

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session



23 SEP 14 A9:31

S E N A T E

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COMMITTEE REPORT NO. 121

Submitted by the Committee on Accountability of Public Officers and Investigations on SEP 14 2023.

MOTU PROPRIO INVESTIGATION INTO THE NON-DISCLOSURE BY AND/OR REFUSAL OF THE DEPARTMENT OF HEALTH (DOH) TO RELEASE THE DETAILS OF THE VACCINE PROCUREMENT CONTRACTS ON THE PRETEXT OF A SUPPOSEDLY EXISTING NON-DISCLOSURE AGREEMENT (NDA)

Recommending the approval of the Committee Report.

Sponsor: Senator Francis N. Tolentino

Mr. President:

The Committee on Accountability of Public Officers and Investigations (Blue Ribbon) has conducted an inquiry, in aid of legislation, on the non-disclosure by and/or refusal of the Department of Health (DOH) to release the details of the vaccine procurement contracts on the pretext of a supposedly existing non-disclosure agreement (NDA).

The Committee on Accountability of Public Officers and Investigations (Blue Ribbon) has the honor to submit to the Senate its Report, after conducting an inquiry.

Recommending the adoption of the recommendations contained therein.

A transparent government is one of the hallmarks of a truly republican state.

Senate vs Ermita, G.R. No. 169777, April 20, 2006

I. INTRODUCTION

- 1 1. Months before the end of World War I in 1918, a deadly influenza virus
2 caused by the H1N1 virus spread worldwide and by 1919, "infected
3 approximately 500 million people around the world and resulted in the
4 deaths of 50 to 100 million people (3% to 5% of the world population)."¹
- 5 2. The 1918 influenza pandemic, also called the Spanish influenza
6 pandemic or Spanish Flu² is "the most severe influenza outbreak of
7 the 20th century, and in terms of deaths, among the most devastating
8 pandemics in human history."³ While several influenza pandemics
9 followed,⁴ nothing prepared the world for what would happen beginning
10 in December 2019 or a hundred years later.
- 11 3. According to the World Health Organization (WHO), officials first
12 reported the first human cases of COVID-19, the disease caused by a
13 novel coronavirus causing COVID-19, subsequently named SARS-
14 CoV-2 in Wuhan City, China, in December 2019. Retrospective
15 investigations by Chinese authorities have identified human cases with
16 the onset of symptoms in early December 2019.⁵
- 17 4. Shocked and crestfallen by the spread of the deadly COVID-19 virus
18 that turned the world upside down, governments of various nations
19 imposed lockdowns, shutdowns, travel bans, quarantine measures, and
20 mask mandates to curb its transmission that sadly "halted majority of
21 economic activities and permitted, at the most, only the most essential
22 activities such as those related to food and health."⁶ Although said
23 measures may have been necessary, these have severely affected
24 people's lives, curtailed economic activities and "plunged the global

¹ Jilani TN, Jamil RT, Siddiqui AH. H1N1 Influenza. [Updated 2022 Oct 25]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2023 Jan--., https://www.ncbi.nlm.nih.gov/books/NBK513241/#_NBK513241_pubdet Accessed on March 29, 2023

² A misnomer as there is no evidence that the outbreak began in Spain. Further, the World Health Organization discouraged scientists and public officials from naming infectious diseases in ways that reference specific people, places, animals, or occupations or using terms that incite undue fear. See World Health Organization Best Practices for the Naming of New Human Infectious Diseases, May 2015.

³ Britannica, The Editors of Encyclopedia. "influenza pandemic of 1918–19". Encyclopedia Britannica, 2 Jan. 2023, <https://www.britannica.com/event/influenza-pandemic-of-1918-1919>. Accessed March 29, 2023.

⁴ Asian Influenza (1957), Hongkong Influenza (1968), Russian flu (1977), flu pandemic (2009)

⁵ WHO Coronavirus disease 2019 (COVID-19) Situation Report- 94, <https://apps.who.int/iris/bitstream/handle/10665/331865/nCoVsitrep23Apr2020-eng.pdf?sequence=1&isAllowed=y>, Accessed on March 29, 2023.

⁶ DOH- The New Normal for Health, <https://doh.gov.ph/sites/default/files/publications/The-New-Normal-for-Health.pdf>, page 5. Accessed on March 30, 2023.

1 economy into a severe contraction,”⁷ harming the “poor and vulnerable
2 the most.”⁸

3 5. To primarily finance its vaccination program, the Philippine
4 government borrowed approximately US\$ 2 Billion from the World
5 Bank (WB), Asian Development Bank (ADB), and Asian Infrastructure
6 Investment Bank (AIIB).

7 6. Procured and donated COVID-19 vaccines started arriving in February
8 2021, and with supplies on hand, though limited, the Philippine
9 government embarked on a massive and unprecedented vaccination
10 program with the goal of vaccinating 70 million Filipinos.⁹

11 7. Three years since the confirmation of the disease in 2019, and while
12 everything seems to be back to “normal,” the national experience has
13 been a painful reality. The virus affected 766,440,796 globally, including
14 6,932,591 deaths as of May 17, 2023.¹⁰ In the Philippines, as of May
15 21, 2023, the Department of Health (DOH) COVID-19 Tracker recorded
16 66,466 deaths from the 4,129,540 confirmed cases.¹¹

17 II. CONTEXT

18 A. MOTU PROPRIO INVESTIGATION

19 8. On **December 14, 2022**, pursuant to its authority under Rule X, Section
20 13 (2) of the Rules of the Senate and Article 6, Section 1 of the Rules of
21 the Senate Committee on Accountability of Public Officers and
22 Investigations (Blue Ribbon Committee),¹² the Blue Ribbon Committee
23 initiated a ***motu proprio* investigation into the non-disclosure by
24 and/or refusal of the DOH to release the details of the Vaccine
25 Procurement Contracts on the pretext of a supposedly existing
26 Non-Disclosure Agreement (NDA) co-signed by the Philippine
27 Government with various manufacturers of vaccines.**

⁷ COVID-19 to Plunge Global Economy into Worst Recession Since WW2, <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii>.

⁸ 2020 Year in Review; The Impact of COVID-19 in 12 Charts, December 14, 2020, <https://blogs.worldbank.org/voices/2020-year-review-impact-covid-19-12-charts>, Accessed on March 29, 2023

⁹ Per the DOH - Based on the initial targets of the National Deployment and Vaccination Program (NDVP) during the 2020 vaccination roll-out, thresholds for herd immunity were set at 63% of the total eligible population, which translates to 70 million eligible Filipinos aged 17 years old and above. The projection for the year 2022 was based on the WHO Roadmap for COVID-19 Vaccination Response 2021-2022, aiming to reach 70% of the total population who are fully vaccinated. For the year 2023, projections were made based on the assumptions of possible inclusion of those under 5 years old who will be eligible for COVID-19 vaccination. National Population Figures were based on the Population Projections by the PSA. However, during the actual implementation of the NDVP, vaccination targets were constantly recalibrated due to several intervening factors. These factors, such as availability of updated scientific evidence, vaccine supply, emergence of the Delta variant, discovery of the phenomenon of waning immunity, booster dose effectiveness--- to name a few, contributed to the continuous expansion of vaccine targets in an effort to protect more and more individuals against an evolving pathogen.

¹⁰ WHO Coronavirus (COVID-19) Dashboard, <https://covid19.who.int>. Accessed on May 22, 2023.

¹¹ DOH COVID-19 Tracker, <https://doh.gov.ph/covid19tracker>. Accessed on May 22, 2023.

¹² Article 6 (Investigations), Sec. 1. *Initiation of Investigations*. – The Committee shall initiate an inquiry on any matter referred to it by the Senate or the President, or on its own initiative on any matter affecting the public interest. xxx

1 9. The procurement of COVID-19 vaccines was the subject of an inquiry
2 by the Senate during the 2nd Regular Session of the 18th Congress.
3 The Senate Committee of the Whole (COW), led by then- Senate
4 President Vicente C. Sotto III, conducted hearings on January 11, 15,
5 22, and June 15, 2021, in aid of legislation, to look into the national
6 COVID-19 vaccination program, and determine appropriate preparatory
7 measures leading to full nationwide implementation of the program.

8 10. In said hearings, officials of the Department of Finance (DOF),
9 Department of Health (DOH), and National Task Force (NTF) Against
10 COVID-19 informed the Senate that they were **prevented from**
11 **disclosing the purchase prices and costs of the vaccines because**
12 **of the confidentiality requirements in the aforementioned NDAs**
13 **signed in favor of the vaccine manufacturers:**

14 a. Because of the ongoing negotiations at that time, **Sec. Carlito G.**
15 **Galvez, Jr. of NTF informed the COW** that the manufacturers
16 reminded them **to honor the Confidentiality Disclosure**
17 **Agreement (CDA)**. He, however, assured the body that said
18 prices would become public domain after the negotiations;¹³

19 b. **Sec. Carlos G. Dominguez of the DOF** likewise reiterated that
20 **they could not reveal the exact cost of the contracted vaccines**
21 **as they are bound by the non-disclosure agreements (NDA)**
22 **required by the suppliers**, which prevents the former from publicly
23 disclosing trade secrets, which include pricing.¹⁴ He said that the
24 NDAs imposed by the suppliers prevented them from revealing
25 individual prices of the vaccines, even if the source used to
26 purchase the vaccines is public funds, and that suppliers would not
27 even talk to them unless they sign the proper NDA;¹⁵

28 c. Despite this, Sec. Dominguez disclosed the following ballpark
29 figures:

30 So, let me just say that the cost of the-okay. If
31 you take the entire cost of the vaccines, **the**
32 **average cost per dose is P398, on the**
33 **average**. If you take the average cost,
34 removing the COVAX and the donations, it is
35 **P568 per dose**. If you look at the average cost
36 of what the GAA... it is **P543**. Now, **the**
37 **average cost so far per dose of the**
38 **amounts that were purchased using the**
39 **loans is P515 per dose**. Okay? So, the
40 **logistics cost per dose is roughly P48 per**
41 **dose**. So, the logistics cost-yes, it's around
42 P48.¹⁶

13 TSN Committee of the Whole Hearing, January 15, 2021, page 244

14 TSN Committee of the Whole Hearing, June 15, 2021, page 107

15 TSN Committee of the Whole Hearing, June 15, 2021, page 111

16 TSN Committee of the Whole Hearing, June 15, 2021, page 108

- 1 11. However, as a compromise, they offered to reveal said information in
2 an Executive Session.¹⁷ In addition, executive branch officials also
3 promised that the contracts will be subject to audit by Commission on
4 Audit (COA).¹⁸
- 5 12. Nonetheless, during the Senate deliberations for the 2023 budget of the
6 COA, Senator Francis "Chiz" G. Escudero raised the apparent failure of
7 the COA to conduct a detailed audit of the procurement contracts for
8 the COVID-19 vaccines on account of the non-disclosure agreements.¹⁹
- 9 13. Likewise, in the **November 29, 2022** hearing of the Commission on
10 Appointments (CA), COA Chairman Gamaliel A. Cordoba disclosed that
11 the World Bank (WB), Asian Development Bank (ADB), and Asian
12 Infrastructure Investment Bank (AIIB) required the conduct of a special
13 audit on the disbursement of loans extended to the Philippine
14 government to finance the procurement of COVID-19 vaccines. He
15 likewise informed the CA that the Department of Health (DOH) had
16 already contacted the COA to conduct a special audit relative to said
17 procurement.²⁰
- 18 14. Consistent with the foregoing antecedents, the Chairperson of the Blue
19 Ribbon Committee, Senator Francis "To" N. Tolentino framed the
20 scope of the investigation in the following manner:

21
22 We are not here to determine whether the price was, quote-
23 unquote, "different from other acquisitions or purchases
24 made by other jurisdictions." We are not here to determine
25 wrongdoing insofar as the purchases, procurements made
26 then. We are not here to ascribe any malfeasance,
27 misfeasance or any violation of existing penal laws. **We are**
28 **here to determine whether the accuracy of the 44 million**
29 **wasted doses of various vaccines were really accurate**
30 **and made within the bounds and parameters of what**
31 **should, what can be, quote-unquote, "be wasted," if that**
32 **is the correct term. [Emphasis supplied]**

33
34 **And we are here to determine whether those policies**
35 **can be corrected, whether enough policies are in place,**
36 **and whether the Senate, the Congress, can still do more**
37 **to ensure that funds, whether sourced locally or foreign,**
38 **can be used properly, with accountability, with**
39 **transparency, to ensure that the people, the people's**
40 **taxes we're really used correctly, having in mind the**
41 **conditions during those days. The availability of the**
42 **vaccines, the existing patents that were not yet out**
43 **there. I'm referring internationally. [Emphasis supplied]**

44
45 xxx.
46

¹⁷ TSN, Blue Ribbon Committee Hearing, December 14, 2022, pages 22-23.

¹⁸ TSN, Blue Ribbon Hearing, December 14, 2022, page 23.

¹⁹ TSN, Senate Session, November 15, 2022, pages 61-62

²⁰ TSN, Commission on Appointments Hearing, November 29, 2022, pages 9-10

1 I think it behooves upon this Committee to really determine
2 **whether the modes of procurement utilized: national**
3 **budget through the GAA; bilateral or government to**
4 **government financing; tripartite agreement with the**
5 **private sector and LGUs; multilateral arrangements with**
6 **ADB and the World Bank were the right modes.** And we
7 have to determine through the forthcoming hearings,
8 whether all the events and I have records here, that
9 unfolded, including the use of APVAX, the utilization of the
10 Heal 2 Project, the Asian infrastructure investment coming
11 from the Asian Infrastructure Investment Bank, the World
12 Bank loans, the 70-billion 2021 unprogrammed funds for the
13 vaccines, as well as the procedures made not just in the
14 procurement, but in the utilization as well. That is why we
15 will, with the presence of the Solicitor General here, the
16 SolGen is present here, **we will determine whether the**
17 **Non-Disclosure Agreement is really encompassing and,**
18 **to utilize the Filipino term, “unli” insofar as revelation is**
19 **concerned having the constitutional mandate of**
20 **freedom to access information can be respected.** I quote
21 the constitutional provision likewise empowering the
22 Commission on Audit, Section 2, Article IX of the 1987
23 Constitution, “The Commission on Audit shall have the
24 power, authority, and duty to examine, audit, and settle all
25 accounts pertaining to the revenue and receipts of, and
26 expenditures or uses of funds and property, owned or held in
27 trust by, or pertaining to, the government.” [Emphasis
28 supplied]

29
30 **So, the matter of price determination, as well as its**
31 **accuracy, during those days will be left to the sound**
32 **judgment and wisdom of the Commission on Audit. It is**
33 **not for this Committee to determine.** But we will ask the
34 Commission on Audit to shed light and give us the factual
35 backdrop of what really transpired. [Emphasis supplied]

36
37 **As to the non-use and Non-Disclosure Agreement, we**
38 **have to determine whether an appropriate government**
39 **agency or investigating body or even the court or even**
40 **the Blue Ribbon Committee can be prevented from**
41 **having access to those NDAs.** But to have my own
42 personal determination on that, I really believe that the NDA
43 will not prevent this Committee from determining whether the
44 NDA is still applicable insofar as this investigation is
45 concerned.²¹ [Emphasis supplied]

46 47 48 **B. CONSTITUTIONAL GUIDELINES**

49
50 15. Following said framework, the inquiry of the Blue Ribbon Committee
51 was primarily guided by the pertinent provisions of the 1987
52 Constitution, as discussed in the immediately following paragraphs.

53 16. The Constitution, under Article II, Section 15, provides that:

²¹ TSN, Blue Ribbon Hearing, December 14, 2022, pages 6-10

1 "The State shall protect and promote the right to health of
2 the people and instill health consciousness among them."

3 Reinforcing said right, the following Sections of Article XIII of the 1987
4 Constitution further state:

5 "Section 11. The State shall adopt an integrated and
6 comprehensive approach to health development which shall
7 endeavor to make essential goods, health and other social
8 services available to all the people at affordable cost. There
9 shall be priority for the needs of the underprivileged, sick,
10 elderly, disabled, women, and children. The State shall
11 endeavor to provide free medical care to paupers."

12 "Section 12. The State shall establish and maintain an
13 effective food and drug regulatory system and undertake
14 appropriate health manpower development and research,
15 responsive to the country's health needs and problems."

16 "Section 13. The State shall establish a special agency for
17 disabled persons for rehabilitation, self-development, and
18 self-reliance, and their integration into the mainstream of
19 society."

20 17. In *Imbong vs Ochoa (Imbong)*,²² the Supreme Court declared that
21 "[a] component to the right to life is the constitutional right to
22 health." A concurring opinion stressed that "[t]he right to health is a
23 necessary element of the right to life. More importantly, the right
24 to health is, in itself, a fundamental human right. This is a
25 consequence of the Philippines being a party to the Universal
26 Declaration of Human Rights and the Alma-Ata Conference Declaration
27 of 1978, as well as the country's adoption of generally accepted
28 principles of international law."²³[Emphasis supplied]

29 18. As regards protecting consumers, Section 9, Article XVI provides:

30 "Section 9. The State shall protect consumers from trade
31 malpractices and from substandard or hazardous products."

32 19. Likewise, Section 2, Chapter 1, Title IX, Book IV of the Administrative
33 Code of 1987 (Executive Order No. 292 signed on 25 July 1987)
34 provides that the primary function of the Department of Health (DOH) is
35 "the promotion, protection, preservation, or restoration of the health of
36 the people through the provision and delivery of health services and
37 through the regulation and encouragement of providers of health goods
38 and services".²⁴

39 20. Of equal significance is Section 7, Article III of the 1987 Constitution,
40 which describes the people's right to information on matters of public
41 concern in this manner:
42

²² G.R. No. 204819, April 8, 2014

²³ Concurring Opinion of Justice Teresita de Castro in *Imbong vs Ochoa*

²⁴ <https://www.officialgazette.gov.ph/2014/05/26/executive-order-no-168-s-2014/>

1 Section 7. The right of the people to information on matters
2 of public concern shall be recognized. Access to official
3 records, and to documents, and papers pertaining to official
4 acts, transactions, or decisions, as well as to government
5 research data used as basis for policy development, shall be
6 afforded the citizen, subject to such limitations as may be
7 provided by law.
8

- 9 21. The State policy of full transparency in all transactions involving public
10 interest reinforces the people's right to information on matters of public
11 concern. This State policy is expressed in Section 28, Article II of the
12 Constitution, thus:
13

14 Sec. 28. Subject to reasonable conditions prescribed by law,
15 the State adopts and implements a policy of full public
16 disclosure of all its transactions involving public interest.
17

- 18 22. *In Chavez vs Public Estates Authority (Chavez)*,²⁵ the Supreme
19 Court explained said constitutional precepts in the following manner:
20

21 **These twin provisions of the Constitution seek to**
22 **promote transparency in policy-making and in the**
23 **operations of the government, as well as provide the**
24 **people sufficient information to exercise effectively**
25 **other constitutional rights. These twin provisions are**
26 **essential to the exercise of freedom of expression.** If the
27 government does not disclose its official acts, transactions
28 and decisions to citizens, whatever citizens say, even if
29 expressed without any restraint, will be speculative and
30 amount to nothing. These twin provisions are also essential
31 to hold public officials "at all times x x x accountable to the
32 people," for unless citizens have the proper information, they
33 cannot hold public officials accountable for anything. Armed
34 with the right information, citizens can participate in public
35 discussions leading to the formulation of government policies
36 and their effective implementation. An informed citizenry is
37 essential to the existence and proper functioning of any
38 democracy. As explained by the Court in *Valmonte v.*
39 *Belmonte, Jr.*²⁶
40

41 An essential element of these freedoms is to
42 keep open a continuing dialogue or process of
43 communication between the government and
44 the people. It is in the interest of the State that
45 the channels for free political discussion be
46 maintained to the end that the government may
47 perceive and be responsive to the people's will.
48 Yet, this open dialogue can be effective only to
49 the extent that the citizenry is informed and
50 thus able to formulate its will intelligently. Only
51 when the participants in the discussion are
52 aware of the issues and have access to
53 information relating thereto can such bear fruit.

²⁵ G.R. No. 133250 July 9, 2002.

²⁶ 170 SCRA 256 (1989).

1
2 23. In addition to citizens' right to information, promoting a high standard of
3 ethics in public service is equally important. The principle that public
4 office is a public trust was underscored by the Supreme Court in
5 ***Belgica vs Ochoa (Belgica)***, where it declared that:

6 The aphorism forged under Section 1, Article XI of the 1987
7 Constitution, which states that "public office is a public trust,"
8 is an overarching reminder that every instrumentality of
9 government should exercise their official functions only in
10 accordance with the principles of the Constitution which
11 embodies the parameters of the people's trust. **The notion
12 of a public trust connotes accountability, hence, the
13 various mechanisms in the Constitution which are
14 designed to exact accountability from public officers.**²⁷
15 [Emphasis supplied]

16 24. ***City of Zamboanga vs. CA (Zamboanga)***,²⁸ explained the duties of a
17 public officer, viz.:

18 "Upon appointment to a public office, an officer or employee
19 is required to take his oath of office whereby he solemnly
20 swears to support and defend the Constitution, bear true
21 faith and allegiance to the same; obey the laws, legal orders
22 and decrees promulgated by the duly constituted authorities;
23 and faithfully discharge to the best of his ability the duties of
24 the position he will hold."

25 25. Corollary to said principle, Article IX (D) of the 1987 Constitution has
26 made the COA the guardian of public funds, vesting it with broad
27 powers over all accounts pertaining to government revenue,
28 expenditures, and the uses of public funds and property, including the
29 exclusive authority to define the scope of its audit and examination,
30 establish the techniques and methods for such review, and promulgate
31 accounting and auditing rules and regulations.²⁹ Article IX of the
32 Constitution provides:

33 Section 2. (1) The Commission on Audit shall have the
34 power, authority, and duty to examine, audit, and settle all
35 accounts pertaining to the revenue and receipts of, and
36 expenditures or uses of funds and property, owned or held in
37 trust by, or pertaining to, the Government, or any of its
38 subdivisions, agencies, or instrumentalities, including
39 government-owned or controlled corporations with original
40 charters, and on a post-audit basis: (a) constitutional bodies,
41 commissions and offices that have been granted fiscal
42 autonomy under this Constitution; (b) autonomous state
43 colleges and universities; (c) other government-owned or
44 controlled corporations and their subsidiaries; and (d) such

²⁷ G.R. No. 208566, November 19, 2013; See also - Bernas, Joaquin G., S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Edition, p. 1108.

²⁸ G.R. No. 80270 February 27, 1990

²⁹ Yap vs COA, G.R. No. 158562, April 23, 2010

1 non-governmental entities receiving subsidy or equity,
2 directly or indirectly, from or through the Government, which
3 are required by law or the granting institution to submit to
4 such audit as a condition of subsidy or equity. However,
5 where the internal control system of the audited agencies is
6 inadequate, the Commission may adopt such measures,
7 including temporary or special pre-audit, as are necessary
8 and appropriate to correct the deficiencies. It shall keep the
9 general accounts of the Government and, for such period as
10 may be provided by law, preserve the vouchers and other
11 supporting papers pertaining thereto.

12 (2) The Commission shall have exclusive authority, subject
13 to the limitations in this Article, to define the scope of its
14 audit and examination, establish the techniques and
15 methods required therefor, and promulgate accounting and
16 auditing rules and regulations, including those for the
17 prevention and disallowance of irregular, unnecessary,
18 excessive, extravagant, or unconscionable expenditures, or
19 uses of government funds and properties.

20 Section 3. No law shall be passed exempting any entity of
21 the Government or its subsidiary in any guise whatever, or
22 any investment of public funds, from the jurisdiction of the
23 Commission on Audit.

- 24 26. As regards the investigative authority of Congress, Sections 21 and 22
25 of Article VI of the 1987 Constitution, while closely related and
26 complementary to each other, should not be considered as pertaining to
27 the same power of Congress. One specifically relates to the power to
28 conduct inquiries in aid of legislation, the aim of which is to elicit
29 information that may be used for legislation, while the other pertains to
30 the power to conduct a question hour, the objective of which is to obtain
31 information in pursuit of Congress' oversight function.³⁰

32 C. THE OUTBREAK AND THE GOVERNMENT'S RESPONSE

- 33 27. To facilitate inter-sectoral collaboration, establish preparedness and
34 ensure efficient government response, and assess, monitor, contain,
35 control, and prevent the spread of any potential epidemic in the
36 Philippines, the Inter-Agency Task Force (IATF) for the Management of
37 Emerging Infectious Diseases was created on **May 26, 2014**, by virtue
38 of Executive Order No. 168.
- 39 28. Section 16 of Republic Act No. 10121, otherwise known as the
40 "Philippine Disaster Risk Reduction and Management Act of 2010,"
41 empowers the President to declare a State of Calamity, which shall
42 make mandatory the immediate undertaking of the following remedial
43 measures by the member-agencies concerned:
44
45 a. Imposition of price ceiling on basic necessities and prime
46 commodities by the President upon the recommendation of the
47 implementing agency as provided for under Republic Act No. 7581,

³⁰ Senate vs. Ermita, G.R. No. 169777, April 20, 2006

1 otherwise known as the "Price Act", or the National Price
2 Coordinating Council;

3
4 b. Monitoring, prevention, and control by the Local Price Coordination
5 Council of overpricing/profitteering and hoarding of prime
6 commodities, medicines, and petroleum products;

7
8 c. Programming/reprogramming of funds for the repair and safety
9 upgrading of public infrastructures and facilities; and

10
11 d. Granting of no-interest loans by government financing or lending
12 institutions to the most affected section of the population through
13 their cooperatives or people's organizations.

- 14
15 29. Epidemics and other public health emergencies are threats to public
16 health and national security, which can undermine the social, economic,
17 and political functions of the State, as such on **April 26, 2019**,
18 Congress enacted **Republic Act No. 11332, or the "Mandatory**
19 **Reporting of Notifiable Diseases and Health Events of Public**
20 **Health Concern Act."**

21 Section 7 of said law provides:

22 Section 7. Declaration of Epidemic or Public Health
23 Emergency. **-The Secretary of Health shall have the**
24 **authority to declare epidemics of national and/or**
25 **international concerns except when the same threatens**
26 **national security. In which case, the President of the**
27 **Republic of the Philippines shall declare a State of**
28 **Public Health Emergency** and mobilize governmental and
29 nongovernmental agencies to respond to the threat.

30 Provincial, city or municipal health offices may only declare a
31 disease outbreak within their respective localities provided
32 the declaration is supported by sufficient scientific evidence
33 based on disease surveillance/data, epidemiologic
34 investigation, environmental investigation, and laboratory
35 investigation.

- 36 30. On **January 7, 2020**, Chinese authorities reported that the cause of a
37 viral pneumonia outbreak in the City of Wuhan, Hubei Province, China
38 is a novel type of Coronavirus that had not been previously identified in
39 humans.³¹

- 40 31. On **January 30, 2020**, the WHO Director-General declared that the
41 outbreak constituted a Public Health Emergency of International
42 Concern (PHEIC), and in view of its urgency, the international
43 community was mobilized to find ways to significantly accelerate the
44 development of interventions. The WHO R&D Blueprint allows the rapid
45 activation of R&D activities during epidemics with the aim to fast-track

³¹ See IATF Resolution No. 10, Series of 2020, dated March 9, 2020.

- 1 the availability of effective tests, vaccines, and medicines that can be
2 used to save lives and avert large-scale crises.³²
- 3 32. On the same day, DOH Secretary Francisco T. Duque III confirmed the
4 first imported positive COVID-19 case in the Philippines. Subsequently,
5 on **March 7, 2020**, the first localized Covid-19 transmission was
6 confirmed by the DOH. By **March 9, 2020**, the confirmed COVID-19-
7 positive cases in the country reached twenty-four (24) individuals.³³
- 8 33. On **March 8, 2020**, President **Rodrigo R. Duterte** declared a **State**
9 **of Public Health Emergency through Proclamation No. 922** as the
10 COVID-19 public health event threatened national security and to
11 prompt a whole-of-government approach in addressing the outbreak.³⁴
- 12 34. On **March 11, 2020**, the **WHO eventually characterized the COVID-**
13 **19 outbreak as a pandemic.**³⁵ On said date, the country's first local
14 death from the virus was recorded when a 67-year-old woman, with no
15 history of travel abroad and no association with a COVID-19 positive
16 carrier, succumbed to the virus.³⁶
- 17 35. With government unable to contain the outbreak through ordinary
18 means, the President, through Proclamation No. 929,³⁷ issued on
19 **March 16, 2020**, placed the entire country in a State of Calamity³⁸ for
20 an initial period of six (6) months.
- 21 36. In addition to Proclamation No. 929, a **Memorandum from the Office**
22 **of the President dated March 16, 2020, placed the entire Luzon**

³²[https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum). Accessed on March 30, 2023.

³³ IATF Resolution No. 10

³⁴ IATF Resolution No. 10

³⁵ <https://www.who.int/europe/emergencies/situations/covid-19>. Accessed on March 30, 2023.

³⁶ National Action Plan Against COVID-19, page 6, <https://iatf.doh.gov.ph/wp-content/uploads/2022/09/National-Action-Plan-against-COVID-19-1.pdf>, Accessed on March 30, 2023

³⁷ <https://www.officialgazette.gov.ph/downloads/2020/03mar/20200316-PROC-929-RRD.pdf>

³⁸ RA No. 10121 - **Section 16. Declaration of State of Calamity.** – The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRMC, based on the results of the damage assessment and needs analysis.

Section 17. Remedial Measures. – The declaration of a state of calamity shall make mandatory the immediate undertaking of the following remedial measures by the member agencies concerned as defined in this Act:

(a) Imposition of price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under Republic Act No. 7581, otherwise known as the "Price Act", or the National Price Coordinating Council; (b) Monitoring, prevention, and control by the Local Price Coordination Council of overpricing/profitteering and hoarding of prime commodities, medicines, and petroleum products; (c) Programming/reprogramming of funds for the repair and safety upgrading of public infrastructures and facilities; and (d) Granting of no-interest loans by government financing or lending institutions to the most affected section of the population through their cooperatives or people's organizations.

