for which the appropriation had been authorized was completed, finally discontinued, or abandoned; or (b) there were vacant positions and leaves of absence without pay; or (c) the required or planned targets, programs and services were realized at a lesser cost because of the implementation of measures resulting in improved systems and efficiencies.

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[150] *Sanchez v. Commission on Audit*, G.R. No. 127545, April 23, 2008, 552 SCRA 471, 497.

The DBM declares that part of the savings brought under the DAP came from "pooling of unreleased appropriations such as unreleased Personnel Services appropriations which will lapse at the end of the year, unreleased appropriations of slow moving projects and discontinued projects per Zero-Based Budgeting findings."

The declaration of the DBM by itself does not state the clear legal basis for the treatment of unreleased or unalloted appropriations as savings. The fact alone that the appropriations are unreleased or unalloted is a mere description of the status of the items as unalloted or unreleased. They have not yet ripened into categories of items from which savings can be generated. Appropriations have been considered "released" if there has already been an allotment or authorization to incur obligations and disbursement authority. This means that the DBM has issued either an ABM (for those not needing clearance), or a SARO (for those needing clearance), and consequently an NCA, NCAA or CDC, as the case may be. Appropriations remain unreleased, for instance, because of noncompliance with documentary requirements (like the Special Budget Request), or simply because of the unavailability of funds. But the appropriations do not actually reach the agencies to which they were allocated under the GAAs, and have remained with the DBM technically speaking. *Ergo*, unreleased appropriations refer to appropriations with allotments but without disbursement authority.

For us to consider unreleased appropriations as savings, unless these met the statutory definition of savings, would seriously undercut the congressional power of the purse, because such appropriations had not even reached and been used by the agency concerned vis-à-vis the PAPs for which Congress had allocated them. However, if an agency has unfilled positions in its *plantilla* and did not receive an allotment and NCA for such vacancies, appropriations for such positions, although unreleased, may already constitute savings for that agency under the second instance.

Unobligated allotments, on the other hand, were encompassed by the first part of the definition of "savings" in the GAA, that is, as "portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance." But the first part of the definition was further qualified by the three enumerated instances of when savings would be realized. As such, unobligated allotments could not be indiscriminately declared as savings without first determining whether any of the three instances existed. This signified that the DBM's withdrawal of unobligated allotments had disregarded the definition of savings under the GAAs.

Justice Carpio has validly observed in his Separate Concurring Opinion that MOOE appropriations are deemed divided into twelve monthly allocations within the fiscal year; hence, savings could be generated monthly from the excess or unused MOOE appropriations other than the Mandatory Expenditures and Expenditures for Business-type Activities because of the physical impossibility to obligate and spend such funds as MOOE for a period that already lapsed. Following this observation, MOOE for future months are not savings and cannot be transferred.

The DBM's Memorandum for the President dated June 25, 2012 (which became the basis of NBC No. 541) stated:

> ON THE AUTHORITY TO WITHDRAW UNOBLIGATED ALLOTMENTS
>
> 5.0 The DBM, during the course of performance reviews conducted on the agencies' operations, particularly on the implementation of their projects/activities, including expenses incurred in undertaking the same, have been continuously calling the attention of all National Government agencies (NGAs) with low levels of obligations as of end of the first quarter to speed up the implementation of their programs and projects in the second quarter.
>
> 6.0 Said reminders were made in a series of consultation meetings with the concerned agencies and with call-up letters sent.
>
> 7.0 Despite said reminders and the availability of funds at the department's disposal, the level of financial performance of some departments registered below program, with the targeted obligations/disbursements for the first semester still not being met.
>
> 8.0 In order to maximize the use of the available allotment, all unobligated balances as of June 30, 2012, both for continuing and current allotments shall be withdrawn and pooled to fund fast moving programs/projects.
>
> 9.0 It may be emphasized that **the allotments to be withdrawn will be based on the list of slow moving projects to be identified by the agencies and their catch up plans to be evaluated by the DBM**.

It is apparent from the foregoing text that the withdrawal of unobligated allotments would be based on whether the allotments pertained to slow-moving projects, or not. However, NBC No. 541 did not set in clear terms the criteria for the withdrawal of unobligated allotments, *viz*:

> 3.1. These guidelines shall cover the withdrawal of unobligated allotments as of June 30, 2012 of all national government agencies (NGAs) charged against FY 2011 Continuing Appropriation (R.A. No. 10147) and FY 2012 Current Appropriation (R.A. No. 10155), pertaining to:

> 3.1.1 Capital Outlays (CO);
>
> 3.1.2 Maintenance and Other Operating Expenses (MOOE) related to the implementation of programs and projects, as well as capitalized MOOE; and
>
> 3.1.3 Personal Services corresponding to unutilized pension benefits declared as savings by the agencies concerned based on their undated/validated list of pensioners.

A perusal of its various provisions reveals that NBC No. 541 targeted the "withdrawal of unobligated allotments of agencies with low levels of obligations"[151] "to fund priority and/or fast-moving programs/projects."[152] But the fact that the withdrawn allotments could be "[r]eissued for the original programs and projects of the agencies/OUs concerned, from which the allotments were withdrawn"[153] supported the conclusion that the PAPs had not yet been finally discontinued or abandoned. Thus, the purpose for which the withdrawn funds had been appropriated was not yet fulfilled, or did not yet cease to exist, rendering the declaration of the funds as savings impossible.

Worse, NBC No. 541 immediately considered for withdrawal all released allotments in 2011 charged against the 2011 GAA that had remained unobligated based on the following considerations, to wit:

> 5.4.1 The departments/agencies' approved priority programs and projects are assumed to be implementation-ready and doable during the given fiscal year; and
>
> 5.4.2 The practice of having substantial carryover appropriations may imply that the agency has a slower-than-programmed implementation capacity **or** agency tends to implement projects within a two-year timeframe.

Such withdrawals pursuant to NBC No. 541, the circular that affected the unobligated allotments for continuing and current appropriations as of June 30, 2012, disregarded the 2-year period of availability of the appropriations for MOOE and capital outlay extended under Section 65, General Provisions of the 2011 GAA, *viz*:

> Section 65. Availability of Appropriations. — Appropriations for MOOE and capital outlays authorized in this Act shall be available **for release and obligation for the purpose specified**, and under the same special provisions applicable thereto, **for a period extending to one fiscal**

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[151] NBC No. 541 (Rationale); see also NBC No. 541 (5.3), which stated that, in case of failure to submit budget accountability reports, the DBM would compute/approximate the agency's obligation level as of June 30 to derive its unobligated allotments as of the same period.

[152] NBC No. 541 (2.1).

[153] NBC No. 541 (5.7.1).

> **year after the end of the year in which such items were appropriated**: PROVIDED, That appropriations for MOOE and capital outlays under R.A. No. 9970 shall be made available up to the end of FY 2011: PROVIDED, FURTHER, That a report on these releases and obligations shall be submitted to the Senate Committee on Finance and the House Committee on Appropriations.

and Section 63 General Provisions of the 2012 GAA, *viz*:

> Section 63. Availability of Appropriations. — Appropriations for **MOOE and capital outlays** authorized in this Act shall be available **for release and obligation for the purpose specified**, and under the same special provisions applicable thereto, **for a period extending to one fiscal year after the end of the year in which such items were appropriated**: PROVIDED, That a report on these releases and obligations shall be submitted to the Senate Committee on Finance and the House Committee on Appropriations, either in printed form or by way of electronic document.[154]

Thus, another alleged area of constitutional infirmity was that the DAP and its relevant issuances shortened the period of availability of the appropriations for MOOE and capital outlays.