1 **Island on Enhanced Community Quarantine (ECQ).**³⁹ The ECQ
2 aimed to immobilize potential carriers, limit contagion to a localized
3 scale, and allowed contact- tracing and tracking as part of COVID-19
4 testing protocol, including the 14-day observation period for possible
5 manifestation of COVID-19 symptoms. During the ECQ, strict home
6 quarantine in all households became mandatory; mass public
7 transportation was suspended; provision for food and essential health
8 services was regulated; and the heightened presence of uniformed law
9 enforcement personnel was observed to enforce quarantine
10 procedures, such as curfews and the setting up of active checkpoints.⁴⁰

11 37. On **March 24, 2020**, President Duterte designated Presidential Adviser
12 on the Peace Process, Sec. Carlito G. Galvez Jr., Chief Implementer of
13 the Philippines' declared national policy against COVID-19 through a
14 memorandum from the Executive Secretary. As Chief implementer,
15 Sec. Galvez was directed to ensure the strict compliance and
16 adherence by everyone to the guidelines and protocols issued by the
17 IATF. He was further tasked to protect and promote the safety and
18 welfare of the public at all times and ensure the efficient and
19 expeditious distribution of government assistance to the public, with
20 particular attention to our citizens in most need.⁴¹

21 38. On the same day, President Duterte signed into law **RA No. 11469 or**
22 **the “Bayanihan to Heal as One Act” (Bayanihan 1), which granted**
23 **the President temporary emergency powers to address the**
24 **national emergency brought about by the COVID-19 pandemic for**
25 **an effective period of three (3) months.** The Act also authorized the
26 Executive branch to reallocate and realign savings from the national
27 budget, as well as from government corporations.

28 39. Also, on said date, the IATF unveiled the National Action Plan (NAP)
29 against COVID-19 to the public.⁴² The NAP outlined the national
30 strategy and broad guidelines to contain and prevent the spread, and
31 eliminate the threat of COVID-19 and mitigate the disease's social,
32 economic, and security impact. Further, the NAP articulated strategic
33 objectives, illustrated strategic actions, and presented the imperatives
34 of government to address and manage the COVID-19 pandemic crisis
35 in the country. The document also showed how coordinated responses
36 are to be forged among established government mechanisms against
37 COVID-19 stemming from the policy guidelines issued by the Inter-
38 Agency Task Force for the Management of Emerging Infectious

³⁹<https://www.officialgazette.gov.ph/downloads/2020/03mar/20200316-MEMORANDUM-FROM-ES-RRD.pdf>

⁴⁰ <https://iatf.doh.gov.ph/wp-content/uploads/2022/09/National-Action-Plan-against-COVID-19-1.pdf>, page 22

⁴¹ Krissy Aguilar, “Duterte’s peace adviser Galvez named as the Chief Implementer of COVID-19 policies, Philippine Daily Inquirer, March 26, 2020. <https://newsinfo.inquirer.net/1249100/dutertes-peace-adviser-galvez-named-as-chief-implementer-of-covid-19-policies>. Accessed on March 30, 2023.

⁴² Paul Quintos, et. al., “The Philippines’ Response: Symptoms of Deeper malaise in the Philippine Health System,” 2020, page 6. <https://ncpag.upd.edu.ph/wp-content/uploads/covid19response.pdf>. Accessed on March 30, 2023.

- 1 Diseases, and as executed by the National Task Force against COVID-
2 19 and its Regional and Local Task Forces.⁴³
- 3 40. On **April 30, 2020**, Executive Order No. 12 imposed ECQ in High-Risk
4 Geographical Areas and a General Community Quarantine in the rest of
5 the country from May 1-15, 2020, and adopted the Omnibus Guidelines
6 for the Implementation of Community Quarantine in the Philippines.
- 7 41. Per IATF Resolution No. 37, dated **May 15, 2020**, there were a total of
8 12,091 confirmed cases in the Philippines that necessitated the
9 continued ECQ and a Modified ECQ in some transitioning high-risk
10 provinces after May 15.
- 11 42. **RA No. 11469 was followed by RA No. 11494, or the “Bayanihan to**
12 **Recover as One Act” (Bayanihan 2) on September 11, 2020.** Section
13 4 (a) authorized the President to adopt and implement measures to
14 prevent or suppress further transmission and spread of COVID-19
15 through effective education, detection, protection, and treatment,
16 following the WHO or United States Centers for Disease Control and
17 Prevention (US-CDC) Guidelines and best practices.
- 18 43. **Section 4(d) of the Bayanihan 2 authorized the President to**
19 **implement an uninterrupted immunization program against**
20 **vaccine-preventable diseases, especially on children amidst the**
21 **COVID-19 pandemic, including the vaccine for COVID-19. To**
22 **expedite the procurement of COVID-19 medication and vaccines,**
23 **Section 12 of Bayanihan 2 also waived the required Phase IV trials**
24 **mandated by Republic Act No. 11223 or the Universal Health Care**
25 **Act.**
- 26 44. The State of Calamity was extended on **September 16, 2020**, for one
27 year through Proclamation No. 1021, and on **September 10, 2021**, was
28 further extended until **September 12, 2022**, by Proclamation No. 1218
29 (s.2021) as the number of positive cases continued to rise despite
30 efforts and interventions.⁴⁴
- 31 45. Sec. Galvez, the Chief Implementer, was given an additional duty on
32 **November 2, 2020**, as “Vaccine Czar.” On **November 5, 2020**, IATF
33 issued Resolution No. 83 that restructured the National Task Force
34 Against COVID-19 (NTF) and established the COVID-19 Vaccine
35 Cluster with the Vaccine Czar as Chair.⁴⁵
- 36 46. Under the said resolution, the duties of the Vaccine Czar were as
37 follows:

⁴³National Action Plan Against COVID-19, page 3, <https://iatf.doh.gov.ph/wp-content/uploads/2022/09/National-Action-Plan-against-COVID-19-1.pdf>. Accessed on March 23, 2023.

⁴⁴See Proclamation No. 1218 dated September 10, 2021, <https://www.officialgazette.gov.ph/downloads/2021/09sep/20210910-PROC-1218-RRD.pdf>. Accessed on March 30, 2023.

⁴⁵ See also: TSN, Blue Ribbon Hearing, February 21, 2023, pages 9-10

- 1 a. **Stewardship**- Coordinate across various agencies, actors, and
2 technical working groups on behalf of DOH, with authorized
3 signatories across all levels of transactions;
4 b. **Safety & Efficacy**- Facilitate early issuance of Certificate of
5 Product Registration with the Food and Drugs Administration
6 c. **Cost-effectiveness** - Facilitate timely conduct of Health
7 Technology Assessment (HTA), as necessary;
8 d. **Price Negotiation**- Activate price negotiation board subject to
9 HTA's cost-effective price;
10 e. **Prioritization** - Facilitate consensus on prioritization of
11 vaccine recipients;
12 f. **Delivery System** - Facilitate decision on whether to use private
13 systems, develop protocol on accessing vaccines and registration
14 with primary care providers with Health Care Provider Networks
15 (HCPNs), practice guidelines;
16 g. **Surveillance**- Setup Adverse Events Following Immunization
17 (AEFI)/ post-marketing surveillance and response;
18 h. **Financing & Co-Payments** - Coordinate with the Department
19 of Budget and Management (DBM) and legislators, as may be
20 necessary, on budget and co-payment ceilings;
21 i. **Procurement** - Facilitate procurement through various
22 mechanisms allowed under existing laws, rules, and regulations
23 through bilateral, multilateral, and other financial modalities (e.g.
24 COVAX facility, etc.);
25 j. **Supply Chain and Logistics Management**- Enter into
26 agreements with third-party warehouse and logistics provider, as
27 necessary;
28 k. **Information Systems**- Establish the information and technology
29 infrastructure to capture supply chain information as well as to
30 capture system for the distribution of the COVID-19 vaccine; and
31 l. **Risk Communication & Community Engagement** - Oversee
32 vaccine risk communication and social preparation, and act as
33 spokesperson for vaccine matters;

34 47. On **November 9, 2020**, President Duterte approved the National
35 Vaccination Roadmap.⁴⁶ It defines the key considerations for the
36 selection of vaccines (e.g., safety, efficacy, sensitivity, supply, and cold
37 chain requirement), the process and stages of vaccination from
38 scientific evaluation to monitoring and safety surveillance, and the
39 desired end-state of COVID-19 vaccination. It sets out a prioritization
40 plan in line with the guidance from the Strategic Advisory Group of
41 Experts on Immunization (SAGE) of the World Health Organization
42 (WHO).⁴⁷

⁴⁶ Alexis Romero, "Duterte approves COVID-19 vaccine roadmap," *Philippine Star*, November 9, 2020. <https://www.philstar.com/headlines/2020/11/09/2055703/duterte-approves-covid-19-vaccine-roadmap>.

Accessed on March 30, 2023

⁴⁷ ADB - Report and Recommendation of the President to the Board of Directors- Proposed Loan-Republic of the Philippines: Second Health System Enhancement to Address and Limit COVID-19 under the Asia Pacific Vaccine Access Facility, page 4, <https://www.adb.org/sites/default/files/project-documents/54171/54171-003-rrp-en.pdf>. Accessed on March 30, 2023.

- 1 48. On **December 1, 2020**, Executive Order No. 121 granted the Food and
2 Drug Administration (FDA) the authority to issue Emergency Use
3 Authorization (EUA) for COVID-19 treatment drugs and vaccines.
- 4 49. In **January 2021**, the DOH released the **“Philippine National
5 Deployment and Vaccination Plan for COVID-19 Vaccines: Interim
6 Plan”** to provide guidelines in terms of vaccine selection, diplomatic
7 negotiation and engagement, procurement and financing, shipment and
8 storage, vaccine distribution and deployment, and assessment,
9 evaluation, and monitoring.⁴⁸
- 10 50. The Philippines’ National COVID-19 Vaccination Plan (the Plan) is
11 expressed in two key documents of government: **(i) the Philippine
12 COVID-19 Vaccine Roadmap developed by the COVID-19 Vaccine
13 Cluster under the Inter-agency Task Force for the Management of
14 Emerging Infectious Diseases (IATF) with a designated vaccine
15 czar; and (ii) the Philippine National Deployment and Vaccination
16 Plan for COVID-19 Vaccines (the deployment plan) by the
17 Department of Health (DOH),**⁴⁹

18 The Philippine COVID-19 Vaccine Roadmap provides the broad
19 framework, principles, and directions for the government’s national
20 vaccination program. It further provides key considerations for the
21 selection of vaccines (e.g., safety, efficacy, sensitivity, supply, cold
22 chain requirement), the process and stages of vaccination from
23 scientific evaluation to monitoring and safety surveillance, and the
24 desired end-state of coronavirus disease (COVID-19) vaccination. It
25 sets the prioritization principles in line with the World Health
26 Organization (WHO)’s Strategic Advisory Group of Experts on
27 Immunization (SAGE) guidance and recommendations and country
28 context (priority groups, sectoral, and geographical), and allocation plan
29 for vaccines relative to various capacities.

30 The deployment plan provides a detailed operations plan and delivery
31 system covering regulatory approvals, institutional arrangements,
32 planning and coordination, vaccine delivery, demand generation and
33 risk communication, cold chain and logistics, medical waste
34 management, safety surveillance, monitoring and evaluation, and other
35 mechanisms. It further defines the implementation arrangements, roles,
36 and responsibilities within the DOH and other responsible agencies of
37 the central and local governments.

- 38 51. The FDA issued an EUA for the following COVID-19 Vaccine brands:

⁴⁸Philippines COVID-19 Emergency Response Project (P173877) and First and Second Additional Financing Projects (P175953 and P177884) [Updated Version] Environmental and Social Management Framework (ESMF), page 35, <https://doh.gov.ph/sites/default/files/basic-page/ESMF-April-2022.pdf>. Accessed on March 30, 2023.

⁴⁹ Country National Vaccination Prioritization and Allocation Plan - <https://www.adb.org/sites/default/files/linked-documents/54171-004-ld-03.pdf> Accessed on April 20, 2023

Date Issued	COVID-19 Vaccine Brand
January 14, 2021	Pfizer-BioNTech ⁵⁰
January 28, 2021	AstraZeneca ⁵¹
February 22, 2021	Sinovac ⁵²
March 19, 2021	Sputnik V ⁵³
April 19, 2021	Janssen (Johnson and Johnson)
May 5, 2021	Moderna ⁵⁴
August 20, 2021	Sputnik Light ⁵⁵
September 10, 2021	Sinopharm ⁵⁶

- 1 52. In the first week of **February 2021**, the IATF adopted the prioritization
2 framework and the Interim National Immunization Technical Advisory
3 Group (NITAG) criteria in allocating the first tranches of vaccines
4 against COVID-19 that will arrive in the country.⁵⁷
- 5 53. On **February 23, 2021**, the DOH issued Department Order No. 2021-
6 0099 (Interim Omnibus Guidelines for the Implementation of the
7 National Vaccine Deployment Plan for COVID-19). Under said
8 guidelines, the priority population groups for COVID-19 immunization
9 are as follows:

Phase 1 - Priority Eligible A	
A1	Frontline workers in health facilities, both national and local, private and public, health professionals and non-professionals like students in health and allied professions courses with clinical responsibilities, nursing aides, janitors, barangay health workers, etc.
A2	Senior citizens aged 60 years old and above
A3	Adults with comorbidities not otherwise included in the preceding categories

⁵⁰ <https://www.fda.gov.ph/wp-content/uploads/2021/01/FDA-Press-Statement-EUA-Pfizer-January-14-2021.pdf> (last accessed May 21, 2023).

⁵¹ <https://www.fda.gov.ph/wp-content/uploads/2021/02/EUA-Astrazeneca-Website.pdf> (last accessed May 21, 2023).

⁵² <https://www.fda.gov.ph/wp-content/uploads/2021/03/EUA-SINOVAC-WEBSITE-3-1.pdf> (last accessed May 21, 2023).

⁵³ <https://hta.doh.gov.ph/2021/12/29/htac-guidance-for-health-care-providers-covid-19-vaccine-sputnik-v/> (last accessed May 21, 2023).

⁵⁴ <https://www.fda.gov.ph/wp-content/uploads/2021/05/EUA-Moderna-Website.pdf> (last accessed May 21, 2023).

⁵⁵ <https://www.fda.gov.ph/wp-content/uploads/2021/08/Sputnik-Light-COVID-19-Vaccine.pdf> (last accessed May 21, 2023).

⁵⁶ <https://www.fda.gov.ph/wp-content/uploads/2021/09/EUA-DOH-procured-Sinopharm-Website.pdf> (last accessed May 21, 2023).

⁵⁷ <https://doh.gov.ph/doh-press-release/IATF-ADOPTS-COVID-19-VACCINATION-PRIORITY-FRAMEWORK-AMID-LIMITED-VACCINE-SUPPLY> (last accessed May 21, 2023).

A4	Frontline personnel in essential sectors both in public and private sectors, including uniformed personnel, and those in working sectors identified by the IATF that are directly client facing and cannot dutifully meet minimum public health standards
A5	Poor population based on the National Household Targeting System for Poverty Reduction (NHTS-PR) not otherwise included in the preceding categories
Phase 2 - Priority Eligible B	
B1	Teachers, Social Workers
B2	Other Government Workers
B3	Other essential workers
B4	Socio-demographic groups at significantly higher risk other than senior citizens and poor population based on the NHTS-PR
B5	Overseas Filipino Workers
B6	Other Remaining Workforce
Phase 3 - Priority Eligible C: Rest of the Filipino population not otherwise included in the above groups	

- 1 54. Congress enacted on **February 26, 2021**, RA No. 11525, or the
2 “*COVID-19 Vaccination Program Act of 2021*”. **The Act authorizes the**
3 **National Government and Local Government Units (LGUs) to**
4 **undertake negotiated procurement of COVID-19 vaccines. In**
5 **contrast, private entities, including the Philippine Red Cross, are**
6 **authorized to procure through a multi-party agreement with the**
7 **DOH and NTF. It also provides for immunity from lawsuits of**
8 **certain individuals and includes an indemnity fund to compensate**
9 **for serious adverse events following immunization.**⁵⁸ The Act shall
10 remain in full force and effect during the period of the state of calamity
11 declared under Proclamation No. 1021 dated September 16, 2020,
12 issued by the President of the Philippines.⁵⁹
- 13 55. The vaccination in the Philippines commenced on **March 1, 2021**, with
14 Sinovac as the first brand rolled out. Several others followed, including
15 AstraZeneca,⁶⁰ Sputnik V,⁶¹ Pfizer,⁶² Moderna,⁶³ Janssen,⁶⁴ Sinopharm,
16 and Sputnik Light.⁶⁵
- 17 56. Later, pursuant to IATF Resolution No. 141 dated **September 30, 2021**,
18 the National COVID-19 Immunization Program was opened to the

⁵⁸ IRR of RA No. 11525

⁵⁹ Section 17 of RA 11525

⁶⁰ March 4, 2021

⁶¹ April 12, 2021

⁶² May 12, 2021

⁶³ June 18, 2021

⁶⁴ July 9, 2021

⁶⁵ January 14, 2022

1 general public nationwide. Further, the IATF approved the
2 recommended strategy for the Vaccination Rollout for the Rest of the
3 Pediatric Population (ROPP) pursuant to IATF Resolution No. 146
4 dated **October 28, 2021**.⁶⁶

5 57. On **November 17, 2021**, the Philippines started implementing booster
6 vaccination of COVID-19 vaccines for health workers (A1). This was
7 followed by an additional dose for the immunocompromised population
8 (ICP) and booster vaccination among the elderly (A2), and individuals
9 with comorbidities (A3). Lastly, all individuals ages 18 years old and
10 above became eligible to receive booster doses in **December 2021**.⁶⁷

11 58. On **December 22, 2021**, WHO released a statement recommending
12 the introduction of booster doses in targeted population groups at the
13 highest risk of serious disease, as well as those necessary to protect
14 the health system. In consideration of the potential waning protection
15 and especially the rise of new COVID-19 variants, the WHO
16 recommended the administration of a fourth dose among ICPs for the
17 following brands: Pfizer-BioNTech (21 January 2022), Moderna (23
18 February 2022), CoronaVac (15 March 2022), Sinopharm (7 May
19 2022), and AstraZeneca (15 March 2022).⁶⁸

20 59. On **April 13, 2022**, the FDA issued the EUA approving the
21 administration of a 2nd COVID-19 vaccine booster dose to citizens 60
22 years old and above, immunocompromised populations, and frontline
23 healthcare workers. Likewise, the Health Technology Assessment
24 Council (HTAC) recommended the administration of a 4th dose or 2nd
25 booster dose of COVID-19 vaccines with the following vaccine brands:
26 Pfizer-BioNTech, Moderna, AstraZeneca, CoronaVac (Sinovac), and
27 Sinopharm among the immunocompromised population (ICPs) ages 18
28 years old and above to be given at least three (3) months after the third
29 dose or first booster dose, with a preference for mRNA vaccines based
30 on the available real world evidence on the immunogenicity and
31 safety.⁶⁹

32 60. On **April 22, 2022**, the DOH issued Department Memorandum No.
33 2022-0154 or the Interim Guidelines on the administration of 2nd
34 COVID-19 Vaccine Booster Doses for ICPs ages 18 years old and
35 above.

36 61. On **June 17, 2022**, the Secretary of Health signed the updated
37 recommendation of the HTAC for a second booster of COVID-19
38 vaccines for healthcare workers, senior citizens (ages 60 years old and
39 above), and a fourth dose for the immunocompromised population,
40 following the Disease Prevention and Control Bureau's (DPCB) rollout.
41 Considering the role of healthcare workers (HCWs) in the healthcare

⁶⁶ As stated in IATF Resolution No. 148-B dated November 11, 2021.

⁶⁷ DOH. Evidence Summary on Second Booster/Fourth Dose of COVID-19 vaccines for the prevention of COVID-19, page 2 https://drive.google.com/file/d/1OmZZkqWIPKR1J9TDJ_cPHKNE6t9Goec7/view. Accessed on April 20, 2023. See also: DOH Department Memorandum 2021- 0492

⁶⁸ *ibid*

⁶⁹ See - DOH - Department Memorandum No. 2022-0154

1 system and their higher risk of infection, as well as available real-world
2 evidence for HCWs, senior citizens ages 60 years old and above, and
3 immunocompromised populations ages 18 years old and above, the
4 HTAC recommended the financing and inclusion of second
5 booster of mRNA vaccines (i.e., Pfizer-BioNTech (Comirnaty),
6 Moderna (Spikevax) 50 ug) and fourth dose of COVID-19 vaccines
7 *Pfizer-BioNTech, Moderna, AstraZeneca, CoronaVac, and*
8 *Sinopharm (with preference for mRNA vaccines), for inclusion in*
9 *the Philippine National Deployment and Vaccination Plan.*⁷⁰

10 62. On **25 July 2022**, the Philippine FDA expanded the approved EUA
11 indication to individuals 50 years old and above and adults 18 to 49
12 years old with comorbidities in a letter to the Department of Health. The
13 FDA specified that the additional booster doses should be limited to
14 Pfizer-BioNTech, Moderna, CoronaVac, AstraZeneca, Sputnik, and
15 Janssen as requested by the DOH, with a dosing interval of at least 4
16 months after the 3rd dose or 1st booster.⁷¹

17 63. On **26 July 2022**, after the assessment of Pfizer-BioNTech, Moderna,
18 AstraZeneca, CoronaVac, Janssen, and Sinopharm as 2nd booster for
19 individuals 50 years old and above and adults 18 to 49 years old with
20 comorbidities, HTAC recommended Pfizer-BioNTech and Moderna only
21 for these populations. Said recommendation was in line with the interim
22 statement released by WHO on 17 May 2022, which noted that data on
23 additional boosters only existed for the mRNA vaccines. Available
24 evidence indicated some short-term benefits of an additional booster
25 dose of mRNA vaccine in healthcare workers (HCWs), those over 60
26 years of age, or with immunocompromised conditions. Such benefits
27 observed in these higher-risk groups supported the administration of an
28 additional booster dose. However, there was limited data to support an
29 additional dose for healthy younger populations, and preliminary data
30 for said population suggested that the benefit is minimal.⁷²

31 64. On **18 August 2022**, the WHO released a good practice statement on
32 the use of second booster doses for COVID-19. It provided that
33 additional protection of the most vulnerable populations would likely be
34 achieved through the administration of a second booster dose; WHO
35 recommended a second booster to the following populations:

- 36 a. all older persons (age specific cut-off should be defined by
37 countries based on local COVID-19 epidemiology);

⁷⁰ DOH, HTAC Guidance On COVID-19 Boosters and Fourth Dose For Healthcare Workers, Senior Citizens, and the Immunocompromised Population, <https://hta.doh.gov.ph/2022/06/21/doh-htac-guidance-on-covid-19-boosters-and-fourth-dose-for-healthcare-workers-senior-citizens-and-the-immunocompromised-population/>. Accessed on March 29, 2023

⁷¹ DOH. Evidence Summary on AstraZeneca COVID-19 vaccine as Second Booster/ Fourth Dose for the prevention of COVID-19, https://drive.google.com/file/d/1yFHO_ZIT386nsIFmV4OmtQIB5uTCi_Vf/view, page 2.

⁷² DOH. Evidence Summary on AstraZeneca COVID-19 vaccine as Second Booster/ Fourth Dose for the prevention of COVID-19, https://drive.google.com/file/d/1yFHO_ZIT386nsIFmV4OmtQIB5uTCi_Vf/view, page 2.

- b. all persons with moderately and severely immunocompromised condition;
- c. adults with comorbidities that put them at a higher risk of severe COVID-19;
- d. pregnant women; and
- e. healthcare workers.⁷³

65. On **September 12, 2022**, acting according to the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC), President Ferdinand R. Marcos Jr., extended the State of Calamity until **December 31, 2022**, to enable the National Government and Local Government Units (LGUs) to deliver COVID-19 interventions, such as but not limited to, COVID-19 vaccination program, utilize appropriate funds, including quick response fund, in their disaster preparedness and response efforts to contain the spread of COVID-19.⁷⁴

66. On **17 October 2022**, WHO released another good practice statement on the use of variant-containing COVID-19 vaccines which also contained recommendations for second booster vaccination. In this statement, WHO recommended the use of any of the vaccines in the WHO Emergency Use Listing (EUL) vaccines or any of the authorized bivalent variant-containing vaccines as a second booster.⁷⁵

67. On **20 March 2023**, the FDA issued the EUA expanding the provision of a second (2nd) booster dose to the general population including healthy adults aged 18 to 49 years old. In addition, on 31 March 2023, the HTAC recommended the utilization of Pfizer-BioNTech, Moderna and AstraZeneca COVID-19 Vaccines as 2nd booster for adults aged 18 to 49 years old without comorbidities.

68. On **April 13, 2023**, DOH issued Department order No. 2023-0146 or the Interim Guidelines on the Management and Administration of COVID-19 Vaccine Second Booster Doses authorizing the administration of COVID-19 vaccines as 2nd booster to individuals 18 years old and above.⁷⁶

D. SOURCES OF FUNDS

69. In a letter dated **December 23, 2022**, Secretary Benjamin E. Diokno of the Department of Finance (DOF) provided the Blue Ribbon Committee with the various sources of funds for COVID-19 vaccination in 2021 and 2022. According to said letter:

The total available funds for COVID-19 vaccination in 2021 was PHP88.6 billion, wherein PHP15.8 billion was

⁷³ *ibid*

⁷⁴ <https://mirror.officialgazette.gov.ph/downloads/2022/09sep/20220912-PROC-57-FRM.pdf>

⁷⁵ *ibid*

⁷⁶ COVID-19 vaccines allowed for the general adult population - Pfizer, Moderna and AstraZeneca.

1 from the 2021 budget appropriated for the Department of
 2 Health (DOH), Republic Act No. 11494 or the Bayanihan
 3 to Recover as One Act (Bayanihan II), and other revenue
 4 sources. The remaining amount was sourced from
 5 Unprogrammed Appropriations, which were backed by loans
 6 from multilateral development banks. [Emphasis supplied]
 7

8 Under the FY2022 General Appropriations Act (GAA),
 9 the National Government allocated PHP2.78 billion
 10 under the regular budget of DOH, and PHP45.3 billion
 11 (around USD 900 million) under its Unprogrammed
 12 Appropriations for the procurement of COVID-19
 13 vaccine booster shots. The foregoing data is summarized
 14 in the following table: [Emphasis supplied]

PARTICULARS	Amount			
	2021 (in millions)		2022	
	PHP	USD	PHP	USD
General Appropriations Act (GAA)⁷⁷				
DOH Budget (CY2021)	2,500.00	N/A	2,780.00	N/A
Bayanihan II in relation to RA No. 11520 on Continuing Appropriations	10,000.00	N/A	-	N/A
Other sources in the national budget and Bayanihan II	3,300.00	N/A	-	N/A
Subtotal (GAA)	15,800.00		2,780.00	
Unprogrammed Appropriations⁷⁸				
World Bank	23,900.00	500.00	15,099.00	300.00
Asian Development Bank	19,100.00	400.00	12,582.50	250.00
Asian Infrastructure Investment Bank	14,300.00	300.00	12,582.50	250.00
Subtotal for ODA	57,300.00	1,200.00	40,264.00	800.00
Other financing sources as necessary	12,700.00	N/A	5,033.00	N/A
Subtotal (Unprogrammed Appropriations)	70,000.00		45,297.00	
Contingency Funds	2,800.00	N/A	-	N/A
Total Available Funds	88,600.00		48,077.00	

⁷⁷ PHPUSD = 50.147

⁷⁸ 2021 PHP USD = 47.75, 2022 PHP USD = 50.33 based on signed loan agreements

Details of loans contracted:

Loan	Financed by	Contracted	Closing	Total Amount	Disbursed Amount (in USD million)	Undisbursed Amount
Health System Enhancement to Address and Limit Covid-19	ADB	Sept 2020	Dec 2023	25.00	24.86	0.14
Second HEAL (HEAL2)	ADB	March 2021	Sept 2024	400.00	393.45	6.55
	AIIB	March 2021	Sept 2024	300.00	295.63	4.37
HEAL 2 - Additional Financing (HEAL2-AF)	ADB	Dec 2021	Sept 2024	250.00	-	250.00
	AIIB	Dec 2021	Sept 2024	250.00	-	250.00
Philippines COVID-19 Emergency Project	WB-IBRD	April 2020	Dec 2023	30.00	30.00	-
PCERP - Additional Financing (PCERP-AF)	WB-IBRD	March 2021	Dec 2023	500.00	453.83	46.17
PCERP - Second Additional Financing (PCERP-AFP2)	WB-IBRD	Dec 2021	Dec 2023	300.00	-	300.00
Total				2,055.00	1,197.77	857.23

- 1 70. HEAL 1 involves a loan agreement between the Philippines and the
2 Asian Development Bank (“ADB”) on September 8, 2020, for the total
3 amount of **US\$125 million, approximately equivalent to ₱6.35**
4 **billion**, for the DOH to scale up its public health capacity to manage the
5 pandemic. Per the submission of the DOF, out of the US\$125 million
6 loan, **US\$25 million was allocated for the procurement of COVID-19**
7 **vaccines.**⁷⁹
8
9 71. COA, in its audit report, describes HEAL 2 as a loan funded by the
10 ADB and co-financed by the AIIB. It is structured to provide the
11 Government of the Philippines (GOP) with immediate and flexible

⁷⁹ See also <https://www.adb.org/news/400-million-ADB-loan-help-Philippines-purchase-covid-19-vaccines>, wherein it was stated that “In January 2021, ADB approved the reallocation of \$25 million under the HEAL loan to fund the government’s advance payments to vaccine suppliers to secure the delivery of vaccines. xxx.”

1 financing to implement programs, projects, and activities to finance
2 vaccine procurement and logistics based on an agreed list of eligible
3 expenditures. It complements the ADB's initial support to the
4 government's COVID-19 vaccine procurement under HEAL 1. More
5 specifically, **HEAL 2 will finance the procurement of safe and**
6 **effective vaccines against COVID-19.**⁸⁰
7

8 72. More specifically, the procurement of COVID-19 vaccines for HEAL 2 is
9 financed from loan agreements funded by the ADB under Loan Number
10 4050-PHI amounting to **P20,000,000,000.00 (US\$400,000,000.00)**, and
11 co-financed by the AIIB under Loan No. L0490A, amounting to
12 **P15,000,000,000.00 (US\$300,000,000.00)**, for a total of
13 **P35,000,000,000.00 (US\$700,000,000.00)**. In addition to the loan
14 financing, **the GOP will provide a counterpart funding of**
15 **P3,208,500,000.00 (US\$ 64,170,000.00) to cover initial loan interest**
16 **and charges** such as other vaccine costs, which include injection
17 devices, personal protective equipment, vaccine transportation,
18 storage, waste disposal and surveillance, and taxes and duties.⁸¹
19

20 73. Two more loans worth **US\$250 million** each were approved by said
21 financing institutions in December of 2021 as additional financing under
22 HEAL 2.⁸²
23

24 74. Finally, **as stated in the COA Audit Report**, PCERP is a loan project
25 funded by the WB which directly supports the implementation of RA No.
26 11469 or the Bayanihan to Heal as One Act. The original loan
27 agreement (Loan No. 9105-PH) for the Project for **US\$100 million** was
28 signed by the government and the WB in April 2020. The Project was
29 restructured in December 2020 to explicitly include the purchase of
30 vaccines, enabling the government to proceed with negotiations with
31 potential vaccine suppliers that fulfill the WB Group's vaccine approval
32 criteria. Per the DOF, from said amount, **US\$30 million** was allocated
33 for the procurement of vaccines.

34 75. In **March 2021**, a loan agreement (Loan No. 9220-PH) was executed
35 between the GOP and the WB to provide additional financing of
36 **US\$500 million**, increasing the loan amount to **US\$600 million**. The
37 financing intends to support the cost of expanding the activities of the
38 parent Project, specifically to help the government purchase and deploy
39 COVID-19 vaccines that meet the WB's regulatory standards and
40 strengthen relevant health systems necessary for successful vaccine
41 deployment. The project duration is 3.75 years or 45 months and will
42 close on 29 December 2023.⁸³
43

44 76. As mentioned previously, the US\$30 million of the original World Bank
45 loan was allowed to be used for vaccine procurement. However, said
46 amount was later offset against the additional financing loan from
47 World Bank of US\$500 million. Thus, only a total of US\$ 500 million

⁸⁰ Management Letter on the Audit of HEAL 2 dated February 7, 2023.

⁸¹ Management Letter on the Audit of HEAL 2 dated February 7, 2023.

⁸² See: <https://www.adb.org/news/250-million-ADB-loan-help-boost-covid-19-vaccine-supply-philippines>. Accessed on April 9, 2023; https://www.aiib.org/en/projects/details/2021/download/philippines/AIIB-PSI-P000555_Second-Health-System-Enhancement-to-Address-and-Limit-COVID-19-Under-the-Asia-Pacific-Vaccine-Access-Facility-Additional-Financing.pdf. Accessed on April 9, 2023.

⁸³ Management Letter on the Audit of the DOH-PCERP dated January 13, 2023.

1 was available for vaccine procurement under the US\$600 million
2 financing from the World Bank.⁸⁴
3

4 77. The World Bank subsequently approved a second additional financing
5 of **US\$300 million** in December of 2021 to cover the procurement and
6 delivery of doses to individuals aged 12-17; additional doses, as part of
7 primary vaccination series, for at-risk population sub-groups, including
8 immunocompromised individuals and senior citizens, who were not fully
9 protected with the initial two-dose or single dose regimens; and booster
10 doses for health workers and the wider population.⁸⁵
11

12 78. From the foregoing, the Philippine government contracted under HEAL
13 and PCERP, the combined amount of US\$2,225,000,000. Out of
14 which, per the DOF, about US\$2,055,000,000 was allocated in support
15 of the vaccination program.⁸⁶
16
17
18

19 E. PROCUREMENT OF VACCINES

20 79. Vaccination is characterized as “an important intervention in infectious
21 disease control because it reduces disease burden in those vaccinated
22 as well as reducing onward transmission to unvaccinated people.”⁸⁷

23 80. As previously mentioned, Congress enacted RA No. 11525 on
24 **February 26, 2021**. In his sponsorship speech of Senate Bill No.
25 2057,⁸⁸ Senator Juan Edgardo “Sonny” M. Angara, the Chairman of the
26 Senate Appropriations Committee, described the tremendous challenge
27 facing the country because of the COVID-19 pandemic in this wise:

28 According to the data from Bloomberg, more than 172 million
29 COVID-19 vaccine doses have been administered across 77
30 countries as of Valentine’s Day this year. And with the
31 vaccination rate of little more than 6.057 million doses per
32 day, on average, Bloomberg estimates that it would take
33 roughly five years before herd immunity—where at least
34 75% of the world’s population are covered with a two-dose
35 vaccine—is achieved. **Realizing this goal entails**
36 **surmounting the greatest logistical challenge humanity**
37 **has faced. For sure, some countries will be able to**
38 **vaccinate their people faster than the others. And those**
39 **that are falling behind would be hard-pressed to do**
40 **everything they can to set the policy framework and**
41 **program to catch up and hasten the process.** [Emphasis
42 and underscoring supplied]

⁸⁴ DBCC FISCAL RISKS STATEMENT 2023 <https://www.treasury.gov.ph/wp-content/uploads/2022/10/2023-Fiscal-Risks-Statement-FINAL.pdf> pages 70-72. See also the Audit Report of COA on PCERP showing US\$500 million as provision for COVID-19 vaccines.

⁸⁵ <https://www.worldbank.org/en/news/press-release/2021/12/21/philippines-world-bank-approves-additional-funding-for-more-vaccines>. Accessed on April 9, 2023.

⁸⁶ However, with the US\$30,000,000 that was offset, the amount should be only US\$2,025,000,000. <https://www.treasury.gov.ph/wp-content/uploads/2022/10/2023-Fiscal-Risks-Statement-FINAL.pdf> (Footnote of Table 21) p.70

⁸⁷ Munday, J.D., van Hoek, A.J., Edmunds, W.J. et al. *Quantifying the impact of social groups and vaccination on inequalities in infectious diseases using a mathematical model*. BMC Med 16, 162 (2018). <https://doi.org/10.1186/s12916-018-1152-1>. Accessed on April 17, 2023.

⁸⁸ Under Committee Report No. 18 - basis for RA No. 11525

1 Dito po nakatuon ang panukalang batas na ating hinaharap
2 sa plenary ngayong araw na tungkol sa pagtatag ng
3 COVID-19 vaccination program. Ang pinakapakay ng
4 panukalang ito base sa Senate Bill No. 2042 na inihain ng
5 ating magiting na Majority Leader, Senator Zubiri, at ng
6 Committee on Health chairperson Senator Go, at iba pang
7 mga kaakibat na panukala mula sa ating mga kasamahan,
8 sina Senator Marcos, Senator Poe, Senator Cayetano,
9 Senator Revilla, at Senator Recto, ay pabilisin ang pagbili
10 at siguraduhing maayos ang pag-administer ng bakuna
11 laban sa COVID-19 para sa buong bansa upang mas
12 maagang mawakasan natin ang pandemya rito sa
13 Pilipinas at masimulan ang muling pagbangon ng ating
14 ekonomiya. [Emphasis and underscoring supplied].⁸⁹

15 81. Consistent with it, RA No. 11525 declared the following as its
16 objectives:⁹⁰

- 17 a. Address the adverse impact of COVID-19 through the procurement
18 and administration of safe and effective COVID-19 vaccines by the
19 National Government through the DOH and the NTF and other duly
20 constituted authorities and instrumentalities;
- 21 b. Source and procure through the DOH and the NTF, either through
22 themselves jointly or in cooperation with any national government
23 agency or instrumentality or local government unit (LGU), safe and
24 effective COVID-19 vaccines;
- 25 c. Recognize the experimental nature of COVID-19 vaccines available
26 in the market and compensate any serious adverse effects (SAEs)
27 arising from the use of COVID-19 vaccine, experienced by people
28 inoculated through the COVID-19 Vaccination Program; and
- 29 d. Creation of a COVID-19 National Vaccine Indemnity Fund to be
30 administered by the Philippine Health Insurance Corporation
31 (PhilHealth) to compensate persons encountering SAE pursuant to
32 the preceding paragraph.

33 82. Section 3 of the law further states that:

34 Notwithstanding any law to the contrary, the DOH and the
35 NTF, either through themselves jointly or in cooperation with
36 any national government agency or instrumentality or LGU,
37 are authorized to procure COVID-19 vaccines, including
38 ancillary supplies and services necessary for their storage,
39 transport, deployment, and administration through
40 Negotiated Procurement under Emergency Cases pursuant
41 to Section 53(b) of Republic Act No. 9184 and Section 53.2
42 of the 2016 Revised *Implementing Rules and Regulations* of
43 Republic Act No. 9184: **Provided, That in the procurement**
44 **of COVID-19 vaccines, the DOH and the NTF shall be**
45 **authorized to negotiate and approve the terms and**
46 **conditions thereof in behalf of LGUs and other**
47 **Procuring Entities including, but not limited to, the price**
48 **and payment terms, making sure that there is price**

⁸⁹ Journal of the Philippine Senate, Session No. 48, February 16, 2021, p. 883

⁹⁰ Section 2 of RA No. 11525

1 **uniformity and to prevent price competition:** *Provided,*
2 further, That after the negotiations by the DOH and the NTF,
3 the LGUs and other Procuring Entities are authorized to
4 enter into supply agreement, advance market commitment,
5 advance payment, research investment, purchase order or
6 any similar arrangements or other requirements as may be
7 identified by the DOH and the NTF. [Emphasis supplied.]⁹¹

- 8 83. To ensure the safety, effectiveness, and transparency in the
9 procurement of vaccines, Section 6 of the law specifically provides
10 that:

11 **The National Government, as well as LGUs, private**
12 **entities and the Philippine Red Cross, may only procure**
13 **COVID-19 vaccines that are registered with the**
14 **Philippine Food and Drug Administration (FDA) as**
15 **evidenced by a valid Certificate of Product Registration**
16 **or which possess an Emergency Use Authorization**
17 **(EUA).** For purposes of transparency, the following
18 information shall be posted in a conspicuous place of the
19 Procuring Entity and in the Government Procurement Policy
20 Board (GPPB) Online Portal within thirty (30) days after
21 award or execution of definitive agreement or after the
22 effectivity of this Act, whichever is applicable:

- 23 **a. Approved budget for the contract;**
24 **b. Name and details of the COVID-19 vaccine or**
25 **ancillary service or supplies;**
26 **c. Name of the supplier, manufacturer, or**
27 **distributor; and**
28 **d. Amount of contract as awarded.** [Emphasis
29 supplied.]

- 30
31 84. As to how the negotiation and procurement was conducted, Sec.
32 Galvez and Usec. Vergeire summarized it in the following manner:

33 MR. GALVEZ. Actually, ito nga ang nagiging ano po namin,
34 process. Ang last na pumipirma is si ano po, si Secretary
35 Duque. Ang pumipirma po ng kontrata, tatlo kami na
36 binigyan po ni Presidente ng special power of attorney to
37 sign the contracts—number one is, ang unang pipirma is si
38 DOF. Then, after that, ako po ang pipirma. And then, ang
39 last na pipirma po is si Secretary of the DOH. And, definitely,
40 iyong lahat ng kontrata po nito, dadaan sa legal ano po nila,
41 sa legal division.

42 And I think Secretary Vergeire can attest to that na—ang
43 counterpart namin po doon ay si Doktora Atoy.

44 THE CHAIRPERSON. Bakit po, sir, iyong letter ng DOH,
45 February 9, ang sagot nila, “DOH did not participate during
46 the negotiations, and it was just the NTF and DOF who
47 represented the government of the Philippines in the same.”

⁹¹ See also TSN, Blue Ribbon Hearing, December 14, 2022, page 45 where Usec. Joven of the DOF stated that it was the Secretary of Health and the Head of the NTF who signed the contracts for the government.

1 MR. GALVEZ. Sir, can we have Secretary Vergeire to—

2 THE CHAIRPERSON. Secretary Vergeire, ang sinasabi
3 ninyo po kasi—sinasabi ng DOH, hindi raw sila kasali. Tapos
4 ngayon—Ano ba talaga ho, kasali ba o hindi kasali?

5 MS. VERGEIRE. Yes, Mr. Chairman. I just like to explain
6 further the specific—what statement we have for that letter.

7 **We were not part of the financial negotiations.** During the
8 time that we were doing all of this, there is this process, as
9 what Secretary Charlie has mentioned, where they had been
10 scouting for these different suppliers or manufacturers
11 across the different countries. And then, once they have this
12 kind of specific manufacturer that they intend to negotiate
13 with, they go back to us and get the science. **If it is really**
14 **backed with science, this vaccine, and if it is part of the**
15 **priorities that we have. So, that is the input of the**
16 **Department of Health during that time. What we were**
17 **stating in the letter was that part where financial**
18 **negotiations were happening already, which the**
19 **Department of Health did not join in, in any of these**
20 **negotiations.** [Emphasis supplied.]

21 THE CHAIRPERSON. Thank you for clarifying that.
22 Otherwise, **the record will just show that you did not**
23 **participate in the negotiations phase.** So, that's clarified.
24 We take note of that. [Emphasis and underscoring
25 supplied.]⁹²

26
27 85. In the Blue Ribbon Committee hearing on **December 14, 2022,**
28 Secretary Galvez explained that the government's main objective was
29 to save lives and our economy. Moreover, everything was a race
30 against time, as such, he contends that **signing the NDAs in order to**
31 **procure vaccines were necessary:**

32
33 Highly-developed nations cornered the main bulk of the
34 limited supply as they were the ones who invested heavily
35 on the research and development. The situation put less-
36 developed nations like us at a major disadvantage as rich
37 nations were able to buy as much as six times their actual
38 population. The Philippine government have moved fast, and
39 our main goal was to save lives.

40
41 And we would like to thank the Congress and the Senate for
42 the passing of Republic Act No. 11525 or the COVID-19
43 Vaccination Program Act of 2021. It was enacted by
44 Congress and Senate, and this law authorized the national
45 task force and the Department of Health to procure vaccines
46 on behalf of the national government.
47

⁹² TSN, Blue Ribbon Committee Hearing, March 9, 2023, pages 51-53

1 Under Section 3 of RA 11525, the national task force and the
2 DOH were likewise allowed to negotiate and approve the
3 terms and conditions of purchases on behalf of the local
4 government units and other procurement entities, but not
5 limited to the price and payment terms. The law also gave
6 confidence to the manufacturers to sell their vaccines to us
7 and also ensure transparency and accountability to the
8 parties.

9
10 **The non-disclosure agreement is part of the process as**
11 **among the manufacturers main requirement before**
12 **entering into supply agreements. Meaning, we cannot**
13 **do away with the CDA. [Emphasis supplied]**

14
15 **On the part of the national government, we have no**
16 **choice at that time. Signing this agreement was the only**
17 **way we could purchase much-needed vaccines doses.**
18 To recall, vaccine production at that time was very limited
19 and was just starting to pick up. Given all the safety nets that
20 has given put in place under RA 11525, all our negotiations
21 and procurement transactions were above board. We must
22 also remember that the bulk of our purchases were being
23 funded through multilateral loan arrangements with Asian
24 Development Bank, World Bank, and Asian Infrastructure
25 Investment Bank. [Emphasis and underscoring supplied]

26
27 xxx.

28
29 Finally **the national government did not over-purchase**
30 **vaccines.** Timely orders, coupled with donations from
31 COVAX and generous countries, gave us the sufficient
32 supply to inoculate at least 100 percent of our target
33 population. We are also able to limit the number of
34 government-procured vaccine wastage within the standard
35 way. [Emphasis supplied]

36
37 In summary, the government aims to fully protect the Filipino
38 people from COVID-19 by providing the needed life-saving
39 vaccines. The magnitude of the vaccine rollout that both
40 government and the private sector carried out is the first of
41 its kind in the country. Through an efficient and effective
42 public and private partnership, the vaccination campaign
43 reached at least 99 percent of its targeted population, which
44 is 77 million.⁹³

45
46 86. Likewise, apparently to justify the execution of the NDAs, former
47 Finance Secretary Dominguez branded the situation as **“a seller's**
48 **market, not a buyer's market.”**⁹⁴

49 87. With some of the legal hindrances to the procurement cleared by the
50 enactment of RA No. 11525, the Government adopted a vaccine
51 diversification procurement strategy using a portfolio of seven (7)
52 vaccines to be sourced and negotiated with the following

⁹³ TSN, Blue Ribbon Committee Hearing, December 14, 2022, pages 14-16.

⁹⁴ TSN, Blue Ribbon Committee Hearing, December 14, 2022, page 51

1 manufacturers: Comirnaty (Pfizer/BioNTech), AstraZeneca/Oxford,
 2 Moderna (ModernaTX), Coronavac (Sinovac), Janssen (Johnson &
 3 Johnson), Sputnik-V (Gamaleya), and BIBP (Sinopharm). Through the
 4 aforementioned agreements and partnerships entered into by the
 5 Philippine Government, a total of 251.38 million COVID-19 vaccine
 6 doses have been secured and delivered, which are sufficient to
 7 inoculate around 122 million Filipinos or more than 100% of the entire
 8 adult population.⁹⁵ **However, The Government only signed supply**
 9 **agreements with Pfizer/BioNTech, ModernaTX, Coronavac, and**
 10 **Gamaleya. The other vaccine brands were supplied to the country**
 11 **through other means (i.e., through donations, private sector/local**
 12 **government procurement).⁹⁶**

See Table Below supplied by the DOF:

Vaccine	Quantity (in millions of doses)	Percentage of Portfolio
National Government		
Donated		
Bilateral Donations	18.62	7.41%
Covax	74.22	29.53%
Total Donated	92.83	36.94%
Purchased		
Vaccine D (Multilateral Financing Institutions [MFI])	12.99	5.17%
Vaccine C (GAA)	5.50	2.19%
Vaccine C (MFI)	45.63	18.15%
Vaccine G (GAA)	10.00	3.98%
Vaccine F (MFI)	60.00	23.87%
Total Purchased	134.13⁹⁷	53.36%
Total National Government (Donated and Purchased)	226.95 (~110 million Filipinos)	90.30%
LGU and Private		
Vaccine D	7.00	2.78%
Vaccine A	16.52	6.57%
Vaccine C	0.90	0.36%

⁹⁵ Letter of Secretary Benjamin Diokno dated December 23, 2022 to Senator Francis N. Tolentino

⁹⁶ Footnote in Secretary Benjamin Diokno's letter dated December 23, 2022 to Senator Francis N. Tolentino

⁹⁷ However, in documents supplied by the DOH, the total purchased vaccines amounted to 134,153,110.

Total (LGU and Private)	24.42 (~12 million Filipinos)	9.71%
Running Grand Total (NG + LGU + Private)	251.38 (~122 million Filipinos)	

Source : DOF

- 1 88. The Blue Ribbon Committee is also in possession of a document
2 showing the various brands of vaccines purchased and donated.



COVID-19 VACCINES IN THE PHILIPPINES

as of December 2, 2022

VACCINE	DONATION		PROCUREMENT					TOTAL	
	COVAX FACILITY	OTHER DONORS	NATIONAL GOVERNMENT			LGU	PRIVATE ENTITIES		
			GOP	ADB	WORLD BANK				
sinovac		4,075,000	5,500,000	45,630,400			400,000	500,000	56,105,400
COVAX	31,292,820	1,432,080		40,001,130	5,001,750				77,727,780
PEGA		6,000,000			15,000,000				21,000,000
Sputnik V COMPONENT I			5,000,000						5,000,000
Sputnik V COMPONENT II			5,000,000						5,000,000
Sputnik		5,000							5,000
AstraZeneca	16,324,000	6,003,750					13,340,300	3,178,900	38,846,950
moderna	13,873,260				13,019,830			6,978,730	33,871,820
Janssen	12,725,650								12,725,650
SINO PHARM		1,100,000							1,100,000
TOTAL	74,215,730	18,615,830	15,500,000	85,631,530	33,021,580	13,740,300	10,657,630	251,382,600	

Source: LBRMO⁹⁸

- 3 89. In effect, the National Government procured 134,153,110 million
4 doses or about 53.36% of the vaccine portfolio utilizing the GAA
5 and the financing discussed above. The rest of the doses were
6 sourced through donations (36.93%) or private sector and local
7 government purchases (9.71%).
- 8 90. Out of the 134.15 million vaccines procured by the national
9 government, 118.65 million (88.45%) were funded through MFIs
10 while the balance of 15.50 million (11.55%) were funded by the
11 GAA.
- 12 91. The quantity and actual cost for the procurement of COVID-19 vaccines by
13 the national government per the DOH are as follows:

Year 2021 to October 31, 2022

Fund Source	Quantity (Dose)	Cost (in Php)
GOP	15,500,000	8,892,803,425.92
World Bank (WB)	33,001,150	24,059,926,658.30
Asian Development Bank (ADB) and Asian Infrastructure	85,631,530	35,373,063,469.40

⁹⁸ **Total donation - 92,831,560.** (COVAX and the following countries PRC, UK, UAE, GoJ, Brunei, Russia, Australia, Poland, South Korea, Argentina, Australia and Qatar). **Total procured - 158,551,040**

Investment Bank (AIIB)		
Total	134,132,680⁹⁹	68,325,793,553.62

92. From said tables, the following can be deduced:

- a. For World Bank funds, the government purchased Pfizer (Adult and Pedia) and Moderna Vaccines;
- b. That **P729.06 per dose is the estimated price for vaccines procured using World Bank Funds;**
- c. For **GAA funds**, the government procured Sinovac and Sputnik V at an **estimated cost of P573.729 per dose;**
- d. For **funds from ADB and AIIB** (HEAL 1 and 2), the government procured Sinovac and Pfizer (Adult) with an estimated purchase price of **P413.08 per dose;**

93. In another submission, this time by the DOF, the indicative average per person cost of 2 doses of vaccine (as of Q4 2022) relative to the source of funding are as follows:

Indicative Average Cost as of Q4 2022 (using the Exchange Rate of PHP 55.91: USD 1.00)	Per Dose		Per Person (at 2 doses per person)	
	In USD	In PHP	In USD	In PHP
MFI Only	10.19	569.89	20.39	1,139.78
GAA Only	11.39	636.65	22.77	1,273.31
Government Procured (MFI + GAA)	10.33	577.60	20.66	1,155.21
Government Procurement + Donations	6.11	341.36	12.21	682.71
Private / LGUs Only	11.59	647.97	23.18	1,295.93

94. Former Secretary Dominguez's perspective on said figures is interesting and arguable. According to him:

The total vaccines that we received is **251 million doses**: we received **92.83 as donations**; **national government procured 134.13 million**; and the **LGUs and the private sector procured 24.42 million**. So, if you are asking what the national government is really responsible for with regard

⁹⁹ Variance of 20,000 doses compared with the table above.

1 **to the funding and the money involved, we are**
2 **responsible for 134.13 million. [Emphasis supplied].**
3

4 Now, according to Undersecretary Vergeire, we lost,
5 from the national government stock, **2.7 million**
6 **wasted. Now, 2.7 million is 2 percent of 134**
7 **million. That is a relatively small amount of loss of**
8 **national government vaccines. So, losses happen**
9 **in every business, in every activity. Two percent, I**
10 **think, is not alarming. Okay. The amount is P1**
11 **billion. But you have to remember that we funded**
12 **this with borrowings, our total amount disbursed**
13 **was \$1.198 billion. So, that is equivalent to about**
14 **50 or P55 billion. We lost 2 percent of that. Okay.**
15 **It is high. Yes, it is high. It should not happen. But**
16 **in reality, these things happen. Even if you buy**
17 **bullets for the armed forces, you will expect a certain**
18 **amount to be duds. You cannot have 100 percent**
19 **perfect. [Emphasis supplied]**
20

21 So, that was what we, as national government officers
22 at that time, are responsible for, a **2 percent loss**.
23 The rest losses, I suppose, will come from the losses
24 from the private sector, from the LGU purchases, from
25 what was donated. And as was explained, not
26 everybody wants to be vaccinated. That is the reality
27 of the situation. I have some relatives who do not
28 want to be vaccinated despite the amount of trying to
29 convince them to do it. But that is the reality. **So, is 2**
30 **percent high? Is 2 percent low? Is it acceptable?**
31 **Is it not? That is up to the judgment of this**
32 **honorable Committee. But in my personal**
33 **experience in the private sector and in the public**
34 **sector, 2 percent loss is not so bad.¹⁰⁰ [Emphasis**
35 **and underscoring supplied]**
36

37 95. As to the arrival of the vaccines, see the following tables:

¹⁰⁰ TSN, Blue Ribbon Committee Hearing, December 14, 2022, page 62- 63

MONTH OF ARRIVAL	PROCUREMENT												TOTAL	
	GOP			ADB		WB			LGU		PRIVATE			
	SINOVAC	SPUTNIK I	SPUTNIK II	SINOVAC	PFIZER ADULT	PFIZER ADULT	PFIZER PEDIA	MODERNA	SINOVAC	ASTRAZENECA	SINOVAC	ASTRAZENECA		MODERNA
Jan-21														0
Feb-21														0
Mar-21	1,000,000													1,000,000
Apr-21	1,500,000													1,500,000
May-21	2,000,000	65,000	15,000											2,080,000
Jun-21	1,000,000	100,000		4,600,000				194,400	400,000		500,000		55,200	6,849,600
Jul-21		120,000	50,000	7,500,000	938,340			194,400		421,900		728,900	56,400	10,009,940
Aug-21			30,000	10,000,000	1,540,890			543,600		1,034,800		123,500	252,000	13,524,790
Sep-21			190,000	9,500,000	3,605,940			1,576,600		916,400		246,800	617,800	16,653,540
Oct-21		560,000	560,000	4,500,000	9,541,350			2,290,410		1,071,100		288,600	1,205,030	20,016,490
Nov-21		4,155,000	4,155,000	9,530,400	5,906,160			4,497,880						28,244,440
Dec-21					18,468,450			3,572,400		8,018,500		1,791,100	4,792,300	36,642,750
Jan-22								1,023,750						3,051,490
Feb-22								1,365,390	2,340,000					3,705,390
Mar-22								2,182,050	11,928,000					14,110,050
Apr-22								430,560	729,600					1,160,160
May-22														0
Jun-22								2,400						2,400
Jul-22														0
Aug-22														0
Sep-22														0
Oct-22														0
Nov-22														0
Dec-22														0
	5,000,000	5,000,000	5,800,000	45,630,400	40,001,130	5,001,750	15,000,000	13,019,830	400,000	13,340,300	500,000	3,178,900	6,376,730	158,551,040
		15,500,000			85,631,530			33,021,580		13,740,300		10,657,630		158,551,040

MONTH OF ARRIVAL	DONATION									TOTAL	
	COVAX				BILATERAL						
	PFIZER ADULT	ASTRAZENECA	MODERNA	JANSSEN	SINOVAC	PFIZER ADULT	PFIZER PEDIA	ASTRAZENECA	SPUTNIK LIGHT		SINOPHARM
Jan-21											0
Feb-21					600,000						600,000
Mar-21		525,600			400,000						925,600
Apr-21											0
May-21	193,050	2,030,400									2,223,450
Jun-21	2,279,160										2,279,160
Jul-21		2,028,000		3,240,850				1,124,100			6,392,950
Aug-21			3,000,060					415,040		1,100,000	4,515,100
Sep-21	2,770,560										2,770,560
Oct-21	9,516,780	2,391,000			1,000,000			1,963,600			14,871,380
Nov-21	301,860	6,019,100						1,786,530	5,000		8,112,490
Dec-21	5,022,810	3,329,900	10,873,200	9,316,800	2,000,000			714,480			31,257,190
Jan-22	2,703,870			168,000							2,871,870
Feb-22	4,206,150							1,432,080			5,638,230
Mar-22	3,999,060										3,999,060
Apr-22					75,000						75,000
May-22											0
Jun-22	299,520										299,520
Jul-22											0
Aug-22											0
Sep-22								3,000,000			3,000,000
Oct-22								2,001,600			2,001,600
Nov-22								998,400			998,400
Dec-22											0
	31,292,820	16,324,000	13,873,260	12,725,650	4,075,000	1,432,080	6,000,000	6,003,750	5,000	1,100,000	92,831,560
			74,215,730					18,615,830			92,831,560

F. Audit Reports and DOH Comments

96. The COA, per request of the MFIs, conducted three (3) audits with separate reports on the following:

- a. HEAL 1;
- b. HEAL 2; and
- c. PCERP

97. On **February 8, 2023**, COA submitted its Audit Reports to the DOH. The DOH subsequently filed its comments. The table below

1 summarizes the pertinent issues related to the inquiry of the Blue
 2 Ribbon Committee:

COA Audit Reports	Management Reply
<p style="text-align: center;">PCERP <i>AOM No. 2023-004 (2021) PCERP</i> <i>13 January 2023</i></p> <p style="text-align: center;">Audit Observation</p> <p>The failure to provide for Liquidated Damages and Performance Security in the Bilateral Agreements for the supply of Moderna and Pfizer vaccines, which are minimum contract conditions for international competitive procurement of goods required under the World Bank (WB) Procurement Regulations for IPF Borrowers, as well as the provision in the Supply Agreement for Pfizer vaccines limiting the liability of the vaccine supplier in case of non-delivery or delayed delivery, may put the Government in a disadvantageous position of not being indemnified in the event of delays in deliveries or any breach of contract by the supplier.</p> <p>Moreover, the non-submission of procurement-related documents and the non-posting of required information in a conspicuous place in the premises of the Department of Health (DOH) and in the Government Procurement Policy Board (GPPB) online portal deviate from the WB core procurement principle of transparency, thereby precluding the overall review and validation of the underlying activities in the procurement process.</p> <p>Finally, the Non-Disclosure Agreements (NDA) in the Supply Agreements (a) undermined the power of the Commission on Audit (COA) to audit, examine and settle accounts of the Government; (b) disregarded the basic precept of transparency of government transactions; and (c) prevented the prompt submission of the Supply</p>	<p style="text-align: center;">DOH Comments</p> <p>As to the provisions of the Supply Agreement observed to be disadvantageous to the government, we respectfully inform that we are not in the position to provide explanation or comment. The Project and the DOH did not participate during negotiations and it was the NTF and the DOF who represented the GoP in the same. The DOF was designated as the lead negotiator for the procurement of COVID-19 vaccinations. The DOF is also the one tasked to review foreign loans including the WB loan obtained for PCERP, making them privy to the policies and requirements of WB.</p> <p>To our knowledge, the vaccine manufacturers were the ones that required that these conditions be agreed to before supplying vaccines. Since the global demand outweighs the global supply, the Philippines is not in a position to negotiate for equally advantageous terms but is in fact beholden to the manufacturer's "take it or leave it "stance. These were the risks that the representative of the GoP had to take to ensure that the country access the needed vaccines. [Emphasis supplied.]</p> <p>Moreover, the provision limiting or waiving the liability of the manufacturer in case of late delivery or non-delivery was required by the manufacturer due to the volatility of the supply and the limited capacity of the latter to mass manufacture the vaccines. Unlike ordinary vaccines (such as for polio, measles, etc,) wherein the vaccine manufacturers had stockpiles and doses with longer shelf life allowing them to give a definite date of delivery, the COVID-19 vaccines supply was different. Because of the limited shelf life of the vaccines, the manufacturers cannot commit as to the stipulated</p>

Agreements to the COA thereby depriving the stakeholders of timely audit results on the Supply Agreements.¹⁰¹

delivery dates in the Supply Agreements since they cannot also afford an oversupply. At any rate, since the COVID-19 global scenario has already improved, the recommendations will now be treated as a lesson learned and ways for improving future transactions.