Congress provided a one-year period of availability of the funds for all allotment classes in the 2013 GAA (R.A. No. 10352), to wit:

> Section 63. Availability of Appropriations.— All appropriations authorized in this Act shall be available for release and obligation for the purposes specified, and under the same special provisions applicable thereto, until the end of FY 2013: PROVIDED, That a report on these releases and obligations shall be submitted to the Senate Committee on Finance and House Committee on Appropriations, either in printed form or by way of electronic document.

Yet, in his memorandum for the President dated May 20, 2013, Sec. Abad sought omnibus authority to consolidate savings and unutilized balances to fund the DAP *on a quarterly basis*, *viz*:

> 7.0 If the level of financial performance of some department will register below program, even with the availability of funds at their disposal, the targeted obligations/disbursements for each quarter will not be

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[154] These GAA provisions are reflected, respectively, in NBC No. 528 (*Guidelines on the Release of funds for FY 2011*), thus:
3.9.1.2 Appropriations under FY 2011 GAA, R.A. 10147 shall be available for release and obligations **up to December 31, 2012** with the exception of PS which shall lapse at the end of 2011.
and NBC No. 535 (*Guidelines on the Release of funds for FY 2012*), thus:
3.9.1.2 Appropriations under CY 2012 GAA, R.A. 10155 shall be available for release and obligations **up to December 31, 2013** with the exception of PS which shall lapse at the end of 2012.

> met. It is important to note that these funds will lapse at the end of the fiscal year if these remain unobligated.
>
> 8.0 To maximize the use of the available allotment, all unobligated balances **at the end of every quarter**, both for continuing and current allotments shall be withdrawn and pooled to fund fast moving programs/projects.
>
> 9.0 It may be emphasized that the allotments to be withdrawn will be based on the list of slow moving projects to be identified by the agencies and their catch up plans to be evaluated by the DBM.

The validity period of the affected appropriations, already given the brief lifespan of one year, was further shortened to only a quarter of a year under the DBM's memorandum dated May 20, 2013.

The petitioners accuse the respondents of forcing the generation of savings in order to have a larger fund available for discretionary spending. They aver that the respondents, by withdrawing unobligated allotments in the middle of the fiscal year, in effect deprived funding for PAPs with existing appropriations under the GAAs.[155]

The respondents belie the accusation, insisting that the unobligated allotments were being withdrawn upon the instance of the implementing agencies based on their own assessment that they could not obligate those allotments pursuant to the President's directive for them to spend their appropriations as quickly as they could in order to ramp up the economy.[156]

We agree with the petitioners.

Contrary to the respondents' insistence, the withdrawals were upon the initiative of the DBM itself. The text of NBC No. 541 bears this out, to wit:

> 5.2 For the purpose of determining the amount of unobligated allotments that shall be withdrawn, all departments/agencies/operating units (OUs) **shall submit** to DBM not later than **July 30, 2012**, the following budget accountability reports as of June 30, 2012;
>
> - Statement of Allotments, Obligation and Balances (SAOB);
> - Financial Report of Operations (FRO); and
> - Physical Report of Operations.
>
> 5.3 In the absence of the June 30, 2012 reports cited under item 5.2 of this Circular, the agency's latest report available shall be used by

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155 *Rollo* (G.R. No. 209442), p. 23.
156 *Rollo* (G.R. No. 209287), p. 1060, (Memorandum for the Respondents).

> DBM as basis for withdrawal of allotment. The DBM shall compute/approximate the agency's obligation level as of June 30 to derive its unobligated allotments as of same period. Example: If the March 31 SAOB or FRO reflects actual obligations of P 800M then the June 30 obligation level shall approximate to P1,600 M (i.e., P800 M x 2 quarters).

The petitioners assert that no law had authorized the withdrawal and transfer of unobligated allotments and the pooling of unreleased appropriations; and that the unbridled withdrawal of unobligated allotments and the retention of appropriated funds were akin to the impoundment of appropriations that could be allowed only in case of "unmanageable national government budget deficit" under the GAAs,[157] thus violating the provisions of the GAAs of 2011, 2012 and 2013 prohibiting the retention or deduction of allotments.[158]

In contrast, the respondents emphasize that NBC No. 541 adopted a spending, not saving, policy as a last-ditch effort of the Executive to push agencies into actually spending their appropriations; that such policy did not amount to an impoundment scheme, because impoundment referred to the decision of the Executive to refuse to spend funds for political or ideological reasons; and that the withdrawal of allotments under NBC No. 541 was made pursuant to Section 38, Chapter 5, Book VI of the *Administrative Code*, by which the President was granted the authority to suspend or otherwise stop further expenditure of funds allotted to any agency whenever in his judgment the public interest so required.

The assertions of the petitioners are upheld. The withdrawal and transfer of unobligated allotments and the pooling of unreleased appropriations were invalid for being bereft of legal support. Nonetheless, such withdrawal of unobligated allotments and the retention of appropriated funds cannot be considered as impoundment.

According to *Philippine Constitution Association v. Enriquez*:[159] "Impoundment refers to a refusal by the President, for whatever reason, to spend funds made available by Congress. It is the failure to spend or obligate budget authority of any type." Impoundment under the GAA is understood to mean the retention or deduction of appropriations. The 2011 GAA authorized impoundment only in case of unmanageable National Government budget deficit, to wit:

> Section 66. Prohibition Against Impoundment of Appropriations. No appropriations authorized under this Act shall be impounded through

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157 *Rollo* (209287), pp. 18-19.
158 *Rollo* (209442), pp. 21-22.
159 G.R. No. 113105, August 19, 1994, 235 SCRA 506, 545.

> retention or deduction, unless in accordance with the rules and regulations to be issued by the DBM: PROVIDED, That all the funds appropriated for the purposes, programs, projects and activities authorized under this Act, except those covered under the Unprogrammed Fund, shall be released pursuant to Section 33 (3), Chapter 5, Book VI of E.O. No. 292.
>
> Section 67. Unmanageable National Government Budget Deficit. Retention or deduction of appropriations authorized in this Act shall be effected only in cases where there is an unmanageable national government budget deficit.
>
> Unmanageable national government budget deficit as used in this section shall be construed to mean that (i) the actual national government budget deficit has exceeded the quarterly budget deficit targets consistent with the full-year target deficit as indicated in the FY 2011 Budget of Expenditures and Sources of Financing submitted by the President and approved by Congress pursuant to Section 22, Article VII of the Constitution, or (ii) there are clear economic indications of an impending occurrence of such condition, as determined by the Development Budget Coordinating Committee and approved by the President.

The 2012 and 2013 GAAs contained similar provisions.

The withdrawal of unobligated allotments under the DAP should not be regarded as impoundment because it entailed only the transfer of funds, not the retention or deduction of appropriations.

Nor could Section 68 of the 2011 GAA (and the similar provisions of the 2012 and 2013 GAAs) be applicable. They uniformly stated:

> Section 68. Prohibition Against Retention/Deduction of Allotment. Fund releases from appropriations provided in this Act shall be transmitted intact or in full to the office or agency concerned. No retention or deduction as reserves or overhead shall be made, except as authorized by law, or upon direction of the President of the Philippines. The COA shall ensure compliance with this provision to the extent that sub-allotments by agencies to their subordinate offices are in conformity with the release documents issued by the DBM.

The provision obviously pertained to the retention or deduction of allotments upon their release from the DBM, which was a different matter altogether. The Court should not expand the meaning of the provision by applying it to the withdrawal of allotments.