Lastly, the WB has a strict requirement prior to procuring vaccines. The Bank required that the vaccine be part of the Emergency Use Listing (EUL) of the World Health Organization (WHO), and should satisfy at least 2 Stringent Regulatory Authority requirements. With these criteria, only Pfizer BioNTech and Moderna were seen to be qualified. Attached are the pertinent documents regarding WHO EUL for your reference.

As to COA's statement that the NDA in the agreements undermined its power to audit, examine and settle accounts of the Government, we respectfully stress that we recognize COA's mandates under Section 2(1) of Article IX (D) of the 1987 Constitution, notwithstanding the NDAs executed between the vaccine manufacturers and the negotiating team of the GoP.

It was never the intention of the DOH to undermine the auditing powers of the COA. The execution of the NDA was made in the interest of public health during the Covid-19 pandemic. In light of the fact that there was a global shortage of vaccines at the time and supplies were limited, the government was put in a position wherein it had to accept the terms and conditions of the manufacturers on confidentiality in order to immediately launch a COVID-19 Vaccination Program. In sum, the benefit of mitigating the effects of global pandemic outweighed the risk of signing the NDA's.

Notably, with the knowledge of COA's mandate, DOH had even requested the COA in earnest through a letter dated 16 November 2021 to conduct a special

¹⁰¹ Final Comments to Audit Observation Memoranda (AOM) for the Philippines COVID-19 Emergency Response Project (PCERP) funded by the World Bank under Loan No. 9105-PH and 9220-PH, letter of DOH Sec. Vergeire to Ms. Deauna, OIC-Supervising Auditor, Commission on Audit, dated February 9, 2023, p.3

	<p>audit on the vaccine procurement transactions. Further, DOH adhered to the audit guidelines by coordinating with the vaccine manufacturers by requesting copies of the supply agreements and NDAs pursuant to COA Circular No. 2009-001. These efforts clearly showed DOH's recognition of the constitutional mandate of COA to audit government contracts.</p> <p>BIHC has provided full copies of the documents to the Office of the Secretary in compliance with the COA directive. However, the same were reviewed by the latter to ensure that the NDAs and confidentiality clauses will not be violated. This rationalizes OSEC's submission of redacted portions of the documents.</p> <p>Nevertheless, the DOH takes note of the COA's recommendations. For future transactions, the DOH shall endeavor to negotiate the confidentiality agreements with the manufacturers for less restrictive terms on disclosure to COA and relevant government agencies.¹⁰²</p>
<p style="text-align: center;">HEAL 1</p> <p style="text-align: center;"><i>Management Letter on the audit of the Health System Enhancement to Address and Limit Covid-19 Project (HEAL 1) Funded by Asian Development Bank (ADB)</i></p> <p>The provision in the Supply Agreement financed by the HEAL 1 limiting the liability of the vaccine supplier in case of non-delivery or delayed delivery of COVID-19 vaccines is disadvantageous to the government, thereby leaving the Government with no recourse in case of delay or default in delivery commitment.</p> <p>Further, the non-disclosure agreements in the Supply Agreement (a) undermine the power of the COA to audit, examine and settle accounts of the Government; and (b) disregard the basic precept of</p>	<p style="text-align: center;">HEAL 1</p> <p>When the COVID-19 vaccines became available, there was a limited supply of vaccines. In addition, the vaccine manufacturers prioritized the First World countries in terms of access to supply making it difficult for the Philippines to procure the said vaccines. When the latter offered the vaccines to the GOP, through the negotiating team composed by the NTF and the DOF, the manufacturers expressed a "take it or leave it" stance during negotiations knowing fully well that there are other available countries needing the vaccines. The vaccine manufacturer required that their template for the Supply Agreement be used, which contained the provision on limited</p>

¹⁰²Final Comments to Audit Observation Memoranda (AOM) for the Philippines COVID-19 Emergency Response Project (PCERP) funded by the World Bank under Loan No. 9105-PH and 9220-PH, letter of DOH Sec. Vergeire to Ms. Deauna, OIC-Supervising Auditor, Commission on Audit, dated February 9, 2023, pp.3-4

<p>transparency of government transactions, thereby depriving the stakeholders of timely audit of the Supply Agreement.</p> <p>NDA is incompatible with the provisions of Section 6 of RA No. 11525, Section VII.D.2 of the IRR of RA No. 11525 and Section 7.1 and 7.2 of GPPB Circular No. 02-2021.</p> <p>Finally, the Supply Agreement was submitted to the COA on 15 December 2022 beyond the 5-day prescriptive period required under COA Circular No. 2009-001 dated 12 February 2009, and was not certified true copies, thereby casting doubt on the authenticity of the said agreement.¹⁰³</p>	<p>liability.</p> <p>As to the non-disclosure agreement, the vaccine manufacturers insisted that an NDA be executed and obliged the GOP to honor the confidentiality clauses embodied in the Supply Agreement as a precondition to the supply of vaccines despite the NDA requirement to remedy the rising fatalities in the country during the height of the pandemic.</p> <p>For the copies of contracts, the Management only had digital copies, hence, they cannot certify as to its authenticity. The Management is now coordinating with the previous administration as to the source of the original signed and dated copies.¹⁰⁴</p>
<p style="text-align: center;">HEAL 2 <i>AOM No. 2023-002 (2021) HEAL2 dated January 23, 2023</i></p> <p>The practice of entering into supply agreements containing disadvantageous provisions that waive supplier liability in case of delay or non-delivery, and non-disclosure agreements that prevent proper audit and examination of the accounts and transactions of government entities undermining transparency and accountability in government. The copies of contracts were not submitted to COA in compliance with COA Circular No. 2009-001, and were not certified as true copies in order to establish the documents' authenticity.¹⁰⁵</p>	<p style="text-align: center;">HEAL 2</p> <p>The DOH wishes to reiterate that DOH did not participate during negotiations and it was the NTF and the DOF who represented the GoP in the same.</p> <p>The DOF was designated as the lead negotiator for the procurement of COVID-19 vaccinations. The DOF is also the one tasked to review foreign loans including the ADB loan obtained for HEAL2, making them privy to the policies and requirements of the ADB.</p> <p><u>Provisions on waiver of supplier's liability in case of delay or non-delivery.</u></p> <p>To our knowledge, the vaccine manufacturers were the ones that required that these conditions be agreed to before supplying vaccines.</p> <p>Accordingly, the provision limiting or waiving the liability of the manufacturer in case of late delivery or non-delivery</p>

¹⁰³ COA Management Letter on the audit of the Health System Enhancement to Address and Limit Covid-19 Project (HEAL 1) Funded by Asian Development Bank (ADB) under Loan Agreement Number 3961-PHI, For the Year Ended 31 December 2021, pp.39-40

¹⁰⁴ COA Management Letter on the audit of the Health System Enhancement to Address and Limit Covid-19 Project (HEAL 1) Funded by Asian Development Bank (ADB) under Loan Agreement Number 3961-PHI, For the Year Ended 31 December 2021, pp.44-45

¹⁰⁵ Final Comments to Audit Observation Memoranda (AOM) for the Asian Development Bank Health System Enhancement to Address and Limit 2 (HEAL 2) COVID-19, letter of DOH Sec. Vergeire to Ms. Tadeo, State Auditor IV-Team Supervisor, Commission on Audit, dated February 15, 2023, p.2

was required by the manufacturers due to the volatility of the supply and the limited capacity of the latter to mass manufacture the vaccines. Unlike ordinary vaccines (such as for polio, measles, etc.) wherein the vaccine manufacturers had stockpiles and doses with longer shelf life allowing them to give a definite date of delivery, the COVID-19 vaccine supply was different.

Securing of the supply agreement with the waiver of supplier's liability in case of delay or non-delivery was made during the world-driven demand for vaccines. To immediately establish a COVID-19 Vaccination Program, the government was obliged to accept the terms and conditions of the manufacturers due to pressing public concerns. **[Emphasis omitted.]**

At any rate, since the COVID-19 global scenario has already improved, the recommendations will now be treated as a lesson learned and ways for improving future transactions.

Non-disclosure Agreements

The execution of the NDA was made in the interest of public health during the COVID-19 pandemic. In light of the fact that there was a global shortage of vaccines at the time and supplies were limited, the government was put in a position wherein it had to accept the terms and conditions of the manufacturers on confidentiality in order to immediately launch COVID-19 Vaccination Program.

Notwithstanding the confidentiality and non-disclosure clauses provided in the vaccine contracts, the DOH has recognized that while some details on the transactions for the procurement of vaccines cannot be publicly disclosed, they are not exempt from COA audit jurisdiction.

Notably, in recognition of COA's mandate, DOH requested the COA in earnest through a letter dated 16 November 2021 to conduct a special

audit on the vaccine procurement transactions. Further, DOH adhered to the audit guidelines by coordinating with the vaccine manufacturers for copies of the supply agreements and NDAs pursuant to COA Circular No. 2009-001. These efforts clearly showed DOH's recognition of the constitutional mandate of COA to audit government contracts.

Late submission of Supply Agreements and failure to provide complete and certified true copies.

The DOH is obliged to honor its commitments under the NDAs and the Confidentiality clauses of the Supply Agreements with the COVID-19 vaccine manufacturers. The Department, through earnest efforts, sought to secure the written approval and "no objection" of the manufacturers before disclosing or furnishing COA with copies of the same documents which resulted in the belated submission of the document.

However, the DOH was able to submit copies of the Supply Agreements as agreed during the Senate Blue Ribbon Hearing last December 14, 2022. This was raised by the DOH during the COA Exit Conference.

As explained by COA during the Exit Conference, the observation stemmed from the failure of the DOH to submit the documents within five (5) days from receipt of the request pursuant to COA Circular No. 2009-001. Thus, what is material to this COA audit observation is the 5-day deadline set by COA. As discussed, since the DOH sought the approval of the vaccine manufacturers first as part of its due diligence and to ensure that the confidentiality obligations of the Department are upheld, the DOH was not able to submit the documents within the 5-day deadline set by the COA Circular.¹⁰⁶

¹⁰⁶ Final Comments to Audit Observation Memoranda (AOM) for the Asian Development Bank Health System Enhancement to Address and Limit 2 (HEAL 2) COVID-19, letter of DOH Sec. Vergeire to Ms. Tadeo, State Auditor IV-Team Supervisor, Commission on Audit, dated February 15, 2023, pp. 2-4

1 98. The additional funding under HEAL 2 of US\$500 million and the
2 US\$300 million in PCERP approved in December of 2021 were not part
3 of the audit reports submitted to DOH and Senate, as confirmed by
4 COA:

5
6 MS. RAMOS. Yes, sir. The audit covered CY or Calendar
7 Year 2020 and 2021. It did not cover 2022.¹⁰⁷
8

9 99. Taking said matters into consideration, COA in its reports,
10 recommended the following:

11
12 **a. Discontinue the practice of entering into supply agreements**
13 **containing:**

14
15 **1. disadvantageous provisions that waive supplier liability**
16 **in case of delay or non-delivery, and**

17
18 **2. non-disclosure agreements that prevent proper audit**
19 **and examination of the accounts and transactions of**
20 **government entities undermining transparency and**
21 **accountability in government, and**

22
23 **b. ensure that copies of contracts submitted to COA in**
24 **compliance with COA Circular No. 2009-001 are certified as**
25 **true copies in order to establish the documents' authenticity.**
26

27
28 **III. ISSUES**
29

30
31 100. At the start of this report, the Chairperson mentioned the scope and
32 limitations of the inquiry. Proceeding from there, the Blue Ribbon
33 Committee has the following issues to resolve:

34
35 **A.**
36

37 **1. Whether or not the Executive Department can refuse to**
38 **provide COA with its COVID-19 procurement contracts on**
39 **account of NDAs.**

40
41 **2. Can the Executive Department refuse to comply with the order**
42 **to divulge information to the Blue Ribbon Committee regarding**
43 **COVID-19 contracts?**

44
45 **3. Whether or not the right to information justifies the revelation**
46 **of the prices of the vaccines.**
47

48 **B.**

¹⁰⁷ TSN, Blue Ribbon Committee Hearing, February 21, 2023, page 54

1
2 4. Is the country's vaccine wastage within the maximum wastage
3 rate as prescribed by WHO?
4

5 C.
6

7 5. Corollary to the wastage rate, whether or not the vaccination
8 campaign of the national government is successful.
9

10 IV. FINDINGS

11 A.
12

- 13
14 • An NDA that would stop
15 COA from examining and
16 auditing government funds
17 contravenes the
18 Constitutional authority of
19 COA.
20

21 The Request and Response

22
23 101. During the **December 14, 2022** hearing of the Blue Ribbon Committee,
24 Senator Imee R. Marcos quoting the Chairperson of COA, stated:

25 SEN. MARCOS. Yes. If I may, Mr. Chair? And, perhaps,
26 since Secretary Duque is here, may I quote the statement on
27 record by the COA head, Cordoba, when he faced the
28 Commission on Appointments.

29 The Department of Health po, at that time, si Secretary
30 Duque, wrote to us stating they will not be able to provide
31 these documents because they have an NDA or non-
32 disclosure agreement with the suppliers.

33 So, perhaps, Secretary Duque can explain.¹⁰⁸

34 102. Sec. Duque belied said statement and explained that:

35 And to respond, I would like to state for the record that, in
36 fact, on November 16, 2021, very much, the DOH under my
37 watch, sent a letter to then-Chairman Michael Aguinaldo,
38 requesting that a special audit be made. And that the special
39 audit consists of financial and compliance audits of our
40 vaccine-related procurements funded through the World
41 Bank, ADB, and AIIB. And anent to that, in fact, we also
42 requested the good chairperson then to also do an end-to-
43 end performance audit of the entire national deployment and
44 vaccination plan on COVID-19 vaccines.¹⁰⁹

¹⁰⁸ TSN, Blue Ribbon Hearing, December 14, 2022, page 18.

¹⁰⁹ TSN, Blue Ribbon Hearing, December 14, 2022, page 18

1 103. In response to it, Sec. Galvez stressed that they never said that COA
2 will not be allowed to look at the Confidential Disclosure Agreement
3 (CDA)¹¹⁰ much more audit it:

4 Based on our knowledge and also on the record that we had
5 during the Senate hearings, the procurement team is ready
6 really for the auditing. So, meaning what we have done
7 during the procurement is basically—we applied what we call
8 the prudence that we have with the procurement, and we
9 follow all the procedures. And what we can say is that we
10 are ready to really have it audited by the COA.

11 Considering that also during our negotiation, the different
12 multilateral partners that we have, the Asian Development
13 Bank, World Bank and also the AIIB, we know that they will
14 also—the terminal or the special audit that will be conducted.
15 That's why in our contract, it is stipulated in there that the
16 ADB and the World Bank and the AIIB provided some sort of
17 transparency and anti-corruption clause so that the
18 manufacturers will abide with certain procedures in auditing
19 in terms of—after the procurement of the vaccine.

20 So, in record, Your Honors, we are really abiding to the
21 constitutional right of the COA to make an audit with the
22 contracts.¹¹¹

23 104. Sec. Dominguez declared that the DOF was open to an audit as the
24 funds were financed by official development assistance:

25 I wish to clarify that the Department of Finance under my
26 watch has never refused to subject the vaccine agreements
27 to audit. In fact, as early as June 2021 in a hearing also
28 before this august chamber under the previous Congress,
29 we had offered to disclose to the Senators the details of the
30 agreement in executive session to be able to comply with the
31 Senate's instructions while also honoring our confidentiality
32 commitments under the contract.

33 The previous Senate saw no need for such an executive
34 session having been satisfied with the average prices we
35 were able to provide and noting that the Commission on
36 Audit may, at any rate, conduct inquiries later on.

37 Let me emphasize that we have never indicated that the
38 vaccine agreements are exempt from audit. Our vaccine
39 procurements were largely financed by official development
40 assistance from our reputable multilateral development
41 partners and the related loan agreements mandate the audit
42 of the supply agreements precisely to ensure that these are
43 corruption-free. In fact, disclosures pursuant to audit
44 requirements are enshrined in the supply agreements.

45 Under our Constitution, the COA has the jurisdiction to audit
46 all government accounts. These vaccine supply agreements
47 are no exception. While the details could not be publicly
48 divulged in keeping with our confidentiality obligations, these

¹¹⁰ TSN, Blue Ribbon Hearing, December 14, 2022, page 16.

¹¹¹ TSN, Blue Ribbon Hearing, December 14, 2022, pages 20-21

1 may be duly audited in compliance with government
2 procedures.¹¹²

3 105. Secretary Dominguez also defended the decision to sign the NDA and
4 argued that:

5 So, again, looking at the situation, you are behind the eight
6 ball here. There is no manufacturer, there is no standard
7 vaccine that can deal with this virus. We had deaths
8 happening every day. We were not fully prepared. No one in
9 the world was fully prepared for this. So, we did our best
10 under the circumstances. Now, if we had to sign a NDA
11 agreement, it was you signed the NDA agreement or you
12 don't have a vaccine. What will you do? Will I explain to the
13 Filipino families whose family died and say, "Sorry, we didn't
14 get the vaccine because we didn't want an NDA
15 agreement"? What is more important, the NDA or
16 somebody's life? That is the decision we were faced with at
17 that time.¹¹³

18 106. Undersecretary Maria Rosario Vergeire narrated the negotiations with
19 the various manufacturers on the release and disclosures of the supply
20 agreements:

21 MS. VERGEIRE. Yes, Mr. Chair. Honorable Chair, we have
22 communicated with the different manufacturers as early as
23 October of 2021 in order for us to get their permission, for us
24 to disclose information to the Senate and also to COA.
25 Because, in general, among all of these agreements that
26 we've had with manufacturers, **there is this similar clause**
27 **wherein if we need to disclose because of auditing or**
28 **because of legal procedures, we need to inform them**
29 **and get their permission.** [Emphasis supplied]

30 So, so far, when we have communicated to them last 2021,
31 only Pfizer, Sinovac and AstraZeneca responded to us.
32 Pfizer responded to us during that time that we can disclose
33 but—

34 THE CHAIRPERSON. Can you repeat that? You can
35 disclose.

36 MS. VERGEIRE. [off-mike] Yes.

37 THE CHAIRPERSON. Can't, can?

38 MS. VERGEIRE. Honorable Chair, **Pfizer responded to us**
39 **specifically stating that we can disclose, but COA has to**
40 **uphold also the confidentiality agreement. And during**
41 **that time, in December of last year, COA responded to**
42 **us when we communicated to them the response of**
43 **Pfizer that they cannot uphold this agreement because**
44 **apparently COA stated that they are not covered by this**
45 **agreement, only DOH and the manufacturer. So we were**
46 **not able to provide them with those documents before.**
47 **Sinovac responded during that time that they cannot**

¹¹² TSN, Blue Ribbon Hearing, December 14, 2022, pages 22-23

¹¹³ TSN, Blue Ribbon Hearing, December 14, 2022, page 52

1 and they are not allowing that we disclose the specific
2 information especially on pricing to anybody. And then
3 the third, for AstraZeneca, they were—

4 **THE CHAIRPERSON.** So, pricing cannot be disclosed by
5 Sinovac. So, in effect, they're saying that pricing is part
6 of the trade secret?

7 **MS. VERGEIRE.** Yes, Honorable Chair. That is what they
8 have stated when they responded to us. And then
9 AstraZeneca, Honorable Chair, responded to us that we
10 can disclose information, but we need to just be discreet
11 in the disclosure of this information as well as the
12 recipients of this information. So, we again repeated—

13 **THE CHAIRPERSON.** AstraZeneca, for the information of
14 the resource persons present here, even have their
15 manufacturing and supply agreements, advance purchase
16 agreements, and all the terms published in their website for
17 Colombia and European Commission, as well as for other
18 countries, including the Dominican Republic and Peru.

19 So, these are out there. These are out there.

20 Please, proceed.

21 Pfizer is okay, as what you said, Madam Secretary. Pfizer is
22 okay.

23 Sinovac is not willing to disclose. AstraZeneca?

24 **MS. VERGEIRE.** Honorable Chair, we again wrote to them
25 specifically for this Senate hearing. **And Pfizer responded**
26 **that we can disclose information only through an**
27 **executive session with the Senate Blue Ribbon**
28 **Committee.**

29 **SEN. ESTRADA.** What about Moderna?

30 **MS. VERGEIRE.** Moderna has not responded, Honorable
31 Senator. Even from the last year's communication they did
32 not respond and also for this year. Sinovac did not respond
33 to us for this year. But last year, specific sila, they said that
34 we cannot disclose the pricing and the other details of this
35 information on price. And then AstraZeneca, then again
36 responded to us now and very much willing to disclose
37 information. So we have already prepared, Honorable
38 Senator, the documents that we will be submitting to the
39 Senate Committee, including the AstraZeneca documents
40 that we will be sharing after this meeting, Honorable
41 Senator.

42 **So, my response, Honorable Senator, to the request of**
43 **COA would be that the information will be provided**
44 **through an executive session for the Pfizer. And then for**
45 **the others, we are still waiting for the response if COA**
46 **would just reiterate their communication officially to us,**
47 **so that we can facilitate the submission already of these**
48 **documents.**

1 THE CHAIRPERSON. So, you're silent on Moderna. You're
2 silent on Johnson and Johnson. You're silent on Sputnik.
3 You're silent on—what's the other one? Novavax? And the
4 others.

5 So, what about vaccines sourced by the private sector?
6 What about vaccines sourced by the LGUs considering that
7 there was supposed to be a tripartite agreement? Is this part
8 of the confidentiality agreement?

9 Because, ma'am, confidentiality agreement from all the
10 NDAs, I have in my possession, refers to two parties. Now, if
11 you have a tripartite, you now have three parties. So, we're
12 venturing into the realm of legalities here. But is this
13 included? [Emphasis supplied.]¹¹⁴

14 107. The Chairperson of the Blue Ribbon Committee replied to the
15 assertions as mentioned earlier with an instruction to COA to:

16 And if I may add, there are two versions of this—one is the
17 complete agreement and the other one is a redacted
18 agreement. Redacted would mean edited, blocked out. So
19 insofar as this Committee is concerned, we probably would
20 have the full version of the agreement even if it contains
21 proprietary insertions there which, we are not scientist here
22 nor having pharmaceutical knowledge so we will not be able
23 to use that but in terms of the duration of the CDA or the
24 NDA, price probably would be included, we are very, very
25 interested. This Committee is interested in that.

26 The Commission on Audit, perhaps, can reply as to the
27 statement given by Secretary Duque. There are dates given,
28 the first date was November 2021 wherein they asked you
29 for an audit. And then if you can likewise answer my
30 question, was there a request coming from the World
31 Bank¹¹⁵ or other foreign agencies requesting for an audit?¹¹⁶

32 108. COA confirmed that the DOH requested a special audit as required by
33 the lending institutions.¹¹⁷ However, even before receiving said
34 request, COA already requested submission of the Supply Agreements
35 as early as 2021.¹¹⁸ Unfortunately, what COA received were the
36 redacted agreements.¹¹⁹ Further, COA also clarified that the audit of
37 funds coming from GAA and Bayanihan 2 for the procurement of
38 vaccines will be part of the regular audit of COA and not through a
39 special audit.¹²⁰

40 109. The DOH, upon the request of the Blue Ribbon Committee, promised to
41 submit to COA the unredacted copy of the various supply agreements,

¹¹⁴ TSN, Blue Ribbon Hearing, December 14, 2022, pages 36-39

¹¹⁵ TSN, Blue Ribbon Hearing, December 14, 2022, page 33

¹¹⁶ TSN, Blue Ribbon Hearing, December 14, 2022, pages 30-31

¹¹⁷ TSN, Blue Ribbon Hearing, December 14, 2022, page 32

¹¹⁸ TSN, Blue Ribbon Hearing, December 14, 2022, page 32

¹¹⁹ TSN, Blue Ribbon Hearing, December 14, 2022, pages 31-36, 40; 56-57

¹²⁰ TSN, Blue Ribbon Hearing, December 14, 2022, pages 35

1 without the need for reiteration letters from COA prompting the
2 Chairperson to say the following:¹²¹

3 lyon lang po ang punto nitong hearing na ito plus iyong na
4 explain na naman kanina ni Secretary Dominguez iyong
5 necessity to acquire the vaccines due to the situation before.
6 Hindi natin alam kung ano ang mangyayari, that is given.
7 And this Committee is taking notice of that. It is a worldwide
8 first-time pandemic.¹²²

9 What is NDA?

10 110. According to the *Dictionary of International Trade*,¹²³ **NDA is a type of**
11 **legal contract between at least two parties that outlines**
12 **confidential material, knowledge, or information that the parties**
13 **wish to share with one another for certain purposes, but wish to**
14 **restrict access to or by third parties.** In the contract, the parties
15 agree not to disclose information covered by the agreement. An **NDA**
16 **creates a confidential relationship between the parties to protect**
17 **any type of confidential and proprietary information or trade**
18 **secrets.** Non-disclosure agreements are also known as confidentiality
19 agreements.

20 111. As stated in the "*The Philippine National Deployment and Vaccination*
21 *Plan for COVID-19 Vaccines*" an **"NDA is put in place to protect the**
22 **rights of both the National Government and the manufacturer to**
23 **their respective confidential information and allow for smooth and**
24 **transparent negotiations.** Through the NDA, both parties agree on the
25 type of confidential information that may be disclosed to each other, the
26 specific purpose for such disclosure, exceptions to the right to
27 confidentiality, as well as the rights of the parties and available reliefs in
28 case of breach."¹²⁴

30 Confidentiality of Trade Secrets

31
32 112. An NDA protects trade secrets which are intellectual property (IP)
33 rights, on confidential information that may be sold or licensed. In
34 general, **to qualify as a trade secret, the information must be:**
35 **commercially valuable because it is secret, be known only to a**
36 **limited group of persons, and be subject to reasonable steps**
37 **taken by the rightful holder of the information to keep it secret,**
38 **including the use of confidentiality agreements for business**
39 **partners and employees.** The unauthorized acquisition, use, or
40 disclosure of such secret information in a manner contrary to honest

¹²¹ TSN, Blue Ribbon Hearing, December 14, 2022, pages 76-79

¹²² TSN, Blue Ribbon Hearing, December 14, 2022, page 76

¹²³ <https://globalnegotiator.com/files/dictionary-of-international-trade.pdf>, page 132. Accessed on December 10, 2022

¹²⁴ The Philippine National Deployment and Vaccination Plan for COVID-19 Vaccines, January 2021, <https://doh.gov.ph/sites/default/files/basic-page/The%20Philippine%20National%20COVID-19%20Vaccination%20Deployment%20Plan.pdf>. Accessed on April 26, 2023.

1 commercial practices by others is regarded as an unfair practice and a
2 violation of trade secret protection.¹²⁵

3
4 113. In general, **any confidential business information which provides**
5 **an enterprise a competitive edge and is unknown to others may be**
6 **protected as a trade secret.** Trade secrets encompass both technical
7 information, such as information concerning manufacturing processes,
8 experimental research data, software algorithms, and commercial
9 information, such as distribution methods, list of suppliers and clients,
10 and advertising strategies. A trade secret may be also made up of a
11 combination of elements, each of which by itself is in the public domain,
12 but where the combination, which is kept secret, provides a competitive
13 advantage. **Other examples of information that may be protected**
14 **by trade secrets include financial information, formulas and**
15 **recipes, and source codes.**¹²⁶

16
17 114. Depending on the legal system, the legal protection of trade secrets
18 forms part of the general concept of protection against unfair
19 competition or is based on specific provisions or case law on the
20 protection of confidential information. While a final determination of
21 whether trade secret protection is violated or not depends on the
22 circumstances of each individual case, in general, unfair practices in
23 respect of secret information include breach of contract, breach of
24 confidence, and industrial or commercial espionage.¹²⁷

25 26 Trade Secrets under Philippine Law

27
28 115. The Supreme Court in *Air Philippines vs. Pennswell (Air*
29 *Philippines)*,¹²⁸ defined a trade secret as:

30
31 **[A] plan or process, tool, mechanism or compound**
32 **known only to its owner and those of his employees to**
33 **whom it is necessary to confide it. The definition also**
34 **extends to a secret formula or process not patented, but**
35 **known only to certain individuals using it in**
36 **compounding some article of trade having a commercial**
37 **value. A trade secret may consist of any formula, pattern,**
38 **device, or compilation of information that: (1) is used in one's**
39 **business; and (2) gives the employer an opportunity to**
40 **obtain an advantage over competitors who do not possess**
41 **the information. Generally, a trade secret is a process or**
42 **device intended for continuous use in the operation of the**
43 **business, for example, a machine or formula, but can be a**
44 **price list or catalogue or specialized customer list. It is**
45 **indubitable that trade secrets constitute proprietary rights.**
46 **The inventor, discoverer, or possessor of a trade secret or**
47 **similar innovation has rights therein which may be treated as**
48 **property, and ordinarily an injunction will be granted to**

¹²⁵ https://www.wipo.int/trademarks/en/trademarks_faq.html. Accessed on December 10, 2022

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ G.R. No. 172835, December 13, 2007.