The respondents rely on Section 38, Chapter 5, Book VI of the *Administrative Code of 1987* to justify the withdrawal of unobligated allotments. But the provision authorized only the suspension or stoppage of further expenditures, not the withdrawal of unobligated allotments, to wit:

> Section 38. *Suspension of Expenditure of Appropriations.* - Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees.

Moreover, the DBM did not suspend or stop further expenditures in accordance with Section 38, *supra*, but instead transferred the funds to other PAPs.

It is relevant to remind at this juncture that the balances of appropriations that remained unexpended at the end of the fiscal year were to be reverted to the General Fund. This was the mandate of Section 28, Chapter IV, Book VI of the *Administrative Code*, to wit:

> Section 28. *Reversion of Unexpended Balances of Appropriations, Continuing Appropriations.* - Unexpended balances of appropriations authorized in the General Appropriation Act shall revert to the unappropriated surplus of the General Fund at the end of the fiscal year and shall not thereafter be available for expenditure except by subsequent legislative enactment: Provided, that appropriations for capital outlays shall remain valid until fully spent or reverted: provided, further, that continuing appropriations for current operating expenditures may be specifically recommended and approved as such in support of projects whose effective implementation calls for multi-year expenditure commitments: provided, finally, that the President may authorize the use of savings realized by an agency during given year to meet non-recurring expenditures in a subsequent year.
>
> The balances of continuing appropriations shall be reviewed as part of the annual budget preparation process and the preparation process and the President may approve upon recommendation of the Secretary, the reversion of funds no longer needed in connection with the activities funded by said continuing appropriations.

The Executive could not circumvent this provision by declaring unreleased appropriations and unobligated allotments as savings prior to the end of the fiscal year.

b.3. Third Requisite – No funds from savings could be transferred under the DAP to augment deficient items not provided in the GAA

The third requisite for a valid transfer of funds is that the purpose of the transfer should be "to augment an item in the general appropriations law for the respective offices." The term "augment" means to enlarge or increase in size, amount, or degree.[160]

The GAAs for 2011, 2012 and 2013 set as a condition for augmentation that the appropriation for the PAP item to be augmented must be deficient, to wit: –

> x x x Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation, or subsequent evaluation of needed resources, is **determined to be deficient**. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

In other words, an appropriation for any PAP must first be determined to be deficient before it could be augmented from savings. Note is taken of the fact that the 2013 GAA already made this quite clear, thus:

> Section 52. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions enjoying fiscal autonomy, and the Ombudsman are hereby authorized to use savings in their respective appropriations **to augment actual deficiencies** incurred for the current year in any item of their respective appropriations.

As of 2013, a total of ₱144.4 billion worth of PAPs were implemented through the DAP.[161] Of this amount ₱82.5 billion were released in 2011 and ₱54.8 billion in 2012.[162] Sec. Abad has reported that 9% of the total DAP releases were applied to the PAPs identified by the legislators.[163]

The petitioners disagree, however, and insist that the DAP supported the following PAPs that had not been covered with appropriations in the respective GAAs, namely:

(i) ₱1.5 billion for the Cordillera People's Liberation Army;
(ii) ₱1.8 billion for the Moro National Liberation Front;
(iii) ₱700 million for assistance to Quezon Province;[164]
(iv) ₱50 million to P100 (million) each to certain senators;[165]

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160 Webster's Third New International Dictionary.
161 TSN, January 28, 2014, p. 12.
162 DBM, "Sec. Abad: DAP used to buoy spending, not to buy votes," available at http://www.dbm.gov.ph/?p=7328 (last accessed March 28, 2014).
163 DBM, "Sec. Abad: DAP used to buoy spending, not to buy votes," available at http://www.dbm.gov.ph/?p=7328 (last accessed March 28, 2014).
164 *Rollo* (G.R. No. 209136), p. 18.

(v) ₱10 billion for the relocation of families living along dangerous zones under the National Housing Authority;
(vi) ₱10 billion and P20 billion equity infusion under the Bangko Sentral;
(vii) ₱5.4 billion landowners' compensation under the Department of Agrarian Reform;
(viii) ₱8.6 billion for the ARMM comprehensive peace and development program;
(ix) ₱6.5 billion augmentation of LGU internal revenue allotments
(x) ₱5 billion for crucial projects like tourism road construction under the Department of Tourism and the Department of Public Works and Highways;
(xi) ₱1.8 billion for the DAR-DPWH Tulay ng Pangulo;
(xii) ₱1.96 billion for the DOH-DPWH rehabilitation of regional health units; and
(xiii) ₱4 billion for the DepEd-PPP school infrastructure projects.[166]

In refutation, the OSG argues that a total of 116 DAP-financed PAPs were implemented, had appropriation covers, and could properly be accounted for because the funds were released following and pursuant to the standard practices adopted by the DBM.[167] In support of its argument, the OSG has submitted **seven evidence packets** containing memoranda, SAROs, and other pertinent documents relative to the implementation and fund transfers under the DAP.[168]

Upon careful review of the documents contained in the **seven evidence packets**, we conclude that the "savings" pooled under the DAP were allocated to PAPs that were not covered by any appropriations in the pertinent GAAs.

For example, the SARO issued on December 22, 2011 for the highly-vaunted Disaster Risk, Exposure, Assessment and Mitigation (DREAM) project under the Department of Science and Technology (DOST) covered the amount of ₱1.6 Billion,[169] broken down as follows:

APPROPRIATION CODE	PARTICULARS	AMOUNT AUTHORIZED
A.03.a.01.a	Generation of new knowledge and technologies and research capability building in priority areas identified as strategic to National Development	
	Personnel Services	₱ 43,504,024
	Maintenance and Other Operating Expenses	1,164,517,589
	Capital Outlays	391,978,387
		₱ 1,600,000,000

165 *Rollo* (G.R. No. 209136), p. 18; (G.R. No. 209442), p. 13.
166 *Rollo* (G.R. No. 209155), p. 9.
167 *Rollo* (G.R. No. 209287), pp. 68-104; (Respondents' Consolidated Comment).
168 *Rollo* (G.R. No. 209287), pp. 524-922.
169 SARO No. E-11-02253; *Rollo* (G.R. No. 209287), p. 628, (Respondents' 2nd Evidence Packet).

the pertinent provision of the 2011 GAA (R.A. No. 10147) showed that Congress had appropriated only ₱537,910,000 for MOOE, but nothing for personnel services and capital outlays, to wit:

	Personnel Services	Maintenance and Other Operating Expenditures	Capital Outlays	TOTAL
III. Operations				
a. Funding Assistance to Science and Technology Activities	177,406,000	1,887,365,000	49,090,000	2,113,861,000
1. Central Office		1,554,238,000		1,554,238,000
a. Generation of new knowledge and technologies and research capability building in priority areas identified as strategic to National Development		537,910,000		537,910,000

Aside from this transfer under the DAP to the DREAM project exceeding by almost 300% the appropriation by Congress for the program *Generation of new knowledge and technologies and research capability building in priority areas identified as strategic to National Development*, the Executive allotted funds for personnel services and capital outlays. The Executive thereby substituted its will to that of Congress. Worse, the Executive had not earlier proposed any amount for personnel services and capital outlays in the NEP that became the basis of the 2011 GAA.[170]

It is worth stressing in this connection that the failure of the GAAs to set aside any amounts for an expense category sufficiently indicated that Congress purposely did not see fit to fund, much less implement, the PAP concerned. This indication becomes clearer when even the President himself did not recommend in the NEP to fund the PAP. The consequence was that any PAP requiring expenditure that did not receive any appropriation under the GAAs could only be a new PAP, any funding for which would go beyond the authority laid down by Congress in enacting the GAAs. That happened in some instances under the DAP.