1 prevent the disclosure of the trade secret by one who
2 obtained the information "in confidence" or through a
3 "confidential relationship." American jurisprudence has
4 utilized the following factors to determine if an information is
5 a trade secret, to wit:
6

- 7 1. the extent to which the information is known outside
8 of the employer's business;
- 9 2. the extent to which the information is known by
10 employees and others involved in the business;
- 11 3. the extent of measures taken by the employer to
12 guard the secrecy of the information;
- 13 4. the value of the information to the employer and to
14 competitors;
- 15 5. the amount of effort or money expended by the
16 company in developing the information; and
- 17 6. the extent to which the information could be easily or
18 readily obtained through an independent source;
- 19

20 116. In the said case, the Supreme Court also cited various Philippine Laws
21 protecting trade secrets:
22

- 23 a. **That trade secrets are of a privileged nature is beyond**
24 **quibble.** The protection that this jurisdiction affords to trade
25 secrets is evident in our laws. The Interim Rules of
26 Procedure on Government Rehabilitation, effective 15
27 December 2000, which applies to: (1) petitions for
28 rehabilitation filed by corporations, partnerships, and
29 associations pursuant to Presidential Decree No. 902-A, as
30 amended; and (2) cases for rehabilitation transferred from
31 the Securities and Exchange Commission to the RTCs
32 pursuant to Republic Act No. 8799, otherwise known as The
33 Securities Regulation Code, expressly provides that the
34 court may issue an order to protect trade secrets or other
35 confidential research, development, or commercial
36 information belonging to the debtor;
37
- 38 b. Moreover, the Securities Regulation Code is explicit that the
39 Securities and Exchange Commission is not required or
40 authorized to require the revelation of trade secrets or
41 processes in any application, report or document filed with
42 the Commission. This confidentiality is made paramount as a
43 limitation to the right of any member of the general public,
44 upon request, to have access to all information filed with the
45 Commission;
46
- 47 c. Furthermore, the Revised Penal Code, as amended,¹²⁹
48 endows a cloak of protection to trade secrets under the
49 following articles:
50
51 1. **Art. 291. Revealing secrets with abuse of office.** —
52 The penalty of *arresto mayor* and a fine not
53 exceeding One hundred thousand pesos (P100,000)

¹²⁹ An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is based, and the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code", as Amended, Republic Act No. 10951 (August 29, 2021).

1 shall be imposed upon any manager, employee or
2 servant who, in such capacity, shall learn the secrets
3 of his principal or master and shall reveal such
4 secrets;

5
6 **2. Art. 292. Revelation of industrial secrets.** — The
7 penalty of *prision correccional* in its minimum and
8 medium periods and a fine not exceeding One
9 hundred thousand pesos (P100,000) shall be
10 imposed upon the person in charge, employee or
11 workman of any manufacturing or industrial
12 establishment who, to the prejudice of the owner
13 thereof, shall reveal the secrets of the industry of the
14 latter;

15
16 **3. Similarly, Republic Act No. 8424, otherwise known**
17 **as the National Internal Revenue Code of 1997,**
18 **has a restrictive provision on trade secrets,**
19 **penalizing the revelation thereof by internal**
20 **revenue officers or employees, to wit:**

21
22 **“SECTION 278. Procuring Unlawful**
23 **Divulgence of Trade Secrets.** - Any
24 *person who causes or procures an officer*
25 *or employee of the Bureau of Internal*
26 *Revenue to divulge any confidential*
27 *information regarding the business,*
28 *income or inheritance of any taxpayer,*
29 *knowledge of which was acquired by him*
30 *in the discharge of his official duties, and*
31 *which it is unlawful for him to reveal, and*
32 *any person who publishes or prints in any*
33 *manner whatever, not provided by law,*
34 *any income, profit, loss or expenditure*
35 *appearing in any income tax return, shall*
36 *be punished by a fine of not more than*
37 *two thousand pesos (₱2,000), or suffer*
38 *imprisonment of not less than six (6)*
39 *months nor more than five (5) years, or*
40 *both.”*

41
42 **4. Republic Act No. 6969, or the Toxic Substances**
43 **and Hazardous and Nuclear Wastes Control Act of**
44 **1990,** enacted to implement the policy of the state to
45 regulate, restrict or prohibit the importation,
46 manufacture, processing, sale, distribution, use and
47 disposal of chemical substances and mixtures that
48 present unreasonable risk and/or injury to health or
49 the environment, also contains a provision that limits
50 the right of the public to have access to records,
51 reports or information concerning chemical
52 substances and mixtures including safety data
53 submitted and data on emission or discharge into the
54 environment, if the matter is confidential such that it
55 would divulge trade secrets, production or sales
56 figures; or methods, production or processes unique
57 to such manufacturer, processor or distributor; or

1 would otherwise tend to affect adversely the
2 competitive position of such manufacturer, processor
3 or distributor.
4

5 **Trade Secrets and the Right to Information**

6

7 117. The Supreme Court in **Chavez vs PCGG** (Chavez)¹³⁰ discussed trade
8 secrets relative to the right to information in this manner:
9

10 The "information" and the "transactions" referred to in the
11 subject provisions of the Constitution have as yet no defined
12 scope and extent. There are no specific laws prescribing the
13 exact limitations within which the right may be exercised or
14 the correlative state duty may be obliged. However, the
15 following are some of the recognized restrictions: (1) national
16 security matters and intelligence information, (2) trade
17 secrets and banking transactions, (3) criminal matters, and
18 (4) other confidential information.
19

20 Limitations to the Right:

21 xxx.
22

23 **(2) Trade Secrets and Banking Transactions**

24

25 **The drafters of the Constitution also unequivocally**
26 **affirmed that, aside from national security matters and**
27 **intelligence information, trade or industrial secrets**
28 **(pursuant to the Intellectual Property Code and other**
29 **related laws) as well as banking transactions (pursuant**
30 **to the Secrecy of Bank Deposits Act) are also exempted**
31 **from compulsory disclosure.**
32

33 xxx.
34
35
36

37 118. In **Garcia v. Board of Investments (Garcia)**,¹³¹ the Supreme Court
38 held that:
39

40 [J]ust as the confidentiality of an applicant's records in the
41 BOI is not absolute, neither is the petitioner's right of access
42 to them unlimited. The Constitution does not open every
43 door to any and all information. Under the Constitution,
44 access to official records, papers, etc. is subject to
45 limitations as may be provided by law (Art. III, Sec. 7,
46 second sentence). The law may exempt certain types of
47 information from public scrutiny (Legaspi vs. Civil Service
48 Commission, 150 SCRA 530). **The trade secrets and**
49 **confidential, commercial and financial information of the**
50 **applicant BPC, and matters affecting national security**
51 **are excluded from the privilege.**
52

¹³⁰ G.R. No. 130716, December 9, 1998

¹³¹ 177 SCRA 374 (1989)

1 119. Echoing *Mirpuri v. Court of Appeals (Mirpuri)*,¹³² and *Chavez*,¹³³ the
2 Court in the *Air Philippines* case also ruled that:

3
4 Jurisprudence has consistently acknowledged the private
5 character of trade secrets. There is a privilege not to
6 disclose one's trade secrets. Foremost, this Court has
7 declared that **trade secrets and banking transactions are**
8 **among the recognized restrictions to the right of the**
9 **people to information as embodied in the Constitution.**
10 **We said that the drafters of the Constitution** also
11 unequivocally affirmed that, aside from national security
12 matters and intelligence information, **trade or industrial**
13 **secrets (pursuant to the Intellectual Property Code and**
14 **other related laws)** as well as banking transactions
15 (pursuant to the Secrecy of Bank Deposits Act), are also
16 exempted from compulsory disclosure. [Emphasis and
17 underscoring supplied]
18

19 120. While the foregoing protects the confidentiality of trade secrets and
20 sanctions the use of non-disclosure clauses to protect private business
21 interests as a general proposition, **the same cannot have the effect of**
22 **curtailing the constitutional mandate of COA to examine**
23 **disbursements of government funds for public purposes.** Despite
24 said pronouncements on the confidentiality of trade secrets, the current
25 and former officials of the DOH, DOF, and NTF are **one in**
26 **acknowledging the authority of COA to examine and audit.**¹³⁴
27 However, it is generally admitted that COA was not given the
28 documents on time and that initially only redacted copies were provided
29 by the DOH, and this was done only after the insistence of this
30 Committee that unredacted copies be provided by DOH to COA.
31

32 121. To prevent a similar occurrence, the Blue Ribbon Committee deems it
33 proper for the information of our people and as guidance in the future to
34 state the following concerning the authority of COA relative to the
35 contracts entered into by the Philippine government with vaccine
36 manufacturers with confidentiality provisions.
37

38 **The Commission on Audit (COA) vs NDA**

39
40 122. As one of the Constitutional Commissions created under the 1987
41 Constitution, the Supreme Court in *Yap vs COA (Yap)*¹³⁵ describes
42 COA in the following manner:

43 **The 1987 Constitution has made the COA the guardian**
44 **of public funds, vesting it with broad powers over all**
45 **accounts pertaining to government revenue and**
46 **expenditures and the uses of public funds and property**
47 **including the exclusive authority to define the scope of**

¹³² 376 Phil. 628 (1999)

¹³³ G.R. No. 130716, December 9, 1998

¹³⁴ TSN, Blue Ribbon Hearing, December 14, 2022, p. 17 (Sec. Galvez), p. 18 and 26 (Sec. Duque), p.
24 (Usec. Vergeire),

¹³⁵ G.R. No. 158562, April 23, 2010

1 **its audit and examination, establish the techniques and**
2 **methods for such review, and promulgate accounting**
3 **and auditing rules and regulations.** Section 11, Chapter 4,
4 Subtitle B, Title I, Book V of the Administrative Code of 1987
5 echoes this constitutional mandate given to COA, to wit:

6 Section 11. General Jurisdiction. – (1) The Commission on
7 Audit shall have the power, authority, and duty to examine,
8 audit, and settle all accounts pertaining to the revenue and
9 receipts of, and expenditures or uses of funds and property,
10 owned or held in trust by, or pertaining to, the Government,
11 or any of its subdivisions, agencies, or instrumentalities,
12 including government-owned or controlled corporations with
13 original charters, and on a post-audit basis: (a) constitutional
14 bodies, commissions and offices that have been granted
15 fiscal autonomy under this Constitution; (b) autonomous
16 state colleges and universities; (c) other government-owned
17 or controlled corporations and their subsidiaries; and (d)
18 such non-governmental entities receiving subsidy or equity,
19 directly or indirectly, from or through the Government, which
20 are required by law or the granting institution to submit to
21 such audit as a condition of subsidy or equity. However,
22 where the internal control system of the audited agencies is
23 inadequate, the Commission may adopt such measures,
24 including temporary or special pre-audit, as are necessary
25 and appropriate to correct the deficiencies. It shall keep the
26 general accounts of the Government and, for such period as
27 may be provided by law, preserve the vouchers and other
28 supporting papers pertaining thereto.

29 (2) The Commission shall have exclusive authority, subject
30 to the limitations in this Article, to define the scope of its
31 audit and examination, establish the techniques and
32 methods required therefor, and promulgate accounting and
33 auditing rules and regulations, including those for the
34 prevention and disallowance of irregular, unnecessary,
35 excessive, extravagant, or unconscionable expenditures, or
36 uses of government funds and properties.

37 **In light of these express provisions of law granting**
38 **respondent COA its power and authority, we have**
39 **previously ruled that its exercise of its general audit**
40 **power is among the constitutional mechanisms that give**
41 **life to the check and balance system inherent in our**
42 **form of government.** Furthermore, we have also declared
43 that COA is endowed with enough latitude to determine,
44 prevent and disallow irregular, unnecessary, excessive,
45 extravagant or unconscionable expenditures of government
46 funds. [Emphasis and underscoring supplied.]¹³⁶

47 123. Moreover, in the case of *Figueroa vs COA (Figueroa)*,¹³⁷ the
48 Supreme Court discussed COA's authority as an independent
49 watchdog of government in this wise:
50

¹³⁶ G.R. No. 158562, April 23, 2010

¹³⁷ G.R. No. 213212, April 27, 2021

1 The 1987 Constitution created the constitutional
2 commissions as independent constitutional bodies, tasked
3 with specific roles in the system of governance that require
4 expertise in certain fields. In this regards, the COA was
5 made the guardian of public funds, vesting it with broad
6 powers over all accounts pertaining to government revenues
7 and expenditures and the use of public funds and property,
8 including the exclusive authority to define the scope of its
9 audit and examination; to establish the techniques and
10 methods for the review; and to promulgate accounting and
11 auditing rules and regulations. Article IX-D, Section 2 of the
12 Constitution thus states:

13
14 SECTION 2. (1) The Commission on Audit shall have
15 the power, authority, and duty to examine, audit, and settle
16 all accounts pertaining to the revenue and receipts of, and
17 expenditures or uses of funds and property, owned or held in
18 trust by, or pertaining to, the Government, or any of its
19 subdivisions, agencies, or instrumentalities, including
20 government-owned or controlled corporations with original
21 charters, and on a post-audit basis: (a) constitutional bodies,
22 commissions and offices that have been granted fiscal
23 autonomy under this Constitution; (b) autonomous state
24 colleges and universities; (c) other government-owned or
25 controlled corporations and their subsidiaries; and (d) such
26 non-governmental entities receiving subsidy or equity,
27 directly or indirectly, from or through the Government, which
28 are required by law or the granting institution to submit to
29 such audit as a condition of subsidy or equity. However,
30 where the internal control system of the audited agencies is
31 inadequate, the Commission may adopt such measures,
32 including temporary or special pre-audit, as are necessary
33 and appropriate to correct the deficiencies. It shall keep the
34 general accounts of the Government and, for such period as
35 may be provided by law, preserve the vouchers and other
36 supporting papers pertaining thereto.

37
38 (2) The Commission shall have exclusive authority,
39 subject to the limitations in this Article, to define the scope of
40 its audit and examination, establish the techniques and
41 methods required therefor, and promulgate accounting and
42 auditing rules and regulations, including those for the
43 prevention and disallowance of irregular, unnecessary,
44 excessive, extravagant, or unconscionable expenditures, or
45 uses of government funds and properties. (Emphasis ours)

46
47 **Indeed, the Constitution has conferred upon the COA**
48 **broad and extensive powers, having been envisioned by**
49 **the Framers as a dynamic, effective, efficient and**
50 **independent watchdog of the Government.** The COA is
51 vested with the authority to determine whether government
52 entities, including LGUs, comply with laws and regulations in
53 disbursing government funds, and to disallow illegal or
54 irregular disbursements of these funds. It has the power to
55 ascertain whether public funds were utilized for the purpose
56 for which they had been intended. [Emphasis supplied.]
57

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124. In *Funa v. Manila Economic and Cultural Office (Funa)*,¹³⁸ the Supreme Court enumerated the various government agencies and instrumentalities that are covered by the COA's audit jurisdiction, viz.:

- a. The government, or any of its subdivisions, agencies, and instrumentalities;
- b. GOCCs with original charters;
- c. GOCCs without original charters;
- d. Constitutional bodies, commissions, and offices that have been granted fiscal autonomy under the Constitution; and
- e. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.

125. The COA's audit jurisdiction generally covers public entities though it can extend even to non-governmental entities insofar as the latter receives financial aid from the government, declared the Court in *Fernando vs COA*.¹³⁹

126. Interpreting the provisions mentioned above of the Constitution, the Supreme Court in *DBP vs COA (DBP)*¹⁴⁰ ruled that:

The clear and unmistakable conclusion from a reading of the entire Section 2 is that the **COA's power to examine and audit is non-exclusive**. On the other hand, the **COA's authority to define the scope of its audit, promulgate auditing rules and regulations, and disallow unnecessary expenditures is exclusive**. [Emphasis and underscoring supplied]

127. The Supreme Court also made it clear in the said case that even Congress is precluded from exempting any entity from the jurisdiction of COA:

The power of the COA to examine and audit government agencies, while non-exclusive, cannot be taken away from the COA. Section 3, Article IX-D of the Constitution mandates that:

"Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatsoever, or any investment of public funds, from the jurisdiction of the Commission on Audit." [Emphasis supplied]

128. The Constitution outlaws any scheme or devise to escape COA's audit jurisdiction as the framers added Section 3, Article IX-D of the Constitution precisely to annul provisions of Presidential Decrees that exempt GOCCs from COA's audit.¹⁴¹

¹³⁸ G.R. No. 193462, February 4, 2014
¹³⁹ G.R. No. 237938, December 4, 2018
¹⁴⁰ G.R. No. 88435, January 16, 2002
¹⁴¹ *Feliciano vs COA*, G.R. No. 147402, January 14, 2004

1
2 129. As to the determination of issues on audit, in **COA vs Ferrer**
3 **(Ferrer)**,¹⁴² the Supreme Court unequivocally stated that:

4
5 This jurisdiction acknowledges and respects the **full**
6 **authority** given by the 1987 Constitution to the Commission
7 on Audit (COA), as guardian of public funds, to make a
8 determination on issues pertaining to audit of government
9 accounts. [Emphasis supplied.]

10
11 130. Premised on the foregoing, the Blue Ribbon Committee firmly concurs
12 with the findings of COA in its audit of the Philippines COVID-19
13 Emergency Response Project (PCERP) Loan funded by the World
14 Bank involving Supply Agreements with Pfizer and Moderna that **the**
15 **NDA in the Supply Agreements, among others, “undermined the**
16 **power of the Commission on Audit to audit, examine and settle**
17 **accounts of the Government” and “prevented the prompt**
18 **submission of the Supply Agreements to the COA thereby**
19 **depriving stakeholders of timely audit.”** The same conclusion was
20 also reached by COA in its audit of HEAL 1 and HEAL 2.

21
22 131. **COA’s Legal Opinion No. 050-2022**¹⁴³ dated **8 July 2022** ardently
23 and forcefully opines that:

24
25 **It is the ATL**¹⁴⁴ **and SA’s**¹⁴⁵ **opinion that the COA should**
26 **not be bound by the same confidentiality obligations**
27 **that the Government of the Philippines, through the**
28 **DOH, has entered into with various COVID-19 vaccine**
29 **manufacturers, suppliers or distributors.** First, the COA,
30 as a constitutional commission is independent from the
31 Executive branch of the Government. Second, COA is an
32 agency which has the mandate to ensure transparency and
33 accountability in the government. Lastly, the 1987
34 Constitution vests in the COA the exclusive authority, subject
35 to the limitations provided therein, to define the scope of its
36 audit and examination, establish the techniques and
37 methods required therefor, and promulgate accounting and
38 auditing rules and regulations, including those for the
39 prevention and disallowance of irregular, unnecessary,
40 excessive, extravagant, or unconscionable expenditures, or
41 uses of government funds and properties.

42
43 **The CD**¹⁴⁶ **agrees with the audit team's opinion that**
44 **binding the COA on the NDAs would limit, if not hamper,**
45 **the exercise of its mandate and audit functions provided**

¹⁴² G.R. No. 218870, November 24, 2020

¹⁴³ signed by Daryl H. Tonolet - Director III (Officer in Charge) of the Legal Services Sector- Legal Affairs Office

¹⁴⁴ Audit Team Leader

¹⁴⁵ Supervising Auditor

¹⁴⁶ Cluster Director

1 **by the Constitution and other existing rules and**
2 **regulations.** However, the CD forwarded the DOH letter to
3 this Office for further opinion considering that the MSA, CDA
4 and related documents for COVID-19 vaccines may also
5 affect other National Government Agencies and Local
6 Government Units over which the COA exercises its power
7 to audit.

8
9 **This Office agrees that the COA should not be bound by**
10 **the same confidentiality obligations entered into by the**
11 **DOH based on the above-cited reasons.** Further,
12 performance of this Commission's constitutional mandate to
13 ensure accountability for public resources, to promote
14 transparency, and to help improve government operations
15 cannot be made subject to the agreement between the
16 Pfizer and DOH.

17
18 In addition, disclosures made to the COA, are to certain
19 extent, afforded confidentiality as needed. International
20 Standards of Supreme Audit Institutions (ISSAI) 130 (Code
21 of Ethics), provides that the Supreme Audit Institution (SAI),
22 i.e., COA in the Philippines, shall balance the confidentiality
23 of audit-related and other information with the need for
24 transparency and accountability, and that the SAI shall
25 establish an adequate system for maintaining confidentiality,
26 as needed, especially with regard to sensitive data. As such,
27 the CO does not indiscriminately disclose information it has
28 received in the regular course of audit.

29
30 132. **Based on said antecedents, the Blue Ribbon Committee concludes**
31 **that denying COA access to documents relative to the**
32 **procurement of COVID-19 vaccines is inconsistent with and**
33 **repugnant to the language and intent of the Constitution. While**
34 **the purchase price for the vaccines may be regarded as**
35 **confidential, COA cannot be prevented from performing its**
36 **constitutionally mandated function to audit government use of**
37 **public funds, and thus, should not be denied full access to all the**
38 **relevant records. Therefore, those in the custody of relevant**
39 **documents must comply with COA's request and/or demand; to**
40 **deny it, or even delay compliance therewith, will constitute an**
41 **obstruction of COA's mandate and duty to examine the utilization**
42 **of public funds under the Constitution.**

43
44
45 • **The Power of Inquiry of**
46 **Congress cannot be**
47 **curtailed by an NDA**

48
49 133. The Congress' power of inquiry is expressly recognized in Section 21 of
50 Article VI of the Constitution, which reads:

1
2 The Senate or the House of Representatives or any of its
3 respective committees may conduct inquiries in aid of
4 legislation in accordance with its duly published rules of
5 procedure. The rights of persons appearing in or affected by
6 such inquiries shall be respected.
7

8 134. The 1987 Constitution recognizes the power of investigation, not just of
9 Congress, but also of "any of its committees. This is significant because
10 it constitutes a direct conferral of investigatory power upon the
11 committees and it means that the mechanisms which the Houses can
12 take in order to effectively perform its investigative function are also
13 available to the committees."¹⁴⁷
14

15 135. Under the said mandate, the Senate Rules of Procedures Governing
16 Inquiries in Aid of Legislation (Senate Resolution No. 5 adopted on 09
17 August 2010, as amended)¹⁴⁸ provides in various sections the following:
18

19 a. **Power to Conduct Formal Inquiries or**
20 **Investigations.** The Senate or any of its Committees may
21 conduct formal inquiries or investigations in aid of legislation
22 in accordance with these Rules.

23 Such inquiries may refer to the implementation or re-
24 examination of any law or appropriation, or in connection
25 with any proposed legislation or the formulation of, or in
26 connection with future legislation, or will aid in the review or
27 formulation of a new legislative policy or enactment. They
28 may also extend to any and all matters vested by the
29 Constitution in Congress and/or in the Senate alone.¹⁴⁹

30 b. **Initiation of Inquiry.** Inquiries may be initiated by the
31 Senate or any of its Committees if the matter is within its
32 competence, or upon petition filed or upon information given
33 by any Senator or by any person not a member thereof.¹⁵⁰

34 c. **Executive Session and Public Hearing.** (1) If the
35 Committee believes that the interrogation of a witness in a
36 public hearing might endanger national security, it may, motu
37 proprio or upon motion of any interested party, conduct its
38 inquiry in an executive session for the purpose of
39 determining the necessity or advisability of conducting such
40 interrogation thereafter in public hearing; (2) Attendance at
41 executive sessions shall be limited to members of the
42 Committee, its staff, other Members of the Senate, and other
43 persons whose presence is requested or allowed by the
44 Chairman; and (3) Testimony taken or material presented in

¹⁴⁷ Quoted in *Sabio vs Gordon*, G.R. No. 174340, October 17, 2006; see also *Bernas S.J.*, *The 1987 Constitution of the Republic of the Philippines*, 2003 Ed. at p.739.

¹⁴⁸ Amended by Senate Resolution No. 145 dated February 6, 2013 and Senate Resolution No. 9 dated August 15, 2016. See also the pertinent Rules of the Committee on Accountability of Public Officers and Investigations for the 19th Congress.

¹⁴⁹ Section 1

¹⁵⁰ Section 2

1 an executive session, or any summary thereof, shall not be
2 made public, in whole or in part, unless authorized by the
3 Committee.¹⁵¹

4 **d. Powers of the Committee.** The Committee shall
5 have the powers of an investigating committee, including the
6 power to summon witnesses and take their testimony and to
7 issue subpoena and subpoena duces tecum, signed by its
8 Chairman, or in his absence by the Acting Chairman, and
9 approved by the President. Within Metro Manila, such
10 process shall be served by the Sergeant-at-Arms or his
11 assistant. Outside of Metro Manila, service may be made by
12 the police of a municipality or city, upon request of the
13 Secretary.¹⁵²

14 **e. Contempt.** (a) The Chairman with the concurrence of
15 at least one (1) member of the Committee, may punish or
16 cite in contempt any witness before the Committee who
17 disobeys any order of the Committee or refuses to be sworn
18 or to testify or to answer a proper question by the Committee
19 or any of its members, or testifying, testifies falsely or
20 evasively, or who unduly refuses to appear or bring before
21 the Committee certain documents and/or object evidence
22 required by the Committee notwithstanding the issuance of
23 the appropriate subpoena therefor. A majority of all the
24 members of the Committee may, however, reverse or modify
25 the aforesaid order of contempt within seven (7) days.

26 A contempt of the Committee shall be deemed a contempt of
27 the Senate. Such witness may be ordered by the Committee
28 to be detained in such place as it may designate under the
29 custody of the Sergeant-at-Arms until he/she agrees to
30 produce the required documents, or to be sworn or to testify,
31 or otherwise purge himself/herself of that contempt.

32 b) A report of the detention of any person for contempt shall
33 be submitted by the Sergeant-at-Arms to the Committee and
34 the Senate.¹⁵³

35 **f. Privilege Against Self-Incrimination.** A witness can
36 invoke his right against self-incrimination only when a
37 question which tends to elicit an answer that will incriminate
38 him is propounded to him. However, he may offer to answer
39 any question in an executive session.

40 No person can refuse to testify or be placed under oath or
41 affirmation or answer questions before an incriminatory
42 question is asked. His invocation of such right does not by
43 itself excuse him from his duty to give testimony.

44 In such a case, the Committee, by a majority vote of the
45 members present there being a quorum, shall determine
46 whether the right has been properly invoked. If the
47 Committee decides otherwise, it shall resume its

¹⁵¹ Section 11

¹⁵² Section 17

¹⁵³ Section 18

1 investigation and the question or questions previously
2 refused to be answered shall be repeated to the witness. If
3 the latter continues to refuse to answer the question, the
4 Committee may punish him for contempt for contumacious
5 conduct.¹⁵⁴

- 6 136. Quoting from the US case of *McGrain vs Daugherty (McGrain)*,¹⁵⁵ the
7 Supreme Court in *Arnault vs Nazareno (Arnault)*,¹⁵⁶ characterized the
8 power of inquiry — with process to enforce it as:

9
10 **“[A]n essential and appropriate auxiliary to the**
11 **legislative function. A legislative body cannot legislate**
12 **wisely or effectively in the absence of information**
13 **respecting the conditions which the legislation is**
14 **intended to effect or change; and where the legislative**
15 **body does not itself possess the requisite information**
16 **— which is not infrequently true — recourse must be**
17 **had to others who do possess it. Experience has shown**
18 **that mere requests for such information are often**
19 **unavailing, and also that information which is**
20 **volunteered is not always accurate or complete; so**
21 **some means of compulsion is essential to obtain what**
22 **is needed.”** [Emphasis supplied]

- 23
24 137. **The power of inquiry, “with process to enforce it,” is grounded on**
25 **the necessity of information in the legislative process.** If the
26 information possessed by executive officials on the operation of their
27 offices is necessary for wise legislation on that subject, by parity of
28 reasoning, Congress has the right to that information and the power to
29 compel the disclosure thereof declared by the Court in *Senate vs*
30 *Ermita (Senate)*.¹⁵⁷

- 31
32 138. Explaining it further, the Supreme Court in the *Ermita case* ruled that:

33
34 **Indeed, if the separation of powers has anything to tell**
35 **us on the subject under discussion, it is that the**
36 **Congress has the right to obtain information from any**
37 **source - even from officials of departments and**
38 **agencies in the executive branch.** In the United States
39 there is, unlike the situation which prevails in a parliamentary
40 system such as that in Britain, a clear separation between
41 the legislative and executive branches. **It is this very**
42 **separation that makes the congressional right to obtain**
43 **information from the executive so essential, if the**
44 **functions of the Congress as the elected representatives**
45 **of the people are adequately to be carried out. The**
46 **absence of close rapport between the legislative and**
47 **executive branches in this country, comparable to those**
48 **which exist under a parliamentary system, and the**
49 **nonexistence in the Congress of an institution such as the**

¹⁵⁴ Section 19

¹⁵⁵ 273 U.S., 135; 71 L. ed., 580; 50 A.L.R., 1.

¹⁵⁶ G.R. No. L-3820, July 18, 1950

¹⁵⁷ G.R. No. 169777, April 20, 2006

1 British question period have perforce made reliance by the
2 Congress upon its right to obtain information from the
3 executive essential, if it is intelligently to perform its
4 legislative tasks. Unless the Congress possesses the right
5 to obtain executive information, its power of oversight of
6 administration in a system such as ours becomes a power
7 devoid of most of its practical content, since it depends for its
8 effectiveness solely upon information parceled out ex gratia
9 by the executive[.] [Emphasis and underscoring supplied.]

10
11 139. In *Akbayan vs Aquino (Akbayan)*,¹⁵⁸ the Supreme Court ruled that
12 “recognizing a type of information as privileged does not mean it will be
13 considered privileged in all instances. **Only after considering the**
14 **context in which the claim is made may it be determined if public**
15 **interest calls for the disclosure of the desired information, strong**
16 **enough to overcome its traditionally privileged status.”**

17
18 140. In line with Section 11 of Senate Resolution No. 5 and Section 3 of
19 Article 6 of the Rules of the Blue Ribbon Committee, the Committee’s
20 resource persons testified in an Executive Session on the various
21 matters surrounding the procurement of COVID-19 vaccines. As
22 recalled by the Chairperson during the hearing dated **February 21,**
23 **2023:**

24
25 THE CHAIRPERSON. The last hearing conducted by this
26 Committee was a closed-door session. Pursuant to the rules,
27 no items discussed during the said closed-door session will
28 be given out and no discussions were made as part of the
29 records. However, if there are items even discussed during
30 the closed-door session that will be discussed today, freely
31 and voluntarily, since this is a public hearing, they will
32 become part of the records and you can, likewise, be
33 questioned thereof.¹⁵⁹

34
35 141. In this matter, the Blue Ribbon Committee chose the more practical
36 way to get the desired information. However, it doesn’t mean that it
37 cannot, by compulsion, require or demand the submission of the
38 relevant procurement information, documents, and testimonies. In
39 allowing disclosure in an executive session, the Blue Ribbon Committee
40 adhered to the *United States v. American Tel. & Tel Co.*,¹⁶⁰
41 pronouncement that “much of this spirit of compromise is reflected in
42 the generality of language found in the Constitution.” It proceeded to
43 state:

44 **Under this view, the coordinate branches do not exist in**
45 **an exclusively adversary relationship to one another**
46 **when a conflict in authority arises. Rather each branch**
47 **should take cognizance of an implicit constitutional**
48 **mandate to seek optimal accommodation through a**

¹⁵⁸ G.R. No. 170516, July 16, 2008, quoting *Senate vs Ermita*.