In relation to the December 22, 2011 SARO issued to the Philippine Council for Industry, Energy and Emerging Technology Research and Development (DOST-PCIEETRD)[171] for *Establishment of the Advanced Failure Analysis Laboratory*, which reads:

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[170] See FY2011 National Expenditure Program, p. 1186, available at http://www.dbm.gov.ph/wp-content/uploads/NEP2011/DOSTG-GAA.pdf.

[171] SARO No. E-14-02254; *Rollo* (G.R. No. 209287), p. 630, (Respondents' 2nd Evidence Packet).

APPROPRIATION CODE	PARTICULARS	AMOUNT AUTHORIZED
A.02.a	Development, integration and coordination of the National Research System for Industry, Energy and Emerging Technology and Related Fields Capital Outlays	₱ 300,000,000

the appropriation code and the particulars appearing in the SARO did not correspond to the program specified in the GAA, whose particulars were *Research and Management Services* (inclusive of the following activities: (1) *Technological and Economic Assessment for Industry, Energy and Utilities*; (2) *Dissemination of Science and Technology Information*; and (3) *Management of PCIERD Information System for Industry, Energy and Utilities*. Even assuming that *Development, integration and coordination of the National Research System for Industry, Energy and Emerging Technology and Related Fields* – the particulars stated in the SARO – could fall under the broad program description of *Research and Management Services* – as appearing in the SARO, it would nonetheless remain a new activity by reason of its not being specifically stated in the GAA. As such, the DBM, sans legislative authorization, could not validly fund and implement such PAP under the DAP.

In defending the disbursements, however, the OSG contends that the Executive enjoyed sound discretion in implementing the budget given the generality in the language and the broad policy objectives identified under the GAAs;[172] and that the President enjoyed unlimited authority to spend the initial appropriations under his authority to declare and utilize savings,[173] and in keeping with his duty to faithfully execute the laws.

Although the OSG rightly contends that the Executive was authorized to spend in line with its mandate to faithfully execute the laws (which included the GAAs), such authority did not translate to unfettered discretion that allowed the President to substitute his own will for that of Congress. He was still required to remain faithful to the provisions of the GAAs, given that his power to spend pursuant to the GAAs was but a delegation to him from Congress. Verily, the power to spend the public wealth resided in Congress, not in the Executive.[174] Moreover, leaving the spending power of

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172 *Rollo* (G.R. No. 209287), p. 27, (Respondents' Memorandum).
173 TSN, January 28, 2014, p. 26.
174 Section 29(1), Article VI of the 1987 Constitution provides that no money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

the Executive unrestricted would threaten to undo the principle of separation of powers. [175]

Congress acts as the guardian of the public treasury in faithful discharge of its power of the purse whenever it deliberates and acts on the budget proposal submitted by the Executive.[176] Its power of the purse is touted as the very foundation of its institutional strength,[177] and underpins "all other legislative decisions and regulating the balance of influence between the legislative and executive branches of government."[178] Such enormous power encompasses the capacity to generate money for the Government, to appropriate public funds, and to spend the money.[179] Pertinently, when it exercises its power of the purse, Congress wields control by specifying the PAPs for which public money should be spent.

It is the President who proposes the budget but it is Congress that has the final say on matters of appropriations.[180] For this purpose, appropriation involves two governing principles, namely: (1) "a Principle of the Public Fisc, asserting that all monies received from whatever source by any part of the government are public funds;" and (2) "a Principle of Appropriations Control, prohibiting expenditure of any public money without legislative authorization."[181] To conform with the governing principles, the Executive cannot circumvent the prohibition by Congress of an expenditure for a PAP by resorting to either public or private funds.[182] Nor could the Executive transfer appropriated funds resulting in an increase in the budget for one PAP, for by so doing the appropriation for another PAP is necessarily decreased. The terms of both appropriations will thereby be violated.

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[175] According to Allen and Miller. *The Constitutionality of Executive Spending Powers*, Harvard Law School, Federal Budget Policy Seminar, Briefing Paper No. 38, p. 16, available at http://www.law.harvard.edu/faculty/hjackson/ConstitutionalityOfExecutive_38.pdf (December 3, 2013):

> If the executive could spend under its own authority, "then the constitutional grants of power to the legislature to raise taxes and to borrow money would be for naught because the Executive could effectively compel such legislation by spending at will. The '[L]egislative Powers' referred to in section 8 of Article I would then be shared by the President in his executive as well as in his legislative capacity" **The framers intended the powers to spend and the powers to tax to be "two sides of the same coin," and for good reason. Separating the two powers — or giving the President one without the other — might reduce accountability and result in excessive spending: the President would be able to spend and leave Congress to deal with the political repercussions of financing such spending through heightened tax rates**.

[176] Bernas, *op. cit*., at 811.

[177] Wander and Herbert (Ed.), Congressional Budgeting: Politics, Process and Power (1984), p. 3.

[178] Wander and Herbert (Ed.), Congressional Budgeting: Politics, Process and Power (1984), at 133.

[179] Bernas, *op. cit*., at 812.

[180] *Philippine Constitution Association v. Enriquez*, supra, note 159, at 522.

[181] Stith, Kate, "Congress' Power of the Purse" (1988), Faculty Scholarship Series, Paper No. 1267, p. 1345, available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2282&context=fss_papers (last accessed March 29, 2014).

[182] Id. at 1377.

b.4 Third Requisite – Cross-border augmentations from savings were prohibited by the Constitution

By providing that the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the Heads of the Constitutional Commissions may be authorized to augment any item in the GAA "for their respective offices," Section 25(5), *supra*, has delineated borders between their offices, such that funds appropriated for one office are prohibited from crossing over to another office even in the guise of augmentation of a deficient item or items. Thus, we call such transfers of funds **cross-border transfers** or **cross-border augmentations**.

To be sure, the phrase "respective offices" used in Section 25(5), *supra*, refers to the entire Executive, with respect to the President; the Senate, with respect to the Senate President; the House of Representatives, with respect to the Speaker; the Judiciary, with respect to the Chief Justice; the Constitutional Commissions, with respect to their respective Chairpersons.

Did any cross-border transfers or augmentations transpire?

During the oral arguments on January 28, 2014, Sec. Abad admitted making some cross-border augmentations, to wit:

> JUSTICE BERSAMIN:
>
> **Alright, the whole time that you have been Secretary of Department of Budget and Management, did the Executive Department ever redirect any part of savings of the National Government under your control cross border to another department?**
>
> SECRETARY ABAD:
>
> **Well, in the Memos that we submitted to you, such an instance, Your Honor**
>
> JUSTICE BERSAMIN:
>
> **Can you tell me two instances? I don't recall having read your material.**
>
> SECRETARY ABAD:
>
> **Well, the first instance had to do with a request from the House of Representatives. They started building their e-library in 2010 and they had a budget for about 207 Million but they lack about 43 Million to complete its 250 Million requirements. Prior to that, the COA, in an audit observation informed the Speaker that they had to continue with that construction otherwise the whole**

building, as well as the equipments therein may suffer from serious deterioration. And at that time, since the budget of the House of Representatives was not enough to complete 250 Million, they wrote to the President requesting for an augmentation of that particular item, which was granted, Your Honor. The second instance in the Memos is a request from the Commission on Audit. At the time they were pushing very strongly the good governance programs of the government and therefore, part of that is a requirement to conduct audits as well as review financial reports of many agencies. And in the performance of that function, the Commission on Audit needed information technology equipment as well as hire consultants and litigators to help them with their audit work and for that they requested funds from the Executive and the President saw that it was important for the Commission to be provided with those IT equipments and litigators and consultants and the request was granted, Your Honor.

JUSTICE BERSAMIN:

These cross border examples, cross border augmentations were not supported by appropriations…

SECRETARY ABAD:

They were, we were augmenting existing items within their… (interrupted)

JUSTICE BERSAMIN:

No, appropriations before you augmented because this is a cross border and the tenor or text of the Constitution is quite clear as far as I am concerned. It says here, "The power to augment may only be made to increase any item in the General Appropriations Law for their respective offices." Did you not feel constricted by this provision?

SECRETARY ABAD:

Well, as the Constitution provides, the prohibition we felt was on the transfer of appropriations, Your Honor. What we thought we did was to transfer savings which was needed by the Commission to address deficiency in an existing item in both the Commission as well as in the House of Representatives; that's how we saw…(interrupted)

JUSTICE BERSAMIN:

So your position as Secretary of Budget is that you could do that?

SECRETARY ABAD:

In an extreme instances because…(interrupted)

JUSTICE BERSAMIN:

No, no, in all instances, extreme or not extreme, you could do that, that's your feeling.

SECRETARY ABAD:

Well, in that particular situation when the request was made by the Commission and the House of Representatives, we felt that we needed to respond because we felt…(interrupted).[183]

The records show, indeed, that funds amounting to ₱143,700,000.00 and ₱250,000,000.00 were transferred under the DAP respectively to the COA[184] and the House of Representatives.[185] Those transfers of funds, which constituted **cross-border augmentations** for being from the Executive to the COA and the House of Representatives, are graphed as follows:[186]

OFFICE	PURPOSE	DATE RELEASED	AMOUNT (In thousand pesos)	
			Reserve Imposed	Releases
Commission on Audit	IT Infrastructure Program and hiring of additional litigation experts	11/11/11		143,700
Congress – House of Representatives	Completion of the construction of the Legislative Library and Archives Building/ Congressional e-library	07/23/12	207,034 (Savings of HOR)	250,000

The respondents further stated in their memorandum that the President "made available" to the "Commission on Elections the savings of his department upon [its] request for funds…"[187] This was another instance of a **cross-border augmentation**.

The respondents justified all the **cross-border transfers** thusly:

> 99. The Constitution does not prevent the President from transferring savings of his department to another department upon the latter's request, provided it is the recipient department that uses such funds to augment its own appropriation. In such a case, the President merely gives the other department access to public funds but he cannot dictate how they shall be applied by that department whose fiscal autonomy is guaranteed by the Constitution.[188]

In the oral arguments held on February 18, 2014, Justice Vicente V. Mendoza, representing Congress, announced a different characterization of the cross-border transfers of funds as in the nature of "aid" instead of "augmentation," *viz*:

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183 TSN of January 28, 2014, pp. 42-45.
184 *Rollo* (G.R. No. 209287), p. 883, (Respondents' 7th Evidence Packet).
185 Id. at 562, (Respondents' 1st Evidence Packet).
186 See the OSG's Compliance dated February 14, 2014, Annex B, p. 2.
187 *Rollo* (G.R. No. 209287), p. 35, (Memorandum for the Respondents).
188 Id.

HONORABLE MENDOZA:

The cross-border transfers, if Your Honors please, is not an application of the DAP. What were these cross-border transfers? They are transfers of savings as defined in the various General Appropriations Act. So, that makes it similar to the DAP, the use of savings. There was a cross-border which appears to be in violation of Section 25, paragraph 5 of Article VI, in the sense that the border was crossed. **But never has it been claimed that the purpose was to augment a deficient item in another department of the government or agency of the government. The cross-border transfers, if Your Honors please, were in the nature of [aid] rather than augmentations. Here is a government entity separate and independent from the Executive Department solely in need of public funds. The President is there 24 hours a day, 7 days a week. He's in charge of the whole operation although six or seven heads of government offices are given the power to augment. Only the President stationed there and in effect in-charge and has the responsibility for the failure of any part of the government. You have election, for one reason or another, the money is not enough to hold election. There would be chaos if no money is given as an aid, not to augment, but as an aid to a department like COA. The President is responsible in a way that the other heads, given the power to augment, are not.** So, he cannot very well allow this, if Your Honor please.[189]

JUSTICE LEONEN:

May I move to another point, maybe just briefly. I am curious that the position now, I think, of government is that some transfers of savings is now considered to be, if I'm not mistaken, aid not augmentation. Am I correct in my hearing of your argument?

HONORABLE MENDOZA:

That's our submission, if Your Honor, please.

JUSTICE LEONEN:

May I know, Justice, where can we situate this in the text of the Constitution? Where do we actually derive the concepts that transfers of appropriation from one branch to the other or what happened in DAP can be considered as aid? What particular text in the Constitution can we situate this?

HONORABLE MENDOZA:

There is no particular provision or statutory provision for that matter, if Your Honor please. It is drawn from the fact that the Executive is the executive in-charge of the success of the government.

JUSTICE LEONEN:

So, the residual powers labelled in *Marcos v. Manglapus* would be the basis for this theory of the government?

HONORABLE MENDOZA:

Yes, if Your Honor, please.

JUSTICE LEONEN:

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[189] TSN of February 18, 2014, p. 32.

> A while ago, Justice Carpio mentioned that the remedy is might be to go to Congress. That there are opportunities and there have been opportunities of the President to actually go to Congress and ask for supplemental budgets?
>
> HONORABLE MENDOZA:
> If there is time to do that, I would say yes.
>
> JUSTICE LEONEN:
> **So, the theory of aid rather than augmentation applies in extra-ordinary situation?**
>
> HONORABLE MENDOZA:
> **Very extra-ordinary situations.**
>
> JUSTICE LEONEN:
> **But Counsel, this would be new doctrine, in case?**
>
> HONORABLE MENDOZA:
> **Yes, if Your Honor please**.[190]

Regardless of the variant characterizations of the **cross-border transfers** of funds, the plain text of Section 25(5), *supra*, disallowing cross-border transfers was disobeyed. Cross-border transfers, whether as augmentation, or as aid, were prohibited under Section 25(5), *supra*.

4.
Sourcing the DAP from unprogrammed funds despite the original revenue targets not having been exceeded was invalid

Funding under the DAP were also sourced from unprogrammed funds provided in the GAAs for 2011, 2012, and 2013. The respondents stress, however, that the unprogrammed funds were not brought under the DAP as savings, but as separate sources of funds; and that, consequently, the release and use of unprogrammed funds were not subject to the restrictions under Section 25(5), *supra*.

The documents contained in the Evidence Packets by the OSG have confirmed that the unprogrammed funds were treated as separate sources of funds. Even so, the release and use of the unprogrammed funds were still subject to restrictions, for, to start with, the GAAs precisely specified the instances when the unprogrammed funds could be released and the purposes for which they could be used.

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[190] TSN of February 18, 2014, pp. 45-46.