¹⁵⁹ TSN page 8

¹⁶⁰ 567 F 2d 121 (1977).Decided by the United States Court of Appeals, District of Columbia Circuit, Cited in *Neri vs Senate*, G.R. NO. 180643, March 25, 2008 (original decision)

1 **realistic evaluation of the needs of the conflicting**
2 **branches in the particular factual situation.** [Emphasis
3 supplied]

- 4 142. However, if push comes to shove, the Blue Ribbon Committee is
5 confident that as discussed and stressed in *Air Philippines*, trade
6 secrets might be disclosed despite being confidential:
7

8 **Indeed, the privilege is not absolute; the trial court may**
9 **compel disclosure where it is indispensable for doing**
10 **justice.** [Emphasis supplied]

- 11 143. Besides, Section 26 of Rule 130 of the 2019 Amendments to the
12 Revised Rules on Evidence (A.M. No.19-08-15-SC, May 1, 2020)
13 provides for the rules on privilege relating to trade secrets. It states that:

14 **SEC. 26.** Privilege relating to trade secrets. - A person
15 cannot be compelled to testify about any **trade secret,**
16 **unless the non-disclosure will conceal fraud or**
17 **otherwise work injustice.** When disclosure is directed, the
18 court shall take such protective measure as the interest of
19 the owner of the trade secret and of the parties and the
20 furtherance of justice may require.”¹⁶¹ [Emphasis supplied]

- 21 144. Furthermore, in *Neri vs Senate (Neri)*,¹⁶² the Supreme Court reiterated
22 that executive privilege which is another type of privilege information is
23 not absolute and can be overturned by:
24

25 The jurisprudential test laid down by this Court in past
26 decisions on executive privilege is that the presumption of
27 privilege can only be overturned by **a showing of**
28 **compelling need** for disclosure of the information covered
29 by executive privilege. [Emphasis from original, underscoring
30 supplied.]
31

- 32 145. Quoting from *Sabio vs Gordon (Sabio)*,¹⁶³ the Supreme Court in
33 *Gamboa vs Chan (Gamboa)*¹⁶⁴ declared that:
34

35 **In that case, we declared that the right to privacy is not**
36 **absolute where there is an overriding compelling state**
37 **interest.** Employing the rational basis relationship test, as
38 laid down in *Morfe v. Mutuc*, there is no infringement of the
39 individual’s right to privacy as the requirement to disclose
40 information is for a valid purpose, in this case, to ensure that
41 the government agencies involved in regulating banking
42 transactions adequately protect the public who invest in
43 foreign securities. **Suffice it to state that this purpose**
44 **constitutes a reason compelling enough to proceed with**

¹⁶¹ Ferdinand A. Tan, *Evidence- A Compendium for the Bench and Bar* (Manila: Rex Bookstore, 2021) pages 393-394

¹⁶² G.R. No. 180643, September 4, 2008 (Motion for Reconsideration)

¹⁶³ G.R. No. 174340, October 17, 2006

¹⁶⁴ G.R. No. 193636, July 24, 2012

1 **the assailed legislative investigation.** [Emphasis and
2 underscoring supplied.]
3

4 146. The Supreme Court warned in **Senate** of the danger of the presumption
5 of secrecy, emphasizing that:
6

7 For [w]hat republican theory did accomplish...was to
8 reverse the old presumption in favor of secrecy,
9 based on the divine right of kings and nobles, and
10 replace it with a presumption in favor of publicity,
11 based on the doctrine of popular sovereignty.

12 **Resort to any means then by which officials of the**
13 **executive branch could refuse to divulge**
14 **information cannot be presumed valid. Otherwise,**
15 **we shall not have merely nullified the power of**
16 **our legislature to inquire into the operations of**
17 **government, but we shall have given up**
18 **something of much greater value—our right as a**
19 **people to take part in government.** [Emphasis
20 supplied]

21 147. The Blue Ribbon Committee is also mindful of the fact that to ensure
22 the safety, effectiveness, and transparency in the procurement of
23 vaccines, Congress specifically provided in Section 6 of RA No. 11525
24 the following transparency provisions:

25 The National Government, as well as LGUs, private
26 entities and the Philippine Red Cross, may only
27 procure COVID-19 vaccines that are registered with
28 the Philippine Food and Drug Administration (FDA) as
29 evidenced by a valid Certificate of Product
30 Registration or which possess an Emergency Use
31 Authorization (EUA). **For purposes of transparency,**
32 **the following information shall be posted in a**
33 **conspicuous place of the Procuring Entity and in**
34 **the Government Procurement Policy Board**
35 **(GPPB) Online Portal within thirty (30) days after**
36 **award or execution of definitive agreement or**
37 **after the effectivity of this Act, whichever is**
38 **applicable:**

- 39 a. **Approved budget for the contract;**
40 b. **Name and details of the COVID-19 vaccine**
41 **or ancillary service or supplies;**
42 c. **Name of the supplier, manufacturer, or**
43 **distributor; and**
44 d. **Amount of contract as awarded.** [Emphasis
45 supplied.]

46 148. Moreover, the contracts between the government and suppliers of
47 COVID-19 vaccines, while providing confidentiality clauses allow
48 disclosures and therefore are not absolutely confidential and privileged.
49

1 149. **Guided by the foregoing, the Executive Department is duty-bound**
2 **to provide Congress with information necessary for it to carry on**
3 **its duties under Section 21 of Article VI of the 1987 Constitution.**
4 **Similar to COA, Congress should not be shackled by NDAs in the**
5 **conduct of its constitutional prerogatives. However, the manner by**
6 **which Congress will get the information, whether by compulsion**
7 **or through a formal request, is left to the sound discretion of each**
8 **Committee of the Senate, guided by the principles of separation of**
9 **powers and effective checks and balances. In the case of the Blue**
10 **Ribbon Committee, with the public submissions of COA of the**
11 **various vaccine prices and its Audit Reports on the foreign**
12 **assisted loans, supplemented by testimonies or resource persons**
13 **submitted during the Executive Session, and the submission of**
14 **the NDAs and some supply contracts, the Committee has**
15 **effectively discharged its constitutional mandate and duties.**
16

17 150. **Additionally, it should be recalled that under the Constitution, the**
18 **power of the purse¹⁶⁵ which includes the power of oversight on**
19 **how such funds were spent belongs to Congress. To deny the**
20 **Senate or any of its Committees pertinent data on vaccine**
21 **procurement which involves the use of public funds negates the**
22 **exercise of this authority.**
23

24 • **The Citizens Right to**
25 **Information Necessitates**
26 **Disclosure of the Prices of**
27 **Vaccines**

28 151. **Complementing the right to information on matters of public concern is**
29 **the State's policy of full public disclosure of all transactions involving**
30 **public interest. Said "provisions are aimed at ensuring transparency in**
31 **policy-making as well as in the operations of the Government, and at**
32 **safeguarding the exercise by the people of the freedom of expression.**
33 **In a democratic society like ours, the free exchange of information is**
34 **necessary and can be possible only if the people are provided the**
35 **proper information on matters that affect them."¹⁶⁶**

36 152. **The Blue Ribbon is also cognizant that the right to information is not**
37 **only provided under domestic laws but is universally recognized. As**
38 **stated in an article published in the New York University Journal of**
39 **International Law and Politics:**

¹⁶⁵ Under our system of government, part of the legislative powers of Congress is the **power of the purse** which, broadly described, is the power to determine the areas of national life where government shall devote its funds; to define the amount of these funds and authorize their expenditure; and to provide measures to raise revenues to defray the amounts to be spent. This power is regarded as the "the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people." (Concurring and dissenting opinion of Justice Brion in *Belgica vs Ochoa*, G.R. No. 208566. November 19, 2013)

¹⁶⁶ *Sereno vs Committee on Tariff and Related Matters (CTRM)*, G.R. No. 175210, February 1, 2016

1 The right to access information is a fundamental right
2 recognized under international human rights standards.
3 Article 19 of the Universal Declaration of Human Rights,
4 Article 19 of the International Covenant on Civil and Political
5 Rights (ICCPR), and Article 13 of the American Convention
6 on Human Rights, all include the freedom to “seek, receive
7 and impart information.” This right applies to information that
8 is held by public bodies and other entities carrying out public
9 functions. The ICCPR and the American Convention on
10 Human Rights recognize the importance of this right to
11 information, allowing the right to be restricted only in very
12 limited circumstances. People have the right to know how
13 governments are spending public money. Both the
14 knowledge itself, and the bargaining power that governments
15 gain when they enter negotiations with pharmaceutical
16 companies knowing how much other governments have paid
17 for vaccines, are for the public benefit. Transparency
18 surrounding vaccine contracts may also prevent corruption
19 and ensure fair and timely allocation and distribution of
20 vaccines, because pharmaceutical companies and
21 governments can be held accountable,¹⁶⁷

22 153. In the course of its hearing, the Blue Ribbon Committee was informed
23 by the COA of the different prices of the vaccines. In accordance with
24 the people’s right to information, during the last hearing, the
25 Chairperson made the following disclosures and summaries:

26 THE CHAIRPERSON. Para po sa mga nakikinig ngayon,
27 ang mag-e-expire natin, ang magiging total ay 50.74 million.

28 I direct the Committee Secretariat to make the appropriate
29 computation as to the amount involved, magkano po ito.
30 Kasi iyong lumalabas, correct me again if I am mistaken
31 here, the amount involved per vaccine, and this has been
32 divulged now by several of the vaccine manufacturers, would
33 vary. For instance, **the price per dose of Moderna is \$43.**
34 The price per dose of Sinovac—Where is the record here?
35 [Emphasis supplied]

36 Again, I repeat, and this came from the records of the
37 Commission on Audit as well as the vaccine manufacturers
38 who already divulged, notwithstanding the NDAs, the price
39 per vaccine procured: **Pfizer at \$6.75; Sinovac at \$14 per**
40 **dose; and Moderna at \$43 per dose.** [Emphasis supplied]

41 I have here, likewise, the records of AstraZeneca and the
42 others, but the Blue Ribbon Secretariat is directed to make
43 the appropriate computation. xxx.¹⁶⁸

44 154. Concerning Moderna, COA mentioned several prices as narrated by the
45 Chairperson during the March 9, 2023 hearing:

¹⁶⁷ Young Park, "Non-disclosure Agreements and Equitable Access to COVID-19 Vaccines," New York University Journal of International Law and Politics, February 17, 2022, https://www.nyuilp.org/wp-content/uploads/2022/03/Park_online_formatted-117-129_Final.pdf (last accessed on May 21, 2023.)

¹⁶⁸ TSN, Blue Ribbon Hearing, March 9, 2023, page 12.

1 So iyong sa Moderna kasi sa record namin: **first quarter of**
2 **2021, \$43; second quarter of 2021, \$43; third quarter of**
3 **2021, \$29.50, bumaba; tapos fourth quarter of 2021 and**
4 **thereafter, \$25.70.** So ang laki noong disparity. And if you
5 talk of the current projected wastage ay malaki rin itong
6 matatapon sa Moderna, 11 million doses.¹⁶⁹ [Emphasis
7 supplied].

8 155. Sec. Galvez denied the **US\$43** per dose; however, he refused to
9 provide the Committee with the actual cost.¹⁷⁰ **The information from**
10 **COA for purposes of this Committee Report is therefore**
11 **uncontroverted.**

12 156. With regard to AstraZeneca, the Supply Contract submitted by the DOH
13 to the Blue Ribbon Committee, and as confirmed by the COA, indicates
14 that AstraZeneca COVID-19 vaccine is **US\$5** per dose, making it the
15 cheapest among the vaccine brands.

16 157. Janssen, Sputnik Light, and Sinopharm COVID-19 vaccines were all
17 donated.

18 158. **The Blue Ribbon Committee understands the importance of**
19 **protecting intellectual property rights. However, given the**
20 **preceding dispositions coupled with the completion of the**
21 **transaction, we believe that the information required by Congress**
22 **should not be considered privileged and therefore subject to**
23 **disclosure to the general public.**

24 159. **Moreover, the market equilibrium has shifted, with demand no**
25 **longer outstripping supply. It is no longer a supplier's market but**
26 **a buyer's market.**¹⁷¹ **As such, the logic that impels purchasing**
27 **countries to agree to restrictive and one-sided provisions in the**
28 **procurement of vaccines no longer holds.**

29 **B.**

- 30 • **While the wastage for**
31 **national government-**
32 **procured vaccines is**
33 **within the acceptable limit**
34 **set by WHO, the projected**
35 **wastage of more than 60**
36 **Million doses of Vaccines**
37 **out of the 251.38 million**
38 **received is unacceptable,**
39 **to say the least.**
40

¹⁶⁹ TSN, Blue Ribbon Hearing, March 9, 2023, page 36.

¹⁷⁰ TSN, Blue Ribbon Hearing, March 9, 2023, page 35.

¹⁷¹ Dareh Gregorian, "Moderna CEO grilled over plan to raise Covid vaccine price at Senate hearing", March 22, 2023. <https://www.nbcnews.com/news/amp/rcna76179>, Accessed on April 9, 2023, see also - <https://www.reuters.com/business/healthcare-pharmaceuticals/novavax-tumbles-31-waning-covid-vaccine-demand-hits-revenue-forecast-2022-08-09/>

1
2 160. In a recently published paper, its authors stressed that:

3
4 The fight against the wide-ranging effects of the virus was
5 fortified with the global introduction of vaccines that aimed to
6 increase the immunity of the general population. However,
7 reports of vaccine wastage have made the goal of
8 eradicating the virus even more challenging.¹⁷²
9

10 161. According to the World Health Organization (WHO) report in 1997,
11 nearly 43% of vaccines delivered to developing countries were wasted,
12 largely due to poor infrastructure.¹⁷³
13

14 162. In 2005, WHO reported that the wastage rate for vaccines was at 50%
15 globally. According to the organization, “no matter how successful a
16 programme is, some vaccine wastage can be expected. Many factors
17 influence vaccine wastage. Improved vaccine management practices
18 are the key to addressing vaccine wastage as a whole.”¹⁷⁴
19

20 163. While imploring the importance of vaccination, a 2022 published
21 commentary also expresses concerns on the continued vaccine
22 wastage:
23

24 Vaccination is the cornerstone of current strategies to
25 mitigate the COVID-19 pandemic, through reductions in
26 transmission, morbidity, and mortality. To optimize the
27 impact of vaccination, an approach for equitable global
28 distribution which minimizes vaccine wastage is essential.
29 Yet, after more than a year of distributing COVID-19
30 vaccines, unnecessary vaccine wastage continues, with
31 wastage rates as high as 30%.¹⁷⁵
32

33 164. Culling data from GAVI¹⁷⁶ and COVAX,¹⁷⁷ said paper underscores the
34 recommended vaccine wastage:
35

36 Ultimately, some vaccine wastage is inevitable. For all
37 vaccines, the GAVI Alliance recommends countries to aim
38 for a maximum wastage rate of **25% for the first year, with**
39 **a gradual reduction to 15% by the third year. For**
40 **vaccines in single-dose or two-dose vials, the maximum**
41 **wastage allowance is 5%. For calculations on COVID-19**
42 **vaccines delivery, COVAX uses a 10% vaccines wastage**

¹⁷² Bernardino, GD, Yogyog, KRA, Tayaben, JL, Garma, PFU. Vaccine wastage in the Philippines: An examination of the contributory factors. *Public Health Chall.* 2022; 2:e50. <https://doi.org/10.1002/puh2.50>

¹⁷³ Nkenyi, R., Pak, G.D., Tonga, C. *et al.* A retrospective review of vaccine wastage and associated risk factors in the Littoral region of Cameroon during 2016–2017. *BMC Public Health* 22, 1956 (2022). <https://doi.org/10.1186/s12889-022-14328-w>

¹⁷⁴ WHO. Monitoring Vaccine Wastage at Country Level, pages 1 and 44. https://apps.who.int/iris/bitstream/handle/10665/68463/WHO_VB_03.18.Rev.1_eng.pdf?sequence=1&isAllowed=y Accessed on April 16, 2023

¹⁷⁵ Lazarus JV, Abdool Karim SS, van Selm L, et al. COVID-19 vaccine wastage in the midst of vaccine inequity: causes, types and practical steps. *BMJ Global Health* 2022;7:e009010. doi:10.1136/bmjgh-2022-009010, page 1. Accessed on April 16, 2022

¹⁷⁶ Global Alliance for Vaccines and Immunizations

¹⁷⁷ COVID-19 Vaccine Global Access

1 rate, though countries should strive for less wastage.¹⁷⁸
2 [Emphasis supplied]
3

- 4 165. During the 2023 Budget deliberation, Senator Pia Cayetano made the
5 following remarks regarding the acceptable vaccine wastage:
6

7 **For Covax, they have initially given a number that is 10**
8 **percent.** But from experience, WHO found that the reality is,
9 in low-income, middle-income, and even high-income
10 countries, the **wastage rates went up to 30%.** So there was
11 then a statement made **by WHO that up to 25% is**
12 **acceptable.** I don't think it's meant to be an excuse. But it's
13 just showing the trends and realities. And the reason why I
14 want to put on record the reasons, it's partly because of the
15 reality that there is vaccine hesitancy[.]¹⁷⁹ [Emphasis
16 supplied]
17

- 18 166. **Vaccine wastage is defined by WHO as “loss by use, decay,**
19 **erosion, or leakage or through wastefulness”, and can be**
20 **calculated as the proportion of vaccine administered against**
21 **vaccine issued.**¹⁸⁰ **WHO also defined vaccine wastage as “the sum**
22 **of vaccines discarded, lost, damaged or destroyed.** Since vaccines
23 account for a significant portion of immunization programme costs,
24 ensuring that wastage is minimized without jeopardizing vaccination
25 coverage is key.”¹⁸¹

- 26 167. In her testimony on **December 14, 2022,** before the Blue Ribbon
27 Committee, Undersecretary Maria Rosario S. Vergeire explained the
28 vaccine wastage figures of the country by emphasizing that the
29 wastage percentage of the national government-procured vaccines is
30 at only **2.97%.** According to her:
31

32 The **44 million wastage** based on our inventories mostly
33 comes from the **procurement of the private sector which**
34 **is around 44.82 percent of their procured vaccines** and
35 **coming from the local government units which is around**
36 **33.34 percent of their procured vaccines.** If we look at
37 **our current inventories, the national government**
38 **procurement, only 2.97 percent out of the total number**
39 **that we have procured which is around 134 million**
40 **doses that we have procured, only around 2.9 million**¹⁸²
41 **have expired from these national government procured**
42 **vaccines.** [Emphasis and underscoring supplied.]

¹⁷⁸ Lazarus, *COVID-19 vaccine wastage*, page 2

¹⁷⁹ https://legacy.senate.gov.ph/press_release/2022/1117_cayetano2.asp, Accessed on April 10, 2023.

¹⁸⁰ UNICEF. *National Vaccine Wastage Assessment*, <https://www.unicef.org/india/media/6686/file/National%20Vaccine%20Wastage%20Assessment.pdf>.

Accessed on April 17, 2023. Yang W, Parisi M, Lahue BJ, Uddin M, Bishai D. The budget impact of controlling wastage with smaller vials: A data-driven model of session sizes in Bangladesh, India (Uttar Pradesh), Mozambique, and Uganda. *Vaccine*. 2014 Nov 20;32(49):6643-8. doi: 10.1016/j.vaccine.2014.09.057. PMID: 25306911 Accessed on April 16, 2023.

¹⁸¹ WHO. *Revising global indicative wastage rates: a WHO initiative for better planning and forecasting of vaccine supply needs*, Concept Note, 8 April 2019, page 1, <https://www.who.int/docs/default-source/immunization/tools/revising-wastage-concept-note.pdf>. Accessed on April 17, 2023

¹⁸² 3,981,540 is the correct figure.

The estimated amount of wastage among the national government-procured vaccines **corresponds only to 1.99 billion if we are to equate or estimate this at ₱500 per dose.** [Emphasis supplied]¹⁸³

168. In its vaccine wastage by source table (see below) that was submitted to the Blue Ribbon Committee, noticeable is the **₱22,037,494,175.00** equivalent monetary value of the **44,074,988** vaccine wastage. The Blue Ribbon Committee observed that the total national government-procured vaccine wastage is **3.981 million doses, with an equivalent value of ₱1,990,769,750.00.**

169. However, the document also shows that out of the **77,215,730** vaccines donated through COVAX, about **10,187,943**, representing 13.19%, were wasted.

COVID-19 Vaccine Wastage Summary by Source as of December 2, 2022

SOURCE	TOTAL QUANTITY (in doses)	QUANTITY (in doses)				Estimated Wastage Cost (@500/dose)
		NATIONAL LEVEL	SUBNATIONAL (CHDs and LGUs)	TOTAL	%	
NG PROCUREMENT (GAA/GOP + ADB + WB)	134,153,110	0	3,981,540	3,981,540	2.97%	1,990,769,750.00
GAA/GOP	15,500,000	0	1,568,487	1,568,487		784,243,500.00
ADB	85,631,530	0	1,465,921	1,465,921		732,960,500.00
WB	33,021,580	0	947,132	947,132		473,565,750.00
LGU	13,740,300	3,209,920	1,378,851	4,588,771	33.40%	2,294,385,500.00
PRIVATE	10,657,630	4,324,580	452,167	4,776,747	44.82%	2,388,373,500.00
COVAX	77,215,730	4,802,310	5,385,633	10,187,943	13.19%	5,093,971,425.00
BILATERAL	15,615,830	183,980	918,706	1,102,686	7.06%	551,343,000.00
MULTIPLE SOURCES/FOR IDENTIFICATION	-	0	<u>19,437,302</u>	19,437,302		9,718,651,000.00
TOTAL	251,382,600	12,520,790	31,554,198	44,074,988	17.53%	22,037,494,175.00

**this can either be donated or procured by the National Government, LGU, and/or private sector*

Total Wastage from All Sources (in doses)	44,074,988
---	------------

¹⁸³ TSN, Blue Ribbon Committee Hearing, December 14, 2022, page 25

Total Procured and Donated Vaccines (in doses)	251,382,600
Wastage Rate (Donated and Procured Vaccines)	17.53%

170. Wastage per brand will show the following:

COVID-19 Vaccine Wastage Summary by Location and Brand

LOCATION/ REGION	NUMBER OF WASTAGE (IN DOSES)									TOTAL WASTAGE
	SINOVAC	ASTRAZENECA	SPUTNIK	PFIZER	PFIZER PEDIA	MODERNA	JANSSEN	SINOPHARM	SPUTNIK LIGHT	
NATIONAL WAREHOUSE	0	5,347,120	0	0	0	7,005,670	168,000	0	0	12,520,790
NCR	87,089	1,900,891	3,610	63,122	8,014	356,905	1,963	9	650	2,422,253
CAR	14,467	167,282	181,984	33,864	9,900	51,681	14,816	0	0	473,994
I	157,870	118,989	52,896	36,054	30,998	152,084	28,602	0	900	578,393
II	27,847	32,825	124,895	21,404	4,545	93,507	6,440	0	1400	312,863
III	1,420	26,411	50,221	14,138	99	15,765	2,891	125	0	111,070
IVA	1,969	201,526	30,411	31,727	4,583	79,472	99,989	81	0	449,758
IVB	96,365	292,308	74,332	491,355	78,182	333,449	280,275	1	0	1,646,267
V	308,802	448,114	118,112	630,225	167,875	627,176	373,421	0	0	2,673,725
VI	319,614	706,364	81,403	485,795	172,823	845,981	363,293	0	0	2,975,273
VII	87,657	290,270	68,414	25,877	0	321,285	582,950	0	0	1,376,453
VIII	230,870	403,021	274,008	91,861	45,023	399,353	324,174	0	0	1,768,310
IX	72,761	263,478	142,506	269,919	74,751	252,988	180,967	0	0	1,257,370
X	273	33,865	371,708	927	1,009	24,018	22,557	1	0	454,358
XI	3,721	49,238	16,059	109,081	27,219	60,231	222,264	281	0	488,094
XII	35,454	189,709	63,912	7,107	3,416	104,087	220,544	0	0	624,229
CARAGA	25,680	494,712	140,000	228,113	41,111	214,918	128,274	0	0	1,272,808
MOH BARMM	32	37,994	0	0	0	77,050	375,445	888	0	491,409
For identification of vaccine brand and										12,177,571

cause										
TOTAL	1,471,891	11,004,117	1,794,471	2,540,569	669,548	11,015,620	3,396,865	1,386	2,950	44,074,888

Source- DOH

COVID-19 Vaccine Wastage Summary by Source and Brand as of December 2, 2022

SOURCE	BRAND	QUANTITY (in doses)
A. PROCUREMENT		
GOP	SPUTNIK V GAMALEYA	1,794,471
	SINOVAC	16,555
ADB	PFIZER BIONTECH (ADULT)	602,228
	SINOVAC	863,693
WB	PFIZER BIONTECH (ADULT)	436,649
	PFIZER PEDIA	669,548
	MODERNA	35,565
LGU	ASTRAZENECA	4,588,771
PRIVATE	ASTRAZENECA	1,075,310
	MODERNA	3,701,437
SUBTOTAL		13,784,228
B. DONATION		
COVAX	PFIZER BIONTECH (ADULT)	1,334,266
	JANSSEN J&J	3,396,865
	ASTRAZENECA	4,695,219
	MODERNA	7,278,618
BILATERAL	PFIZER BIONTECH (ADULT)	167,426
	SINOPHARM	1,386
	SPUTNIK LIGHT	2,950
	SINOVAC	591,643
	ASTRAZENECA	644,817
SUBTOTAL		18,113,190
FOR VALIDATION		12,177,571
GRAND TOTAL		44,074,988

Source- DOH

COVID-19 Vaccine Wastage Summary (Procured and received vis-a-vis wastage)

VACCINE	TOTAL QUANTITY RECEIVED/PROCURED (in doses)	TOTAL QUANTITY WASTAGE (in doses)			
		NATIONAL LEVEL	SUBNATIONAL (CHDs and LGUs)	TOTAL	%
SINOVAC	56,105,400	0	1,471,891	1,471,891	2.62
ASTRAZENECA	38,846,950	5,346,610	5,657,507	11,004,117	28.33
GAMALEYA	10,000,000	0	1,794,471	1,794,471	17.94

PFIZER	77,727,780	0	2,540,569	2,540,569	3.27
PFIZER PEDIA	21,000,000	0	669,548	669,548	3.19
MODERNA	33,871,820	7,005,670	4,009,950	11,015,620	32.52
JANSSEN	12,725,650	168,000	3,228,865	3,396,865	26.69
SINOPHARM	1,100,000	0	1,386	1,386	0.13
SPUTNIK LIGHT	5,000	0	2,950	2,950	59
for validation	-	0	12,177,571	12,177,571	-
TOTAL	251,382,600	12,520,280	31,554,708	44,074,988	17.53

Source- DOH

1 171. As can be gleaned from the various data tabulations above, a **large**
2 **amount of Moderna vaccines expired, numbering more than 11**
3 **million.** The Chairperson called attention to the matter during the
4 March 9, 2023, hearing:

5
6 THE CHAIRPERSON. So ano nga, iyong 43 naging 25.50.
7 **But surprisingly, and this is a sad state of our**
8 **implementation phase, Moderna, ang nag-expire ay 11**
9 **million. Pinakamahal na, pinakamarami pang nag-expire.**
10 **So paano napunta iyong urgency doon na gamitin na,**
11 **iyon nga iyong pinakamaraming nasayang?**¹⁸⁴
12

13 172. Per record, the government procured 13,019,830 Moderna
14 vaccines. On the other hand, the private sector purchased 6,978,730
15 while the COVAX facility donated 13,873,260 for a total of 33,
16 871,820 vaccines. The 11,015, 620 Moderna vaccines wasted
17 correspond to a 32.521% wastage rate.
18

19 173. However, submissions of the DOH subsequently reveal that almost 11
20 million Moderna vaccines wasted were either donated or procured by
21 the private sector. **Wastage on the part of the national government**
22 **accounted for only 35,565 procured doses.**
23

24 174. The case of **AstraZeneca** is also alarming. The Philippines received
25 16,324,000 from COVAX and an additional 6,003,750 from other
26 donors. In addition, LGUs procured 13,340,300 vaccines while private
27 entities bought 3,178,900 for a grand total of 38,846,950. **Out of the 38**
28 **million vaccines, 11,004,117 were wasted, resulting in a wastage**
29 **rate of 28.33%.**
30

31 175. It should be noted that the national government did not enter into supply
32 agreements with AstraZeneca though it allowed LGUs and private
33 entities to do so. **The wastage from said entities totaled 5,664,081.**

¹⁸⁴ TSN, Blue Ribbon Committee Hearing, page 37

- 1
2 176. Nonetheless, said figures are not yet final as 12,177,571 doses of
3 wasted vaccines are still for identification for vaccine brand and cause
4 as previously mentioned.¹⁸⁵
5
6 177. With the more than **12 million vaccine wastage still for**
7 **identification**, the COA findings that there were deficiencies in the
8 distribution of COVID-19 vaccines amounting to **P3,489,848,237.02**
9 such as (a) vaccines worth P2,267,063,112.48 not received by intended
10 recipients per confirmation replies; b) discrepancies amounting to
11 P864,839,645.18 between the quantities reported per Distribution Lists
12 (DLs) and actual quantities received by the recipient agencies; (c)
13 delivery of vaccines worth P15,766,072.00 to agencies other than the
14 intended recipients; and (d) unidentifiable vaccines due to lack of
15 information in the supporting documents amounting to P342,179,407.36
16 becomes relevant.
17
18 178. **These incidents indicate weakness in the distribution system of**
19 **COVID-19 vaccines, which could have adverse effects on the**
20 **overall attainment of the objectives of the national COVID-19**
21 **vaccination program**, according to COA.¹⁸⁶
22
23 179. Regrettably, the reply of DOH also confirms the less than cohesive
24 monitoring of the supply chain:
25

26 The reality on the field is that the persons in charge of the
27 receipt and monitoring of the distribution of the vaccines are
28 oftentimes the same persons managing the vaccination site.
29 They are the same persons handling the line list of people to
30 be vaccinated, in charge of monitoring adverse effects, if
31 any, and other tasks to operationalize the vaccination
32 program. Due to the bulk of work that these persons are
33 handling during vaccination, monitoring the inventories was
34 not a priority at the time. As stated previously, we would like
35 to emphasize that the COVID-19 vaccines have shorter shelf
36 life compared to ordinary vaccines. The priority at that time
37 was to have the vaccines administered as soon as possible.
38 Thus, the same was distributed expediently which
39 unfortunately affected the distribution monitoring of the
40 inventories. As to the vaccine inventories, when the vaccines
41 are distributed and deployed, the recipients longer took note
42 whether the vaccines were procured either through PCERP,
43 or from COVAX, government procured or donated. In
44 addition, there were several instances that a certain area
45 received more than enough supplies to vaccinate a covered
46 population due to external factors, such as vaccine hesitancy
47 of the would-be recipients. There are also areas that did not
48 receive enough doses due to unexpected demands for the
49 same.
50

¹⁸⁵ Per testimony of Dr. Ma. Joyce U. Ducusin of DOH, LGUs did not indicate in the reporting forms the name or the brand of the vaccine.