The petitioners point out that a condition for the release of the unprogrammed funds was that the revenue collections must exceed revenue targets; and that the release of the unprogrammed funds was illegal because such condition was not met.[191]

The respondents disagree, holding that the release and use of the unprogrammed funds under the DAP were in accordance with the pertinent provisions of the GAAs. In particular, the DBM avers that the unprogrammed funds could be availed of when any of the following three instances occur, to wit: (1) the revenue collections exceeded the original revenue targets proposed in the BESFs submitted by the President to Congress; (2) new revenues were collected or realized from sources not originally considered in the BESFs; or (3) newly-approved loans for foreign-assisted projects were secured, or when conditions were triggered for other sources of funds, such as perfected loan agreements for foreign-assisted projects.[192] This view of the DBM was adopted by all the respondents in their Consolidated Comment.[193]

The BESFs for 2011, 2012 and 2013 uniformly defined "unprogrammed appropriations" as appropriations that provided standby authority to incur additional agency obligations for priority PAPs when revenue collections exceeded targets, and when additional foreign funds are generated.[194] Contrary to the DBM's averment that there were three instances when unprogrammed funds could be released, the BESFs envisioned only two instances. The third mentioned by the DBM – the collection of new revenues from sources not originally considered in the BESFs – was not included. This meant that the collection of additional revenues from new sources did not warrant the release of the unprogrammed funds. Hence, even if the revenues not considered in the BESFs were collected or generated, the basic condition that the revenue collections should exceed the revenue targets must still be complied with in order to justify the release of the unprogrammed funds.

The view that there were only two instances when the unprogrammed funds could be released was bolstered by the following texts of the Special Provisions of the 2011 and 2012 GAAs, to wit:

2011 GAA

> 1. Release of Fund. The amounts authorized herein shall be released only when the **revenue collections exceed the original revenue targets**

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191 *Rollo* (G.R. No. 209287), p. 1027; (G.R. No. 209442), p. 8.

192 Other References: A Brief on the Special Purpose Funds in the National Budget <http://www.dbm.gov.ph/?page_id=7366> (visited May 2, 2014).

193 *Rollo* (G.R. No. 209287), p. 95.

194 Glossary of Terms, BESF.

> submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, including savings generated from programmed appropriations for the year: PROVIDED, **That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund**: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds: PROVIDED, FURTHERMORE, That if there are savings generated from the programmed appropriations for the first two quarters of the year, the DBM may, subject to the approval of the President, release the pertinent appropriations under the Unprogrammed Fund corresponding to only fifty percent (50%) of the said savings net of revenue shortfall: PROVIDED, FINALLY, That the release of the balance of the total savings from programmed appropriations for the year shall be subject to fiscal programming and approval of the President.

2012 GAA

> 1. Release of the Fund. The amounts authorized herein shall be released only when the **revenue collections exceed the original revenue targets** submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution: PROVIDED, **That collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund**: PROVIDED, FURTHER, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

As can be noted, the provisos in both provisions to the effect that "collections arising from sources not considered in the aforesaid original revenue targets may be used to cover releases from appropriations in this Fund" gave the authority to use such additional revenues for appropriations funded from the unprogrammed funds. They did not at all waive compliance with the basic requirement that revenue collections must still exceed the original revenue targets.

In contrast, the texts of the provisos with regard to additional revenues generated from newly-approved foreign loans were clear to the effect that the perfected loan agreement would be in itself "sufficient basis" for the issuance of a SARO to release the funds but only to the extent of the amount of the loan. In such instance, the revenue collections need not exceed the revenue targets to warrant the release of the loan proceeds, and the mere perfection of the loan agreement would suffice.

It can be inferred from the foregoing that under these provisions of the GAAs the additional revenues from sources not considered in the BESFs must be taken into account in determining if the revenue collections exceeded the revenue targets. The text of the relevant provision of the 2013 GAA, which was substantially similar to those of the GAAs for 2011 and 2012, already made this explicit, thus:

> 1. Release of the Fund. The amounts authorized herein shall be released only when the **revenue collections exceed the original revenue targets** submitted by the President of the Philippines to Congress pursuant to Section 22, Article VII of the Constitution, **including collections arising from sources not considered in the aforesaid original revenue target**, as certified by the BTr: PROVIDED, That in case of newly approved loans for foreign-assisted projects, the existence of a perfected loan agreement for the purpose shall be sufficient basis for the issuance of a SARO covering the loan proceeds.

Consequently, that there were additional revenues from sources not considered in the revenue target would not be enough. The total revenue collections must still exceed the original revenue targets to justify the release of the unprogrammed funds (other than those from newly-approved foreign loans).

The present controversy on the unprogrammed funds was rooted in the correct interpretation of the phrase "*revenue collections should exceed the original revenue targets*." The petitioners take the phrase to mean that the total revenue collections must exceed the total revenue target stated in the BESF, but the respondents understand the phrase to refer only to the collections for each source of revenue as enumerated in the BESF, with the condition being deemed complied with once the revenue collections from a particular source already exceeded the stated target.

The BESF provided for the following sources of revenue, with the corresponding revenue target stated for each source of revenue, to wit:

> **TAX REVENUES**
>
> Taxes on Net Income and Profits
> Taxes on Property
> Taxes on Domestic Goods and Services
> General Sales, Turnover or VAT
> Selected Excises on Goods
> Selected Taxes on Services
> Taxes on the Use of Goods or Property or Permission to Perform Activities
> Other Taxes
> Taxes on International Trade and Transactions

NON-TAX REVENUES

Fees and Charges
BTR Income
    Government Services
    Interest on NG Deposits
    Interest on Advances to Government Corporations
    Income from Investments
Interest on Bond Holdings
    Guarantee Fee
    Gain on Foreign Exchange
    NG Income Collected by BTr
        Dividends on Stocks
        NG Share from Airport Terminal Fee
        NG Share from PAGCOR Income
        NG Share from MIAA Profit
Privatization
Foreign Grants

Thus, when the Court required the respondents to submit a certification from the Bureau of Treasury (BTr) to the effect that the revenue collections had exceeded the original revenue targets,[195] they complied by submitting certifications from the BTr and Department of Finance (DOF) pertaining to only one identified source of revenue – the dividends from the shares of stock held by the Government in government-owned and controlled corporations.

To justify the release of the unprogrammed funds for 2011, the OSG presented the certification dated March 4, 2011 issued by DOF Undersecretary Gil S. Beltran, as follows:

> This is to certify that under the Budget for Expenditures and Sources of Financing for 2011, the programmed income from dividends from shares of stock in government-owned and controlled corporations is 5.5 billion.
>
> This is to certify further that based on the records of the Bureau of Treasury, the National Government has recorded dividend income amounting to ₱23.8 billion as of 31 January 2011.[196]

For 2012, the OSG submitted the certification dated April 26, 2012 issued by National Treasurer Roberto B. Tan, *viz*:

> This is to certify that the actual dividend collections remitted to the National Government for the period January to March 2012 amounted to ₱19.419 billion compared to the full year program of ₱5.5 billion for 2012.[197]

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195 TSN, January 28, 2014, p. 106.
196 *Rollo* (G.R. No. 209155), pp. 327 & 337.
197 Id. at 337 & 338.

And, finally, for 2013, the OSG presented the certification dated July 3, 2013 issued by National Treasurer Rosalia V. De Leon, to wit:

> This is to certify that the actual dividend collections remitted to the National Government for the period January to May 2013 amounted to ₱12.438 billion compared to the full year program of ₱10.0[198] billion for 2013.
>
> Moreover, the National Government accounted for the sale of the right to build and operate the NAIA expressway amounting to ₱11.0 billion in June 2013.[199]

The certifications reflected that by collecting dividends amounting to ₱23.8 billion in 2011, ₱19.419 billion in 2012, and ₱12.438 billion in 2013 the BTr had exceeded only the ₱5.5 billion in target revenues in the form of dividends from stocks in each of 2011 and 2012, and only the ₱10 billion in target revenues in the form of dividends from stocks in 2013.

However, the requirement that revenue collections exceed the original revenue targets was to be construed in light of the purpose for which the unprogrammed funds were incorporated in the GAAs as standby appropriations to support additional expenditures for certain priority PAPs should the revenue collections exceed the resource targets assumed in the budget or when additional foreign project loan proceeds were realized. The unprogrammed funds were included in the GAAs to provide ready cover so as not to delay the implementation of the PAPs should new or additional revenue sources be realized during the year.[200] Given the tenor of the certifications, the unprogrammed funds were thus not yet supported by the corresponding resources.[201]

The revenue targets stated in the BESF were intended to address the funding requirements of the proposed programmed appropriations. In contrast, the unprogrammed funds, as standby appropriations, were to be released only when there were revenues in excess of what the programmed appropriations required. As such, the revenue targets should be considered as a whole, not individually; otherwise, we would be dealing with artificial revenue surpluses. The requirement that revenue collections must exceed revenue target should be understood to mean that the revenue collections must exceed the total of the revenue targets stated in the BESF. Moreover, to release the unprogrammed funds simply because there was an excess revenue as to one source of revenue would be an unsound fiscal

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198 The target revenue for dividends on stocks of ₱5.5 billion was according to the BESF (2013), Table C.1 Revenue Program, by Source 2011-2013.

199 *Rollo* (G.R. No. 209155), pp. 337 & 339.

200 Other References: A Brief on the Special Purpose Funds in the National Budget <http://www.dbm.gov.ph/?page_id=7366> (visited May 2, 2014).

201 Basic Concepts in Budgeting <http://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B1.pdf> (visited May 2, 2014).

management measure because it would disregard the budget plan and foster budget deficits, in contravention of the Government's surplus budget policy.[202]

We cannot, therefore, subscribe to the respondents' view.

5.
Equal protection, checks and balances, and public accountability challenges

The DAP is further challenged as violative of the Equal Protection Clause, the system of checks and balances, and the principle of public accountability.

With respect to the challenge against the DAP under the Equal Protection Clause,[203] Luna argues that the implementation of the DAP was "unfair as it [was] selective" because the funds released under the DAP was not made available to all the legislators, with some of them refusing to avail themselves of the DAP funds, and others being unaware of the availability of such funds. Thus, the DAP practised "undue favoritism" in favor of select legislators in contravention of the Equal Protection Clause.

Similarly, COURAGE contends that the DAP violated the Equal Protection Clause because no reasonable classification was used in distributing the funds under the DAP; and that the Senators who supposedly availed themselves of said funds were differently treated as to the amounts they respectively received.

Anent the petitioners' theory that the DAP violated the system of checks and balances, Luna submits that the grant of the funds under the DAP to some legislators forced their silence about the issues and anomalies surrounding the DAP. Meanwhile, Belgica stresses that the DAP, by allowing the legislators to identify PAPs, authorized them to take part in the implementation and execution of the GAAs, a function that exclusively belonged to the Executive; that such situation constituted undue and unjustified legislative encroachment in the functions of the Executive; and that the President arrogated unto himself the power of appropriation vested in Congress because NBC No. 541 authorized the use of the funds under the DAP for PAPs not considered in the 2012 budget.

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202 Id.

203 The Equal Protection Clause is found in Section 1, Article III of the 1987 Constitution, to wit:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, **nor shall any person be denied the equal protection of the laws**.

Finally, the petitioners insist that the DAP was repugnant to the principle of public accountability enshrined in the Constitution,[204] because the legislators relinquished the power of appropriation to the Executive, and exhibited a reluctance to inquire into the legality of the DAP.

The OSG counters the challenges, stating that the supposed discrimination in the release of funds under the DAP could be raised only by the affected Members of Congress themselves, and if the challenge based on the violation of the Equal Protection Clause was really against the constitutionality of the DAP, the arguments of the petitioners should be directed to the entitlement of the legislators to the funds, not to the proposition that all of the legislators should have been given such entitlement.

The challenge based on the contravention of the Equal Protection Clause, which focuses on the release of funds under the DAP to legislators, lacks factual and legal basis. The allegations about Senators and Congressmen being unaware of the existence and implementation of the DAP, and about some of them having refused to accept such funds were unsupported with relevant data. Also, the claim that the Executive discriminated against some legislators on the ground alone of their receiving less than the others could not of itself warrant a finding of contravention of the Equal Protection Clause. The denial of equal protection of any law should be an issue to be raised only by parties who supposedly suffer it, and, in these cases, such parties would be the few legislators claimed to have been discriminated against in the releases of funds under the DAP. The reason for the requirement is that only such affected legislators could properly and fully bring to the fore when and how the denial of equal protection occurred, and explain why there was a denial in their situation. The requirement was not met here. Consequently, the Court was not put in the position to determine if there was a denial of equal protection. To have the Court do so despite the inadequacy of the showing of factual and legal support would be to compel it to speculate, and the outcome would not do justice to those for whose supposed benefit the claim of denial of equal protection has been made.

The argument that the release of funds under the DAP effectively stayed the hands of the legislators from conducting congressional inquiries into the legality and propriety of the DAP is speculative. That deficiency eliminated any need to consider and resolve the argument, for it is fundamental that speculation would not support any proper judicial

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[204] Article XI of the 1987 Constitution states:

Section 1. Public office is a public trust. **Public officers and employees must, at all times, be accountable to the people**, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

determination of an issue simply because nothing concrete can thereby be gained. In order to sustain their constitutional challenges against official acts of the Government, the petitioners must discharge the basic burden of proving that the constitutional infirmities actually existed.[205] Simply put, guesswork and speculation cannot overcome the presumption of the constitutionality of the assailed executive act.

We do not need to discuss whether or not the DAP and its implementation through the various circulars and memoranda of the DBM transgressed the system of checks and balances in place in our constitutional system. Our earlier expositions on the DAP and its implementing issuances infringing the doctrine of separation of powers effectively addressed this particular concern.

Anent the principle of public accountability being transgressed because the adoption and implementation of the DAP constituted an assumption by the Executive of Congress' power of appropriation, we have already held that the DAP and its implementing issuances were policies and acts that the Executive could properly adopt and do in the execution of the GAAs to the extent that they sought to implement strategies to ramp up or accelerate the economy of the country.

6.
Doctrine of operative fact was applicable

After declaring the DAP and its implementing issuances constitutionally infirm, we must now deal with the consequences of the declaration.

Article 7 of the *Civil Code* provides:

> Article 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.
>
> **When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.**
>
> **Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.**

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[205] See *Fariñas v. Executive Secretary*, G.R. No. 147387, December 10, 2003, 417 SCRA 503.

A legislative or executive act that is declared void for being unconstitutional cannot give rise to any right or obligation.[206] However, the generality of the rule makes us ponder whether rigidly applying the rule may at times be impracticable or wasteful. Should we not recognize the need to except from the rigid application of the rule the instances in which the void law or executive act produced an almost irreversible result?

The need is answered by the doctrine of operative fact. The doctrine, definitely not a novel one, has been exhaustively explained in *De Agbayani v. Philippine National Bank*:[207]

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.' Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.
>
> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
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> In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to

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[206] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013.

[207] G.R. No. L-23127, April 29, 1971, 38 SCRA 429, 434-435.

> invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official.'"

The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect.[208] But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play.[209] It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application.