¹⁸⁶ DOH Final Comments on AOM on PCERP dated February 9, 2023, page 6

1 Moreover, there was an over-supply of vaccines from the
2 private sector or private companies procured separately. As
3 a result, the Government issued Joint Memorandum
4 Circulars to allow the swapping and loaning of vaccines. This
5 further complicated the monitoring and recording of the
6 vaccine inventories. We attached copies of the MCs for your
7 reference. Noting the recommendations given by COA, the
8 Project has coordinated with SCMS to improve and update
9 any pending inventory reports for recording. **Also, the DOH
10 is pushing for the digitalization of all reports and
11 monitoring data with the intention of integrating all
12 information in one central repository. This will simplify
13 and conveniently facilitate the smooth monitoring of the
14 inventories of COVID-19 vaccines and health goods of
15 the DOH[.]**¹⁸⁷ [Emphasis supplied]
16

17 180. As to the source of vaccine wastage, the following pronouncements by
18 the Chairperson are instructive:

19 From the previous discussions, what came out was that—
20 this is an unassailable fact now—more than million doses of
21 vaccines were not utilized and, eventually, expired because
22 of some reasons known only to a few. **One, perhaps, these
23 vaccines were about to expire when procured; two,
24 there were systems in place that prevented the proper
25 distribution of the vaccines; three, lack of proper
26 information campaign on the part of the intended
27 recipients, meaning to say, our kababayans; and four,
28 inexcusable neglect, perhaps, on the part of those
29 handling the vaccines.**¹⁸⁸ [Emphasis supplied]
30

31 181. Further, the Chairperson underscored the non-extension of the shelf
32 life of the expired vaccines:
33

34 Aside from the expiration, nabasag, nalagay sa maling
35 temperature, natapon—iyong sa expiration tayo, kung in-
36 extend ninyo ba iyon, nabawasan itong wastage? Allowed
37 naman pala kayong mag-extend.¹⁸⁹
38

39 182. Vaccine wastage falls into two categories: wastage in unopened vials
40 and wastage in opened vials. Unopened vial wastage' is primarily due
41 to inefficiencies in the supply chain, including temperature control,
42 temperature monitoring, and stock management during storage and
43 transportation. It may result from vaccine expiry, excess heat exposure,
44 freezing, breakage, missing inventory or discard following outreach
45 sessions etc. Opened vial wastage" can be both avoidable (attributable
46 to immunization workers' practices and include errors in reconstitution,
47 suspected contamination, patients' reaction, excess heat, freezing or
48 breakage) and unavoidable (discarded doses from vials of unused

¹⁸⁷ DOH Final Comments on AOM on PCERP dated February 9, 2023, pages 6-7

¹⁸⁸ TSN, Blue Ribbon Hearing, February 21, 2023, page 8

¹⁸⁹ TSN, Blue Ribbon Hearing, February 21, 2023, pages 40-41

doses of multi-dose vials and determined by vial size, session size and discard time).¹⁹⁰

183. The DOH submitted the following data on the causes of wastage, with expired beyond shelf life being the biggest contributor to the wastage accounting for 56% :

COVID-19 Vaccine Wastage by Cause

Wastage	National Warehouse		CHDs + LGUs		TOTAL	
	Quantity	%	Quantity	%	Quantity	%
1. Expired / Beyond Shelf-life	12,352,280	4.91	12,321,448	4.90	24,673,728	9.82
2. Other Reasons :						
Operational	168,000	0.07	4,025,092	1.60	4,193,092	1.60
Natural Disaster & Fire	0	0.00	332,429	0.13	332,429	0.13
Temperature Excursion	0	0.00	231,610	0.09	231,610	0.16
Discoloration/Presence of Particulate Matter	0	0.00	21,306	0.01	21,306	0.01
Others (Underdoes, Empty Vial, Defective Syringe)	510	<0.001	2,444,742	0.97	2,445,252	0.97
3.No reasons indicated	0	0.00	12,177,571	0.98	12,177,571	4.84
TOTAL	12,520,790	4.98	31,554,198	12.55	44,074,988	17.53

184. On this issue, Dr. Anthony C. Cu - Director IV, Field Implementation and Coordination Team, DOH made the following defense:

So, tungkol naman po doon sa ginagawa ng Department of Health para po doon sa mga—iyong validity ng vaccine, as long as mayroon pong available data na puwede pang i-extend ang shelf life nito, nakikipag-coordinate po kami sa mga manufacturer and supplier para i-consider iyong applying for extension of the validity of this particular vaccine tulad rin po ng suggestion ni Chair Tolentino. So, iyon po iyong ginagawa as of this point in time.¹⁹¹

185. Said figures were discussed by Senator Robinhood Padilla and Dr. Ma. Joyce U. Ducusin - OIC Director IV, Supply Chain Management Service, DOH:

SEN. PADILLA. Magandang umaga rin po.

MS. RAMOS. Sa ngayon po, tayo po ay mayroong 15,972,740 doses of various COVID vaccines na nasa national store po.

¹⁹⁰ World Health Organization. Revising global indicative wastage rates: a WHO initiative for better planning and forecasting of vaccine supply needs. Concept Note. April 2019. URL: https://www.who.int/docs/default-source/immunization/tools/revising-wastage-concept-note.pdf?sfvrsn=30e43557_4

¹⁹¹ TSN, Blue Ribbon Hearing, February 21, 2023, page 65

1 SEN. PADILLA. Opo. Ito po ay matagal pa po itong mag-
2 expire?

3
4 MS. DUCUSIN. Mayroon pong mag-e-expire, based on the
5 EUA, ng February, mayroon din po sa March, mayroon din
6 po sa April, mayroon po sa May, September and this coming
7 October.

8
9 SEN. PADILLA. Opo. Ano po ang mga pangalan nitong mga
10 vaccine na mag-e-expire po ngayong February?

11
12 MS. DUCUSIN. So nitong February, mayroon po tayo iyong
13 Pedia-

14
15 SEN. PADILLA. Pfizer po, Pfizer?

16
17 MS. DUCUSIN. Sorry. Pfizer na for adult. Then, sa March po
18 mayroon din po tayong Pfizer adult at saka for pedia. April is
19 Pfizer pedia. Then, for May, September and October, ito po
20 ang Sinovac.

21
22 SEN. PADILLA. Opo. Puwede pong maitanong kung bakit
23 parang inaabot po tayo lagi ng expiration? Ayaw po talaga
24 ng taumbayan ba na magpabakuna?¹⁹²

25
26 186. The underutilization of funds is a problem that we have encountered
27 before. Likewise, underutilization of vaccines is not a new problem but
28 it is something that must be resolved since unlike other government
29 supplies, vaccines will expire.¹⁹³

30
31 187. Regretfully, the more than 44 million wasted vaccine doses were as of
32 December 2022 only. The DOH admits that millions of doses will still be
33 wasted in the coming months as testified by Usec. Vergeire:

34
35 THE CHAIRPERSON. So, ma'am, do you confirm that this
36 will still balloon into a bigger amount considering that there
37 are still vaccines in your inventory, and that some of the
38 vaccines with short life extensions will still expire and will not
39 be totally utilized? For instance, Moderna was extended to
40 up to nine months; AstraZeneca, nine months; Pfizer adult,
41 15 months; Sinovac, two years; but others were shortened
42 by one year.

43
44 So, if our vaccination rate would not ramp up considering the
45 existing vaccine hesitancy, ayaw na magpabakuna noong
46 iba, ay lalago pa itong 50.74. Do you agree with that
47 assumption, ma'am?

48
49 MS. VERGEIRE. Yes, Mr. Senator. Yes, that might happen.
50 But for now, based on the inventories, the succeeding expiry
51 dates of the vaccines would already be in September of
52 2023. While we have, in May of 2023, around 13,000 doses
53 to be added to the expiries if this won't be consumed, but the

¹⁹² TSN, Blue Ribbon Hearing, February 21, 2023, page 60

¹⁹³ TSN, Blue Ribbon Hearing, March 9, 2023, page 23

1 succeeding expiry dates would already be in September of
 2 2023. Plus, Mr. Senator, we have around 6.9 million doses
 3 of vaccines which are currently quarantined, as we define it,
 4 since we are still awaiting from the manufacturers and FDA if
 5 this can be allowed to have an extension of the shelf lives.
 6

7 THE CHAIRPERSON. How many vaccines, ma'am, six
 8 point--?
 9

10 MS. VERGEIRE. Six Million Nine Hundred Fifty-Five
 11 Thousand and Three Hundred Fifty doses, Mr. Senator.
 12

13 THE CHAIRPERSON. So, potentially, Secretary Vergeire,
 14 potentially we will have around 57 million, potentially, if this
 15 will not be extended. But even if you extend, do you agree
 16 with me, even if we extend the shelf life of all vaccines within
 17 your inventory, if they will not be used because of vaccine
 18 hesitancy and perhaps the misinterpretation as to the
 19 normalcy that we have now, **they will add up to more than**
 20 **60 million in the long run?** [Emphasis supplied]
 21
 22

23 MS. VERGEIRE. Yes, I agree, Mr. Senator. But we are
 24 doing all things possible now so that we can intervene and
 25 be able to ramp up again the vaccination.¹⁹⁴
 26

27 188. The table below shows the remaining Inventory of COVID-19 Vaccines
 28 at the National Warehouse Facility based on Shelf-life. Not yet included
 29 are the vaccines in the various regions.

EXPIRY DATE	ASTRA ZENECA	SPUTNIK V GAMALEYA		PFIZER ADULT 12 YRS OLD & ABOVE	PFIZER PEDIA 5-11 YRS OLD	SINOVAC	GRAND TOTAL
		COMPONENT I	COMPONENT II				
Mar-23				3,598,920	1,670,700		5,269,620
Apr-23					998,400		998,400
May-23						13,040	13,040
Sep-23						1,176,000	1,176,000
Oct. 2023						972,560	972,560
QUARANTINED	338,780	2,897,030	3,506,600	*212,940			6,955,350
TOTAL	338,780	2,897,030	3,506,600	3,811,860	2,669,100	2,161,600	<u>15,384,970</u>

QUARANTINED VACCINES - awaiting shelf-life extension

*PFIZER PEDIA (Feb 2023) - Awaiting for the EUA Amendment (18 months Shelf-life)

¹⁹⁴ TSN, Blue Ribbon Committee Hearing , March 9, 2023, pages 13-14

1 189. COVID-19 Vaccine wastage is a reality; **no country is immune from**
2 **it. In the United States, it was reported that 82 million doses were**
3 **wasted as of July 2022.**¹⁹⁵ **In Singapore, about 15 percent of its**
4 **COVID-19 vaccine doses worth S\$140 million expired,** Health
5 **Minister Ong Ye Kung said in Parliament last March 2023, calling it a**
6 **price the country was prepared to pay to stave off the risk of**
7 **catastrophic consequences.**¹⁹⁶ **In Indonesia, Deputy Minister of**
8 **Health Dante Saksono Harbuwono, in October 2022, said 40.2**
9 **million doses of expired vaccines were to be got rid of**
10 **immediately.**¹⁹⁷

11
12 190. However, while such may be the case, for a developing country like
13 ours, every dose which is worth an average price of P500 is a big
14 loss. **For a country that needed to borrow US\$2 billion to finance**
15 **its vaccine procurement, the 2.97% or 3,981,540 million vaccine**
16 **wastage of the national government is already worth**
17 **P1,990,769,750 billion pesos.**

18
19 191. **If we include the wastage coming from the LGUs, private entities,**
20 **and donations, the monetary value for wasting 44,074,988 doses**
21 **will amount to P22,037,494,175.00 using the conservative P500**
22 **estimated cost per dose.** With the prospect of losing about 60 million
23 doses, the amount of loss is staggering.

24
25 192. While about 18,113,190 doses of wasted vaccines were donated, it's
26 not an excuse to be cavalier about its use. Every avenue should be
27 explored by the DOH in this regard.

28
29 193. The Blue Ribbon Committee, therefore, appreciates Usec. Vergeire's
30 candid response as contained in her letter dated March 23, 2023,
31 wherein she stated the following:

32
33 As regards the conduct of COVID-19 vaccination, the
34 government developed the Philippine "National Deployment
35 and Vaccination Plan for COVID-19 Vaccines" that identifies
36 population groups to be prioritized and ensures vaccine
37 equity accounting for different risks and needs. However,
38 studies showed that impediments to COVID-19 vaccines
39 may be personal, interpersonal, and/or structural, which
40 interact to affect choices. The decision to vaccinate is
41 heavily influenced by an individual's views, which are
42 affected by exposure to (mis)information amplified by the
43 media, the community, and the system. **Thus, the DOH**
44 **continues to work towards population protection** by
45 constantly collaborating and engaging with National
46 Government Agencies and the private sector to expand

¹⁹⁵ <https://www.nbcnews.com/news/us-news/covid-vaccine-doses-wasted-rcna31399>

¹⁹⁶ <https://www.channelnewsasia.com/singapore/expired-covid-19-vaccine-140-million-dollars-insurance-premium-white-paper-debate-3362376>

¹⁹⁷ <https://en.antaranews.com/news/247233/some-402-million-expired-covid-19-vaccines-have-been-separated-govt>

1 vaccination campaigns and initiatives. The Department also
2 increased its communication efforts in communities where it
3 collaborated with Local Government Units (LGUs) to raise
4 awareness about the importance of COVID-19 vaccines.
5 [Emphasis and underscoring supplied]
6

7 194. She further informed the Blue Ribbon Committee of recent initiatives of
8 the DOH moving forward:

- 9
- 10 a. To address hesitancy, the Department conducted Risk
11 Communication, Community Engagement, and Micro planning
12 workshop in partnership with WHO, UNICEF, and USAID
13 (September 2022) to strengthen local capabilities and identify
14 specific issues;
- 15 b. The microplan produced by the participants are supported by hiring
16 of social mobilizers deployed (240 in 2022, target to deploy 248 in
17 2023) at LGU level and mobilization fund to implement the demand
18 generation and advocacy activities in the microplan;
- 19 c. The DOH targeted key community influencers and localized
20 solutions, and continues to provide information through online
21 channels with a specific focus on mothers in partnership with
22 USAID Breakthrough Action; and
- 23 d. Digital media, broadcast media (television and radio), and print
24 media will be maximized with monthly spots this 2023 to ensure
25 that the Department will be able to reach its commitments and
26 encourage Filipino people to get vaccinated.

27

28 195. While the Blue Ribbon Committee acknowledges the earnest efforts
29 being made by the DOH to reduce the wastage of vaccines, we should
30 however be mindful **that any form of waste, whether in vaccines,
31 equipment or supplies, especially those of the life-saving types,
32 remains unacceptable and should be reduced to the lowest
33 possible level.** Still, the Blue Ribbon Committee could not easily
34 condemn or deplore the DOH, its allied agencies, and its personnel,
35 knowing the difficulties they faced and continue to face in relation to this
36 government vaccination program.

37

38 196. Even the COA admits in its Audit Report the peculiarity of the situation
39 in its answer to the question of the Chairperson:

40

41 THE CHAIRPERSON. ... na talagang agawan noon sa
42 supply— limited lang iyong supply. So, hindi na sila maka-
43 argue doon.

44

45 Will that be acceptable to the Commission on Audit?

46

47 MS. RAMOS. Yes, Your Honor. And, in fact, in our
48 recommendations, our recommendations **are actually
49 moving-forward considerations** because we do accept the

1 fact that we were at a very inopportune time. So, yes, sir,
2 we—¹⁹⁸ [Emphasis supplied]

3
4 xxx

5 THE CHAIRPERSON. ...since you are a separate
6 constitutional agency - set a framework for this for future
7 reference, iyong mga emergency purchases natin—
8 pandemic, other calamities, siguro naiiba iyong treatment
9 noon. Do you agree with me?

10 MS. RAMOS. Yes, sir, Your Honor. Although, of course, we
11 already have existing regulations on how to go about
12 obtaining contracts for whatever purposes but, yes, Your
13 Honor, I do agree that we should have special
14 considerations for special circumstances also.¹⁹⁹

15
16 197. By virtue of the foregoing, the Blue Ribbon Committee is reminded by
17 the wise words of the Supreme Court in *PEZA vs COA (PEZA)*
18 regarding government service,²⁰⁰ viz.:

19
20 Government employment should be seen as an opportunity
21 for individuals of goodwill to render honest-to-goodness
22 public service, not a trap for the unwary. It should be an
23 attractive alternative to private employment, not an
24 undesirable undertaking grudgingly accepted, to therefore
25 regret. It should present a fulfilling environment where those
26 who enter could realize their potentials, and the public could
27 benefit from their contributions.

28
29
30 198. Nevertheless, the number of vaccine wastage is still concerning which,
31 in this Committee's opinion, necessitates the further review and
32 consideration of the Office of the Ombudsman for any possible liability
33 on the part of the involved government officials and employees, in
34 accordance with Sec. 3 (d) of Republic Act No. 9184.²⁰¹

35
36
37 C.

- 38
39 • **While the Primary Series**
40 **Vaccination Program of the**
41 **Government is successful,**
42 **its booster program is**
43 **wanting.**

¹⁹⁸ TSN, Blue Ribbon Hearing, March 9, 2023, page 48

¹⁹⁹ TSN, Blue Ribbon Committee Hearing, March 9, 2023, page 49-50

²⁰⁰ G.R. No. 210903. October 11, 2016

²⁰¹ Sec. 3 (d) RA 9184: "(d) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto."

1
2 199. One of the largest impediments to efficient immunization is the wastage
3 of vaccines. It may even be argued that a large amount of vaccine
4 wastage indicates an unsuccessful vaccination program. However, for
5 the Blue Ribbon Committee, low immunization coverage and a large
6 number of people still being affected by COVID-19 deserve great
7 attention in addition to the wastage factor.
8

9 200. **According to WHO, “[w]hatever measures are taken to reduce
10 vaccine wastage, they should not compromise immunization
11 coverage. If a selected approach to reducing vaccine wastage
12 results in reducing immunization coverage, other approaches
13 should be considered.”**²⁰²
14

15 201. **Ultimately, the goal of COVID-19 immunization is to attain herd
16 immunity against the virus. Herd immunity, also known as
17 ‘population immunity’, is the indirect protection from an infectious
18 disease that happens when a population is immune either through
19 vaccination or immunity developed through previous infection.**²⁰³
20

21 202. However, for the country, the DOH continues to work towards
22 “population protection.”²⁰⁴
23

24 203. WHO requires fully vaccinating at least 70% of the world's population,
25 accounting for most adults and adolescents and for the vast majority of
26 those at risk of serious disease.²⁰⁵
27

28 204. Vaccinating 78,441,515 individuals is no small feat and our health
29 personnel should be congratulated. Despite the risk to their own lives,
30 they persevere for the sake of our countrymen.
31

32 205. To put it in its proper perspective, it was revealed by Former Deputy
33 Chief Implementer, National Task Force Against COVID-19 (NTFA-
34 COVID-19) Vivencio “Vince” B. Dizon that before the COVID-19
35 vaccination, the most number of vaccinations performed by the DOH
36 was 500,000 in a year:
37

38 Noon pong sinimulan namin ang vaccine program, mayroon
39 pong napakagandang tanong si Secretary Galvez noon na
40 tinanong niya sa DOH, sabi niya, “Sa history ba ng DOH,
41 ano ang pinaka-widespread— pinakamalawak at
42 pinakamadaming bakuna ang na-administer ng DOH sa loob
43 ng isang taon, sa iba’t ibang mga bakuna at iba’t ibang
44 sakit?” Ang sagot po sa amin ng DOH at that time and I

²⁰²WHO. Monitoring Vaccine Wastage at Country Level, page 46.
https://apps.who.int/iris/bitstream/handle/10665/68463/WHO_VB_03.18.Rev.1_eng.pdf?sequence=1&isAllowed=y Accessed on April 16, 2023

²⁰³<https://www.who.int/news-room/questions-and-answers/item/herd-immunity-lockdowns-and-covid-19>

²⁰⁴See Usec. Vergeire letter dated March 23, 2023.

²⁰⁵WHO. *Strategy to Achieve Global Covid-19 Vaccination by mid-2022*, page 3,
<https://reliefweb.int/attachments/ceab3dbf-0622-3cf6-ac16-c11f9fdd79e4/strategy-to-achieve-global-covid-19-vaccination-by-mid-2022.pdf>. Accessed on April 16, 2023

1 remember that very vividly was 500,000 doses in one year. I
 2 am not sure. I cannot remember na lang po kung bakuna sa
 3 dengue ba iyon o bakuna sa polio o anong sakit. Pero iyon
 4 po, ano. So, that meant po na kailangan talagang baguhin at
 5 i-redesign ang buong vaccination program ng gobyerno.
 6 Kasi you can imagine po, ang target po ni Secretary Galvez
 7 at ni Secretary Duque at that time ay makapagbakuna tayo
 8 ng 70 million Filipinos by the end of 2021, if I'm not
 9 mistaken, or by the beginning of 2022. So, napakadami po
 10 noon at parang imposible po kung iisipin natin. So, iyon po
 11 iyong malaking task na hinaharap namin noong
 12 kapanahunang iyon. To add to that, noon pong umpisa ng
 13 2021, mayroon pong ginawang survey ang iba't ibang mga
 14 survey companies regarding vaccine acceptability or vaccine
 15 hesitancy. And lumabas po sa survey na iyon and
 16 natatandaan ko pa po ito, 35 percent lang po ang willing
 17 magpabakuna. And this was, I think, in the first or second
 18 quarter of 2021. So, 65 percent ang hesitant, medyo
 19 natatakot o ayaw magpabakuna.²⁰⁶
 20

21 206. However, with regard to first booster shots, it's a different story. Of the
 22 target population, only 23,806,893 had been vaccinated. Percentage
 23 wise, said number is only 30.48% of the target. Worse, the second
 24 booster shot is only at 5.6% with only 4,374,694 being vaccinated.

25 207. The tables below show our vaccination progression from 2021-2023:
 26

2021 COVID-19 Vaccination Accomplishment. (As of December 31, 2021)

<u>Vaccination Status</u>					
Age Group	Total Target Population	Fully Vaccinated	% Coverage (Fully)	1st Booster	% 1st Booster
<5	-	-	-	-	-
5-11	-	-	-	-	-
12-17	1,272,207	174,377	13.71%	-	-
18-59	67,612,320	43,964,026	65.02%	1,316,386	1.95%
>60	8,254,531	5,626,810	68.17%	490,449	5.94%
TOTAL	77,139,058	49,765,213	64.51%	1,806,835	2.34%

²⁰⁶ TSN, Blue Ribbon Committee Hearing, Feb 21, 2023, pages 19-20

2022 COVID-19 Vaccination Accomplishment. (As of December 29, 2022)

<u>Vaccination Status</u>								
Age Group	Total Population	Total Target Population	Fully Vaccinated	% Coverage (Fully)	1st Booster	% 1st Booster	2nd Booster	% 2nd Booster
<5	11,108,140	-	-	-	-	-	-	-
5-11	15,564,305	10,895,015	5,413,196	49.69%	-	-	-	-
12-17	12,739,762	8,917,833	10,031,930	112.49%	1,148,400	12.88%	-	-
18-59	61,899,705	49,566,439	51,395,334	103.69%	17,252,632	34.81%	2,826,438	5.7%
>60	10,260,342	8,721,291	6,928,947	79.45%	2,758,570	31.63%	924,581	10.6%
TOTAL	111,572,254	78,100,578	73,769,407	94.45%	21,159,602	27.09%	3,751,019	4.8%

2023 COVID-19 Vaccination Accomplishment. (As of March 14, 2023)²⁰⁷

<u>Vaccination Status</u>								
Age Group	Total Population	Total Target Population	Fully Vaccinated	% Coverage (Fully)	1st Booster	% 1st Booster	2nd Booster	% 2nd Booster
<5	11,108,140	-	-	-	-	-	-	-
5-11	15,564,305	10,895,015	5,624,358	51.62%	-	-	-	-
12-17	12,739,762	8,917,833	10,209,135	114.48%	1,239,949	13.90%	-	-
18-59	61,899,705	49,566,439	55,442,638	111.86%	19,680,305	39.70%	3,404,866	6.87%
>60	10,260,342	8,721,291	7,165,384	82.16%	2,886,639	33.10%	969,826	11.12%
TOTAL	111,572,254	78,100,578	78,441,515	100.44%	23,806,893	<u>30.48%</u>	4,374,694	<u>5.6%</u>

²⁰⁷ The 78,100,578 target population for 2023 is subject to revision.

1 208. The contrasting state of affairs between the primary series and booster
2 shots of the COVID-19 vaccine was best captured by the following,
3 though the data being discussed was as of December 2022:

4
5 MS. VERGEIRE. Yes, Mr. Chairman. Currently, we have
6 around 94.62 percent of our eligible population fully
7 vaccinated with COVID-19.

8
9 THE CHAIRPERSON. Ninety-four—

10
11 MS. VERGEIRE. Ninety-four point sixty-two percent or 73.8
12 million Filipinos fully vaccinated, meaning, they have their
13 first and second doses.

14
15 Now, in terms of the—

16
17 THE CHAIRPERSON. That is a—comparing it with other
18 ASEAN countries, mataas po ito.

19
20 MS. VERGEIRE. Yes, Mr. Chairman. We are at par with
21 other countries in terms of the fully vaccinated individuals.
22 These are the first two doses.

23
24 THE CHAIRPERSON. Considering our population of 110
25 million, mataas po ito.

26
27 MS. VERGEIRE. Yes, Mr. Chairman.

28
29 THE CHAIRPERSON. Okay.

30
31 MS. VERGEIRE. So, in terms of the individuals with booster
32 doses, we only have around 27.65 percent among the
33 eligible population, and this would be around 20—

34
35 THE CHAIRPERSON. Iyon naman po ang mababa, iyong
36 booster?

37
38 MS. VERGEIRE. Ito po iyong mababa, Mr. Chairman, only
39 21.5 Million—

40
41 THE CHAIRPERSON. Twenty-seven percent or twenty-one
42 Percent?

43
44 MS. VERGEIRE. Twenty-seven point sixty-five percent of
45 the eligible population, equivalent to 21.5 million individuals
46 or Filipinos.

47
48 THE CHAIRPERSON. Mababa po ito. Mababa po ito. So,
49 two plans: the plan to utilize the existing stockpiled vaccines,
50 how do you ensure that those will be utilized; number two,
51 the plan to have the booster program implemented
52 intensively, na halos—kasi mababa itong 21 million.
53 Papaano pa ho ito mapapalago?²⁰⁸
54

²⁰⁸ TSN, Blue Ribbon Hearing, March 9, 2023, pages 21-23

1 209. During the December 2022 hearing of the Blue Ribbon Committee, the
2 DOH argued that the demand for COVID-19 vaccines had declined
3 considerably. Upon questioning of Senator Jinggoy Estrada, Usec.
4 Vergeire stated before the Blue Ribbon Committee the following:
5

6 MS. VERGEIRE. Honorable Chair and Honorable Senator,
7 first would be—if we look at the trends of vaccinations right
8 now, the demand really has declined tremendously. If we
9 were vaccinating around three to four million per day in the
10 previous months in 2021 until December 2021, starting
11 January of 2022, the demand for the vaccines declined.
12

13 SEN. ESTRADA. How many percent, madam?
14

15 MS. VERGEIRE. Now, Honorable Senator, we are just
16 averaging a total of just 18,000 to 20,000 vaccinations per
17 day or doses that we give.
18

19 SEN. ESTRADA. As we speak?
20

21 MS. VERGEIRE. As we speak, Honorable Senator,
22 compared to the previous months, especially in 2021, where
23 we were averaging millions of doses being provided per
24 day.²⁰⁹
25

26 210. Subsequently, in the March 2023 hearing, Usec. Vergeire informed the
27 Blue Ribbon Committee of the weekly vaccination number of DOH:
28

29 MS. VERGEIRE. Yes, Mr. Chairman. Mr. Chairman,
30 apologies. I like to correct myself. We are vaccinating 46,000
31 weekly. The 6,000 to 10,000 would be a daily performance.
32 So, per week po, our average is 46,000 weekly.
33

34 As to the other strategies being implemented, we are now
35 partnering with our national government agencies and the
36 private sector so that we can also expand our vaccinations.
37 Also, we have intensified our information campaign in our
38 communities where we have partnered with local
39 governments so that we can improve on the awareness of
40 people in our vaccines.
41

42 THE CHAIRPERSON. Ito iyong dashboard ninyo: 7,389
43 average daily doses; tapos as of March 5, 166,549,829
44 doses administered.²¹⁰
45

46 211. For more detailed monthly vaccination accomplishments, see the table
47 below:

Monthly doses administered (2021- 2023)²¹¹

²⁰⁹ TSN, Blue Ribbon Hearing, December 14, 2022, pages 59-60

²¹⁰ TSN, Blue Ribbon Hearing, March 9, 2023, page 20-21

²¹¹ Note: Vaccine Operations Reporting System was deployed in September 2021. Vaccines administered before said date were reported in bulk thus, monthly disaggregation will not be possible.