We find the doctrine of operative fact applicable to the adoption and implementation of the DAP. Its application to the DAP proceeds from equity and fair play. The consequences resulting from the DAP and its related issuances could not be ignored or could no longer be undone.

To be clear, the doctrine of operative fact extends to a void or unconstitutional executive act. The term *executive act* is broad enough to include any and all acts of the Executive, including those that are quasi-legislative and quasi-judicial in nature. The Court held so in *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council*:[210]

> Nonetheless, the minority is of the persistent view that the applicability of the operative fact doctrine should be limited to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature. Thus, the minority concludes that the phrase 'executive act' used in the case of *De Agbayani v. Philippine National Bank* refers only to acts, orders, and rules and regulations that have the force and effect of law. The minority also made mention of the Concurring Opinion of Justice Enrique Fernando in *Municipality of Malabang v. Benito,* where it was supposedly made explicit that the operative fact doctrine applies to executive acts, which are ultimately quasi-legislative in nature.
>
> We disagree. For one, neither the *De Agbayani* case nor the *Municipality of Malabang* case elaborates what 'executive act' mean. Moreover, while orders, rules and regulations issued by the President or the executive branch have fixed definitions and meaning in the Administrative Code and jurisprudence, the phrase 'executive act' does not have such specific definition under existing laws. It should be noted that in the cases cited by the minority, nowhere can it be found that the

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208 *Yap v. Thenamaris Ship's Management*, G.R. No. 179532, May 30 2011, 649 SCRA 369, 381.
209 *League of Cities Philippines v. COMELEC*, G.R. No. 176951, August 24, 2010, 628 SCRA 819, 833.
210 G.R. No. 171101, November 22, 2011, 660 SCRA 525, 545-548.

term 'executive act' is confined to the foregoing. **Contrarily, the term 'executive act' is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court.**

A case in point is the concurrent appointment of Magdangal B. Elma (Elma) as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) which was declared unconstitutional by this Court in *Public Interest Center, Inc. v. Elma*. In said case, this Court ruled that the concurrent appointment of Elma to these offices is in violation of Section 7, par. 2, Article IX-B of the 1987 Constitution, since these are incompatible offices. Notably, the appointment of Elma as Chairman of the PCGG and as CPLC is, without a question, an executive act. Prior to the declaration of unconstitutionality of the said executive act, certain acts or transactions were made in good faith and in reliance of the appointment of Elma which cannot just be set aside or invalidated by its subsequent invalidation.

In *Tan v. Barrios*, this Court, in applying the operative fact doctrine, held that despite the invalidity of the jurisdiction of the military courts over civilians, certain operative facts must be acknowledged to have existed so as not to trample upon the rights of the accused therein. Relevant thereto, in *Olaguer v. Military Commission No. 34*, it was ruled that 'military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives.'

Evidently, the operative fact doctrine is not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature.

Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness.

Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be

> **respected. It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.** (Bold underscoring supplied for emphasis)

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[211] the Court likewise declared that "for the operative fact doctrine to apply, there must be a '**legislative or executive measure,**' meaning a **law or executive issuance.**" Thus, the Court opined there that the operative fact doctrine did not apply to a mere administrative practice of the Bureau of Internal Revenue, *viz*:

> Under Section 246, taxpayers may rely upon a rule or ruling issued by the Commissioner from the time the rule or ruling is issued up to its reversal by the Commissioner or this Court. The reversal is not given retroactive effect. This, in essence, is the doctrine of operative fact. **There must, however, be a rule or ruling issued by the Commissioner that is relied upon by the taxpayer in good faith. A mere administrative practice, not formalized into a rule or ruling, will not suffice because such a mere administrative practice may not be uniformly and consistently applied. An administrative practice, if not formalized as a rule or ruling, will not be known to the general public and can be availed of only by those with informal contacts with the government agency.**

It is clear from the foregoing that the adoption and the implementation of the DAP and its related issuances were executive acts. The DAP itself, as a policy, transcended a merely administrative practice especially after the Executive, through the DBM, implemented it by issuing various memoranda and circulars. The pooling of savings pursuant to the DAP from the allotments made available to the different agencies and departments was consistently applied throughout the entire Executive. With the Executive, through the DBM, being in charge of the third phase of the budget cycle – the budget execution phase, the President could legitimately adopt a policy like the DAP by virtue of his primary responsibility as the Chief Executive of directing the national economy towards growth and development. This is simply because savings could and should be determined only during the budget execution phase.

As already mentioned, the implementation of the DAP resulted into the use of savings pooled by the Executive to finance the PAPs that were not covered in the GAA, or that did not have proper appropriation covers, as well as to augment items pertaining to other departments of the Government in clear violation of the Constitution. To declare the implementation of the DAP unconstitutional without recognizing that its prior implementation constituted an operative fact that produced consequences in the real as well

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[211] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013.

as juristic worlds of the Government and the Nation is to be impractical and unfair. Unless the doctrine is held to apply, the Executive as the disburser and the offices under it and elsewhere as the recipients could be required to undo everything that they had implemented in good faith under the DAP. That scenario would be enormously burdensome for the Government. Equity alleviates such burden.

The other side of the coin is that it has been adequately shown as to be beyond debate that the implementation of the DAP yielded undeniably positive results that enhanced the economic welfare of the country. To count the positive results may be impossible, but the visible ones, like public infrastructure, could easily include roads, bridges, homes for the homeless, hospitals, classrooms and the like. Not to apply the doctrine of operative fact to the DAP could literally cause the physical undoing of such worthy results by destruction, and would result in most undesirable wastefulness.

Nonetheless, as Justice Brion has pointed out during the deliberations, the doctrine of operative fact does not always apply, and is not always the consequence of every declaration of constitutional invalidity. It can be invoked only in situations where the nullification of the effects of what used to be a valid law would result in inequity and injustice; [212] but where no such result would ensue, the general rule that an unconstitutional law is totally ineffective should apply.

In that context, as Justice Brion has clarified, the doctrine of operative fact can apply only to the PAPs that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the DAP, but cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities.

WHEREFORE, the Court **PARTIALLY GRANTS** the petitions for *certiorari* and prohibition; and **DECLARES** the following acts and practices under the Disbursement Acceleration Program, National Budget Circular No. 541 and related executive issuances **UNCONSTITUTIONAL** for being in violation of Section 25(5), Article VI of the 1987 Constitution and the doctrine of separation of powers, namely:

(a) The withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings prior to the end of the fiscal year and

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[212] This view is similarly held by Justice Leonen, who asserts in his separate opinion that the application of the doctrine of operative fact should be limited to situations (a) where there has been a reliance in good faith in the acts involved, or (b) where in equity the difficulties that will be borne by the public far outweigh the rigid application of the legal nullity of an act.

without complying with the statutory definition of savings contained in the General Appropriations Acts;

(b) The cross-border transfers of the savings of the Executive to augment the appropriations of other offices outside the Executive; and

(c) The funding of projects, activities and programs that were not covered by any appropriation in the General Appropriations Act.

The Court further **DECLARES VOID** the use of unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets for non-compliance with the conditions provided in the relevant General Appropriations Acts.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

I join the Concurring and Dissenting Opinion of J. Del Castillo.

PRESBITERO J. VELASCO, JR.
Associate Justice

My Separate Opinion

ANTONIO T. CARPIO
Associate Justice

See: Separate Opinion

ARTURO D. BRION
Associate Justice

No part:
Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

Pls see separate concurring and dissenting opinion

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice
See separate concurring opinion

Pls. see separate concurring opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the court.

MARIA LOURDES P. A. SERENO
Chief Justice