October 2021	12,874,719
November 2021	25,377,280
December 2021	23,025,382
January 2022	18,455,780
February 2022	8,537,947
March 2022	6,382,790
April 2022	4,186,363
May 2022	3,568,104
June 2022	3,785,105
July 2022	3,316,116
August 2022	4,421,525
September 2022	3,494,211
October 2022	2,027,489
November 2022	937,299
December 2022	860,477
January 2023	423,804
February 2023	408,085
March 8, 2023	122,587

- 1 212. The DOH attributes the continuing decline in vaccination to the
2 following reasons:²¹²
3
4 a. Foremost would be the hesitancy of our citizens because it is
5 already not a requirement for school or not a requirement for work;
6
7 b. Second, some of them would not like it because they think that they
8 already have enough immunity in their bodies, because they got
9 sick already, plus the first two doses.
- 10
11 213. The Blue Ribbon Committee notes that last **April 12, 2023**, the DOH
12 announced that the general population would soon be allowed to
13 receive their second booster shot against Covid-19.²¹³ Hopefully, with
14 its availability to the general public, we will lower the expected number
15 of vaccine wastage.

²¹² TSN, Blue Ribbon Hearing, December 14, 2022, page 65 quoting Usec. Vergeire.

²¹³ Analou De Vera, *DOH approves second Covid-19 booster shot for general population*, Manila Bulletin, Apr 12, 2023, <https://mb.com.ph/2023/4/12/doh-approves-second-covid-19-booster-shot-for-general-population>. Accessed on April 13, 2023; See also: Department order No. 2023-0146 of the DOH dated April 13, 2023.

1
2 214. As rich countries gobbled vaccine supply,²¹⁴ our country scoured in
3 2020 and 2021 to get its hand on COVID-19 vaccines. As demands for
4 the vaccine wanes, the government is facing another difficulty. While
5 vaccine wastage is troublesome, such cannot be compared to the
6 unavailability of vaccines we experienced in 2020 and 2021. As testified
7 to by former Deputy Chief Implementer Vivencio "Vince" B. Dizon.

8
9 Noong una po kasi, Mr. Chairman, ang problema natin
10 noong una ay kulang tayo ng bakuna. Kasi naaalala ko po
11 ang mga panahon na ang mga LGU po natin ay talagang
12 nagmamakaawa na, "Bigyan pa ninyo kami." Humihingi po
13 sila paulit-ulit ng mga bakuna kaya lang kami po ay wala
14 nang maibigay.²¹⁵

15
16 215. To recapitulate, despite the various challenges, i.e., vaccine wastage,
17 brand preference, hesitancy, etc., It is a fact that we have vaccinated
18 with two-doses, 70% of the entire population of the Philippines, which
19 is in accord with the recommended vaccination coverage by WHO
20 While there are still many challenges ahead, our experiences over the
21 last three years serve as a clear guide on what should and should not
22 be done moving forward.

23 216. The table below summarized the various data on vaccines procured
24 and donated; wastage, and remaining vaccines.

SUMMARY OF COVID-19 VACCINES			
AS OF DECEMBER 2, 2022		AS OF MARCH 3, 2023	
A. Total Vaccines Received and Administered in the Philippines		A. Total Vaccines Received and Administered in the Philippines	
Total Doses Received	251,382,600	Total Doses Received	251,382,600
Total Doses Administered	172,341,704	Total Doses Administered	173,575,720
Total Received - Total Administered*	79,040,896	Total Received - Total Administered*	77,806,880
B. Report at the National Warehouse		B. Report at the National Warehouse	
Wastage	12,520,790	Wastage	12,520,790
Remaining Inventory	17,965,840	Remaining Inventory	15,384,970
Total Doses Accounted in the National Warehouse	30,486,630	Total Doses Accounted in the National Warehouse	27,905,760
C. Report of the 17 Regions		C. Report of the 17 Regions	
Total Wastage	31,554,198	Total Wastage	36,204,092
Total Remaining Inventory	11,891,666	Total Remaining Inventory	9,918,191
Total Doses Accounted in 17 Regions	43,445,864	Total Doses Accounted in 17 Regions	46,122,283
Total Received - Total Administered	79,040,896	Total Received - Total Administered	77,806,880
Accounted in National Warehouse + 17 Regions	73932494	Accounted in National Warehouse + 17 Regions	74,028,043
For validation/reconciliation	5,108,402	For validation/reconciliation	3,778,838

²¹⁴ TSN, Blue Ribbon Hearing, February 21, 2023, pages 13-17

²¹⁵ TSN, Blue Ribbon Hearing, February 21, 2023, page 22

1 217. As shown in the said table as of **March 3, 2023, 48,724,882 vaccines**
2 **had been wasted**²¹⁶ while **25,303,161**²¹⁷ **remain in the inventory**
3 (national and regions). Further, **3,778,838 vaccines are still for**
4 **validation and reconciliation**. On even date, the total vaccines
5 administered totalled 173,575,720. However, in another submission of
6 the DOH, **as of March 14, 2023, the department already**
7 **administered 181,636,100 doses.**

8 9 V. RECOMMENDATIONS

10
11 218. In an article published late last year, the author wails about the lack of
12 transparency in vaccine pricing, stating that:

13
14 Lack of transparency in vaccine pricing practices is a
15 problem that has been under discussion for a long time. To
16 tackle this, the World Health Assembly adopted the
17 resolution *Improving the transparency of markets for*
18 *medicines, vaccines, and other health products* in 2019.
19 However, despite the appalling effects of the current
20 pandemic and the unequal global distribution of vaccines,
21 the 2019 resolution has not been included as a fundamental
22 pillar in the global health response to COVID-19.²¹⁸

23
24 219. In the course of the investigation, the Blue Ribbon Committee noticed
25 our representatives' "**seeming helplessness**" during the contract
26 negotiations with the various manufacturers. Sec. Dominguez classified
27 the situation at that time as a seller's market. DOH, in its comments to
28 the Audit Report of COA, describes the procurement contracts as "take
29 it or leave it." Sec. Galvez admitted that the government did not sign
30 with three suppliers because of its unacceptable requirements.²¹⁹
31 Further, it should also be recalled that because of the various demands
32 from vaccine manufacturers, Congress had to enact Republic Act No.
33 11525, which provides the following:

34
35 a. *Immunity from Liability.* - Notwithstanding any law to
36 the contrary, public officials and employees,
37 contractors, manufacturers, volunteers, and
38 representatives of duly authorized private entities who
39 are duly authorized to carry out and are actually
40 carrying out the COVID-19 Vaccination Program shall
41 be immune from suit and liability under Philippine
42 laws with respect to all claims arising out of, related

²¹⁶ 12,520,790 +36,204,092= 48,724,882

²¹⁷ 15,384,970+9,918,191= 25,303,161

²¹⁸ Arguedas-Ramírez, G., 2022. *A Call to Action Against Persistent Lack of Transparency in Vaccine Pricing Practices During the COVID-19 Pandemic.* *Annals of Global Health*, 88(1), p.87. DOI: <http://doi.org/10.5334/aogh.3898>, Accessed on April 9, 2023.

²¹⁹ TSN, Blue Ribbon Hearing, December 14, 2021, page 53. Referring to AstraZeneca, Johnson and Johnson and Novavax

1 to, or resulting from the administration or use of a
2 COVID-19 vaccine under the COVID-19 Vaccination
3 Program except arising from willful misconduct and
4 gross negligence.²²⁰

5 b. *COVID-19 National Vaccine Indemnity Fund.* - The
6 COVID-19 National Vaccine Indemnity Fund, which
7 shall be administered by the PhilHealth, is hereby
8 established as a trust fund to compensate any person
9 inoculated through the COVID-19 Vaccination
10 Program, in case of death, permanent disability or
11 hospital confinement for any SAEs: *Provided*, That in
12 case of death and permanent disability, PhilHealth is
13 hereby authorized to pay compensation from the
14 indemnity fund.²²¹

15 220. Because of such characterization, the Blue Ribbon Committee is
16 reminded of a particular term in contract law ... **contract of adhesion**.
17 **A contract of adhesion is defined as one in which one of the**
18 **parties imposes a ready-made form of contract, which the other**
19 **party may accept or reject, but which the latter cannot modify. One**
20 **party prepares the stipulation in the contract, while the other party**
21 **merely affixes his signature or his "adhesion" thereto, giving no**
22 **room for negotiation and depriving the latter of the opportunity to**
23 **bargain on equal footing.** Nevertheless, these types of contracts have
24 been declared as binding as ordinary contracts, the reason being that
25 the party who adheres to the contract is free to reject it entirely.²²² The
26 Supreme Court, in one case, minced no words in describing a
27 contract of adhesion as a **veritable trap for the weaker party** whom
28 the courts are bound to protect from abuse and imposition.²²³
29 [Emphasis supplied]

30
31 221. Though executive officials tried to impress on the Blue Ribbon
32 Committee that they negotiated terms and conditions favorable to the
33 Philippines,²²⁴ **the reality is that many of the provisions of the**
34 **contract are non-negotiable and favorable to the vaccine**
35 **manufacturer, as confirmed by the Audit Reports of COA.** Sec.
36 Dominguez was correct when he said that it's a seller's market, not a
37 buyer's market, a situation which naturally implies that the seller gets to
38 dictate its terms. However, the Blue Ribbon Committee also
39 acknowledges that, as testified to by Sec. Galvez, vaccine
40 manufacturers that offered onerous terms were rejected by the
41 negotiating team of the country.²²⁵

220 Section 8

221 Sec. 10

222 *Apelario vs Arcanys, Inc.*, G.R. No. 227098. November 14, 2018

223 *Quiambao vs China Banking Corporation*, G.R. No. 238462, May 12, 2021

224 TSN, Blue Ribbon Committee Hearing, March 9, 2023, pages 32-33

225 TSN, Blue Ribbon Committee Hearing, March 9, 2023, pages 42-45

1 222. On vaccine wastage, while the rate of the WHO is not set in stone,
2 countries are encouraged to adhere to it and, if possible, even reduce it.
3

4 223. The tone of the inquiry is quite clear. Not to be repetitive, the Blue
5 Ribbon Committee wishes to reiterate the following as stated by
6 Chairperson last 21 February 2023:
7

8 . . . from what you know—and, again, I reiterate, **the**
9 **purpose of these hearings would not be to ascribe fault**
10 **on anyone, on any agency, on any private entity but, but**
11 **to enable the general public to know how their money**
12 **was used; two, how the systems in place then could**
13 **have been fine-tuned and better implemented had we—**
14 **because we now have the privilege of hindsight and**
15 **lessons learned; and, looking forward, if there would be**
16 **other situations like this, on how the DOH or any other**
17 **agency could do this better[.] [Emphasis supplied.]²²⁶**

18
19 224. **Given the foregoing, the Blue Ribbon hereby recommends the**
20 **following:**
21

22 a. In future contract negotiations for vaccines and critical life-saving
23 supplies, **the Office of the Solicitor General (OSG) should be**
24 **part of the proper negotiating teams to ensure that any and all**
25 **terms and conditions with foreign governments, corporations,**
26 **entities or individuals are in compliance with the Constitution**
27 **and the law.** Thus, amend the powers and functions of the OSG
28 as provided under Sec. 35 of Chapter 12 Title III Book IV of
29 Executive Order No. 292 otherwise known as the Administrative
30 Code of 1987 to reflect the said additional function and ensure that
31 all government contracts are entered into in conformity with the law
32 and in the best interest of the public.
33

34 b. Usec. Vergeire mentioned that the DOH only handles the following
35 aspects as it relates to vaccine procurement:
36

- 37 i. Projections for how many doses the government will need to
38 procure in order to roll out vaccines to special populations
39 based on its allocation framework;
- 40 ii. Technical support to the Department of Science and
41 Technology who leads the development of technical
42 specifications for vaccines to be procured;
- 43 iii. Health Technology Assessment (HTA) of the vaccines
44 through the HTA Council;
- 45 iv. Facilitating the provision of Emergency Use Authorization
46 (EUA) through the Philippine Food and Drug Administration
47 (FDA).
48

²²⁶ TSN, Blue Ribbon Hearing, February 21, 2023, page 11

1 In the hearings conducted, it was revealed to the Blue Ribbon
2 Committee that **the DOH did not participate during negotiations**
3 **and it was the NTF and the DOF who represented the GoP in**
4 **the same. The DOF was designated as the lead negotiator for**
5 **the procurement of COVID-19 vaccines.** The foregoing is
6 apparently an absurd situation. Why is the end user, i.e., the
7 Department of Health, excluded from the negotiations for vaccines,
8 and the Secretary of Health limited only in participation to the items
9 listed above?

10
11 Thus, in the future, it is recommended that the government should
12 include the end user, the DOH in this case and its technical
13 experts during contract negotiations. **With this recommendation,**
14 **it is expected that a signatory to a Supply Agreement cannot**
15 **feign ignorance and/or limit his/her involvement by simply**
16 **stating that he/she did not participate in the negotiations for**
17 **its terms and conditions.**

18
19 c. While the Blue Ribbon Committee understands the intent and
20 purpose of NDAs, there are however constitutional and statutory
21 provisions mandating transparency of government transactions as
22 exhaustively discussed in this report. In view thereof, it is
23 recommended that any NDAs to be signed by the representatives
24 of the government should always:

- 25
26 1. Allow Congress pursuant to its power under the Constitution
27 to inquire and examine the terms and conditions of the
28 Supply Agreement;
- 29
30 2. Should not preclude COA from exercising its power to
31 examine, audit and settle all accounts pertaining to the
32 revenue and receipts of, and expenditures or uses of funds
33 and property, owned or held in trust by, or pertaining to, the
34 Government, or any of its subdivisions, agencies, or
35 instrumentalities, including government-owned or controlled
36 corporations with original charters, and on a post-audit basis:
37 (a) constitutional bodies, commissions and offices that have
38 been granted fiscal autonomy under this Constitution; (b)
39 autonomous state colleges and universities; (c) other
40 government-owned or controlled corporations and their
41 subsidiaries; and (d) such non-governmental entities
42 receiving subsidy or equity, directly or indirectly, from or
43 through the Government, which are required by law or the
44 granting institution to submit to such audit as a condition of
45 subsidy or equity.

46
47 As such, to strengthen the procurement process it is recommended
48 to amend pertinent provisions of the Government Procurement
49 Reform Act (RA 9184) by requiring the bidders to submit an
50 affidavit of full disclosure, and to exempt competent authorities,

1 such as but not limited to the Commission on Audit (COA), the
2 Ombudsman, and any Committee of Congress from the application
3 of any Non-Disclosure Agreement.
4

- 5
6 d. Moving forward, **there should at all times be a provision in**
7 **government contracts “concerning possible environmental**
8 **degradation as to products purchased by the Philippine**
9 **government.”** In a position paper dated April 12, 2023, the OSG
10 posits that :

11
12 **“The Supreme Court has respected contracts voluntarily**
13 **entered by the Republic of the Philippines provided the**
14 **object, consideration and purpose do not violate the**
15 **Constitution, law and public policy.**
16

17 Including provisions in all government contracts "concerning
18 possible environmental degradation as to products
19 purchased by the Philippine Government" is not prohibited
20 by law or contrary to public policy and in fact will serve to be
21 advantageous to the country."
22

23 The Blue Ribbon Committee notes that Usec. Vergeire mentioned
24 that Vietnam disposed of their wastage by returning it to the
25 manufacturers as part of their agreement.²²⁷
26

27 In auditing the various Supply Agreements, the COA found some
28 provisions disadvantageous to the government. However,
29 noticeable is the absence of any findings on the disposal of used
30 and expired vaccines. It is recommended that in future audits of
31 COA of funds used to procure COVID-19 vaccines, COA should
32 also inquire on how said vaccines were disposed.
33

34 Also as stated by the Chairperson on March 9, 2021, the COA
35 should have a reference to environmental harm that can be caused
36 by a product purchased which affects humans and living things.²²⁸
37

38 According to Mr. Chito Pacheco of Integrated Waste Management
39 Inc., (IWMI),²²⁹ IWMI has collected almost 700 tons of COVID
40 vaccine waste.²³⁰ With more hazardous waste forthcoming, the
41 Department of Environment and Natural Resources (DENR)
42 should study the processes of other countries in disposing of
43 hazardous waste.
44

²²⁷ TSN, Blue Ribbon Hearing, March 9, 2023, page 86

²²⁸ TSN, Blue Ribbon Hearing, March 9, 2023, page 92

²²⁹ Contracted to handle the disposal of COVID-19 vaccines waste through thermal decomposition by pyrolysis

²³⁰ TSN, Blue Ribbon Hearing, March 9, 2023, page 72

- 1 e. In retrospect, considering the expected vaccine wastage, in the
2 future, **the government should demand the inclusion of a**
3 **provision that would allow under certain conditions, the return**
4 **and exchange of the COVID-19 vaccines with a new batch of**
5 **COVID-19 vaccines or another type of vaccine.**
6

7 The Blue Ribbon Committee notes that some vaccines donated
8 through COVAX were replaced as testified by Usec. Vergeire.
9

10 MS. VERGEIRE. Yes, Mr. Chairman. Actually, we had
11 an agreement already with COVAX, even prior to this,
12 while we are waiting for OSG. That was, I think,
13 December when we had that agreement— even early
14 July of 2022—I am sorry, Mr. Chairman—that we
15 requested, and they offered also that they can replace
16 the existing vaccines that have expired in the country.
17

18 So we were able to start that implementation where
19 we were able to have some 398,000 doses replaced
20 by COVAX last July of 2022.²³¹
21

- 22 f. **The DOH is further urged to improve its data management**
23 **system.** Edward Tufte²³² said that “Above all else show the
24 data.”²³³ The importance of digitalization in a pandemic situation is
25 highlighted by the lack of the monthly vaccination reports from
26 March to September of 2021,²³⁴ the variance of more than 3
27 million vaccines between the procured and donated vaccines *vis-a-*
28 *vis* the total number of vaccines administered, wastage and still in
29 stock, as well the 12 million wasted vaccines that still needs to be
30 validated as to its brand. The DOH should therefore digitize its
31 records for more accurate reporting as correct “data is the new
32 gold.” Digitalization will also be of great help in making sure that
33 the policy of First Expired, First Out (FEFO) is carried out more
34 effectively.
35

- 36 g. With only about 30% of the target population being vaccinated with
37 the first booster dose and 5.60% for the second booster, the
38 challenge to vaccinate the target population is quite daunting.²³⁵
39 With vaccine hesitancy and misinformation prevalent, education is
40 a key-component in increasing vaccination coverage. A paper
41 suggested that “[u]sing various Philippine languages in
42 communicating the benefits of vaccination could help ramp up the
43 vaccination process at the local level as valuable information would

²³¹ TSN, Blue Ribbon Hearing, March 9, 2023, page 59

²³² Yale University - Professor Emeritus in Political Science, Computer Science & Statistics & Senior Critic, School of Art

²³³ Tufte, Edward R., *The Visual Display of Quantitative Information* 92 (2nd Ed., 2001), available at: <http://faculty.salisbury.edu/~jtanderson/teaching/cosc311/fa21/files/tufte.pdf> (last accessed May 21, 2023).

²³⁴ Vaccine Operations Reporting mechanism was deployed in September 2021. Vaccines administered before this date were reported in bulk thus, monthly disaggregation will not be possible.

²³⁵ It should also be noted that more than 20 million of those 5 years old and above are not yet vaccinated.

1 be made more accessible and easier to comprehend."²³⁶ In addition
2 to integrating COVID-19 vaccination to its regular community
3 program the DOH should really be present in the daily discussion
4 in order to make the people realize that vaccines are still needed.
5 Revitalizing public information through **regular public briefings as**
6 **being previously done will help encourage the people to have**
7 **their respective booster shots. Moreover, a stronger**
8 **broadcast, print, and digital media push should be employed**
9 **by the DOH to inform and convince people of the benefit of**
10 **vaccination.**

11
12 h. The Blue Ribbon Committee is also aware of the ongoing
13 negotiation for a WHO Pandemic Accord²³⁷ which the DOH is
14 supportive of.²³⁸ Said accord is important to better prepare the
15 world in case of another pandemic. The Philippines should take an
16 active part in its negotiation. The Blue Ribbon Committee and the
17 Senate as a whole, will highly appreciate being informed of the
18 latest developments in this regard and if possible consulted on its
19 provisions.

20
21 i. The DOH is urged to be mindful of and responsive to the latest
22 WHO guidelines and advisories. During the hearing, the Blue
23 Ribbon Committee was informed of the non-extension of the state
24 of calamity which resulted also in the non-applicability of the
25 provisions of RA No. 11525. Because of this, any new purchase
26 of COVID-19 vaccines including bivalent vaccines have no legal
27 cover. Licensed pharmacists and midwives are also no longer
28 allowed to administer COVID-19 vaccines. With said problems in
29 mind and positivity rate²³⁹ going up, the Blue Ribbon Committee
30 initially considered recommending to the President an extension
31 or reimposition of the State of Calamity. In case RA No. 11525 is
32 already *functus officio*, the alternative is for Congress to pass a
33 new law to address said concerns.

34 However, as declared by the DOH positivity rate is not the sole
35 criterion in monitoring our COVID-19 situation. According to the
36 DOH, the positivity rate is expected to increase as the individuals
37 tested are those most likely to be positive as the shift in testing
38 protocols to focus more on symptomatic individuals. The DOH also
39 emphasized that the public must keep an eye on the healthcare

²³⁶ Cedeño TDD, Rocha ICN, Miranda AV, Lim LTS, Buban JMA, Cleofas JV. Achieving herd immunity against COVID-19 in the Philippines. Public Health Chall. 2023;2:e61. <https://doi.org/10.1002/puh2.61>

²³⁷ Zero Draft of the WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response ("WHO CA+"); see also: <https://www.who.int/news/item/03-03-2023-countries-begin-negotiations-on-global-agreement-to-protect-world-from-future-pandemic-emergencies>

²³⁸ <https://news.abs-cbn.com/news/10/28/22/philippines-backs-global-pandemic-treaty-doh>

²³⁹ <https://newsinfo.inquirer.net/1764873/doh-says-rise-of-covid-19-positivity-rate-in-ph-already-expected/am>; <https://newsinfo.inquirer.net/1765206/octa-experts-foresee-covid-19-positivity-rate-to-rise-to-25-in-metro-manila/amp>

1 utilization rates and monitor the situation in our admissions in the
2 hospitals.²⁴⁰

3
4 Further, last May 5, 2023, WHO released the following statement:

5
6 The WHO Director-General has the pleasure of
7 transmitting the Report of the fifteenth meeting of the
8 International Health Regulations (2005) (IHR)
9 Emergency Committee regarding the coronavirus 2019
10 disease (COVID-19) pandemic, held on Thursday 4
11 May 2023, from 12:00 to 17:00 CET.

12
13 During the deliberative session, the Committee
14 members highlighted the decreasing trend in COVID-
15 19 deaths, the decline in COVID-19 related
16 hospitalizations and intensive care unit admissions,
17 and the high levels of population immunity to SARS-
18 CoV-2. The Committee's position has been evolving
19 over the last several months. While acknowledging the
20 remaining uncertainties posted by potential evolution
21 of SARS-CoV-2, they advised that it is time to
22 transition to long-term management of the COVID-19
23 pandemic.

24
25 The WHO Director-General concurs with the advice
26 offered by the Committee regarding the ongoing
27 COVID-19 pandemic. He determines that COVID-19 is
28 now an established and ongoing health issue which no
29 longer constitutes a public health emergency of
30 international concern (PHEIC).

31
32 Considering the announcement from WHO, the Blue Ribbon
33 Committee urges the DOH to carefully study its impact on the
34 vaccination drive of the DOH as surely such will play a big role in
35 the decision of many of our citizens to be vaccinated or not. DOH
36 should readjust its plans and programs if necessary in light of the
37 end of PHEIC. Of course, this is without prejudice to the previous
38 course of action of possibly declaring a state of calamity or a re-
39 enactment of RA No. 11525, in case the situation worsens for at the
40 end of the day, it's the situation on the ground and our own national
41 interest that determines our directions.

- 42
43 j. The significance of R&D was highlighted during this pandemic. It
44 cannot be overemphasized that without the vaccines, testing kits,
45 medicines and other interventions, the world will be in a worse

²⁴⁰ As of April 30, only 3,157 or 18.1 percent of 17,480 non-intensive care unit (ICU) beds are utilized. Meanwhile, only 303 or 15 percent of 2,021 ICU beds were utilized. <https://www.pna.gov.ph/articles/1200787>.

1 shape than it is now. According to the United Nations Education,
2 Scientific, and Cultural Organization (UNESCO), Research and
3 Development (R&D) expenditures for developing countries should
4 be at 1% of their Gross Domestic Product (GDP). The global
5 average spending for R&D is about 2%.²⁴¹ However, the Philippines
6 expenditure on R&D was only at .32 percent of GDP in 2018.²⁴² In
7 the 2022 Global Innovation Index (GII) report, the Philippines was
8 ranked 59th among 132 economies, which is an eight-notch decline
9 from its 2021 rank of 51st, though as a silver lining, the *research*
10 *and development* sub-pillar showed an improvement, from 74th in
11 2021 to 63rd spot in 2022.²⁴³ No wonder our government
12 negotiators were left with no choice when the vaccine
13 manufacturers would not even consider negotiating with them
14 without signing and NDA first, it was because we have no other
15 choice as we do not have the capacity to make our own vaccines.
16 As such, more investments on R&D for pandemic prevention,
17 preparedness, response and recovery of health systems by the
18 government and the private sector should be encouraged and
19 supported.

- 20 k. Let copies of this Report be furnished to the Department of Health
21 (DOH), Office of the Solicitor General (OSG), the Commission on
22 Audit (COA), and the Office of the Ombudsman for appropriate
23 action.

Adopted,

Respectfully Submitted:

Chairperson:



FRANCIS N. TOLENTINO

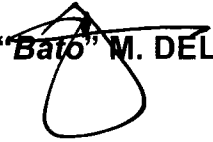
²⁴¹ Albert, J.R., Yasay, D. and Gaspar, R. (2015, June). Examining Processes in Research and Development at the Department of Science and Technology. Available at: pidswebs.pids.gov.ph. Accessed on May 4, 2023.

²⁴² <https://www.foi.gov.ph/requests/aglzfmVmb2kctcGhyHgsSB0NvbnRlbnQiEURPU1QtMTUwODA0MjAxNTgwDA>

²⁴³ Facts and Figures, CPBRD, House of Representatives, November 2022, (No.63). [https://cpbrd.congress.gov.ph/images/PDF%20Attachments/Facts%20in%20Figures/FF2022-63 The Phils Performance in the 2022 Global Innovation Index.pdf](https://cpbrd.congress.gov.ph/images/PDF%20Attachments/Facts%20in%20Figures/FF2022-63%20The%20Phils%20Performance%20in%20the%202022%20Global%20Innovation%20Index.pdf). Accessed on May 4, 2023

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CHRISTOPHER LAWRENCE T. GO



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Members:

PIA S. CAYETANO



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WIN GATCHALIAN

RAMON BONG REVILLA Jr.

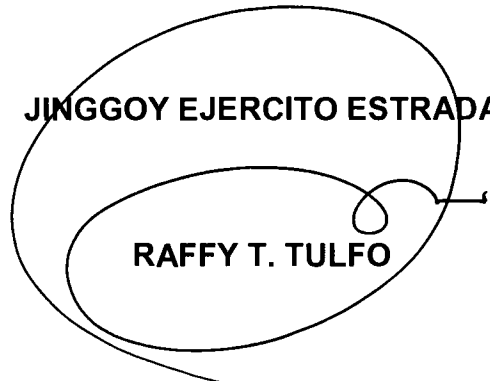
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JOSEPH VICTOR G. EJERCITO

GRACE L. POE

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ROBINHOOD C. PADILLA

~~Substitute Garapul~~
RISA HONTIVEROS
May Interpellate.

Ex Officio:

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Minority Leader

JOEL VILLANUEVA
Majority Leader

LOREN LEGARDA
President Pro-Tempore

HON. JUAN MIGUEL "Migz" F. ZUBIRI
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RAFFY T. TULFO

JOSEPH VICTOR G. EJERCITO

GRACE L. POE

MANUEL "Lito" M. LAPID

ROBINHOOD C. PADILLA

with Reservation

RISA HONTIVEROS

with infidelitate
A. Pimentel
AQUILINO "Koko" PIMENTEL III
Minority Leader

Ex Officio:

JOEL VILLANUEVA
Majority Leader

LOREN LEGARDA
President Pro-Tempore

HON. JUAN MIGUEL "Migz" F. ZUBIRI
President
Senate of the Philippines
Pasay City

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President
Senate of the Philippines
Pasay City

Sen Poe E-sig for NDA Vaccines

OSGPLEGIS [osgplegis@gmail.com]

Sent: Monday, September 11, 2023 12:38 PM

To: blueribbon

Attachments:SGP E-sig.pdf (180 KB)

Thank you

Grace Poe
GRACE POE

Sen. Lapid's Esig on Non Disclosure Agreement of Vaccine ComRep.

• *blueribbon*

Sent Items

Dear OS Lapid:

We confirm receipt of your email and its attachment. Thank you very much.

Sincerely,

Blue Ribbon Oversight Office Management
Room 305, 3rd Floor, Senate of the Philippines
GSIS Bldg., Roxas Blvd., Pasay City
Tel. no. 8552-6981, 8552-6601 local 5112
Telefax no. 8552-6877

• **Manuel Lapid [oslapidlegis@gmail.com]**

To: *blueribbon*

• You replied on 9/12/2023 12:04 PM.

Sending you Sen. Manuel "Lito" Lapid's e-signature for the Committee Report on Non Disclosure Agreement of Vaccine ComRep.

Thank you.



Office of Sen Manuel "Lito" M. Lapid
Senate of the Philippines

Tuesday, September 12, 2023 12:04 PM

👉 👈 👉 Actions -

Tuesday, September 12, 2023 11:44 AM