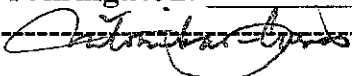


G.R. No. 235891 – PRINCESS SHERISSE ABINES, PAUL ANDREI ABINES, SHANE NICOLE ABINES, RALPH CHRISTIAN ABINES (represented by their mother ZEN J. ABAIGAR), JAM MICHAEL S. ALANO (represented by his mother MARILOU ALANO), BERNARD C. ALVIAR (represented by her mother ROSABELITA A. ANDRADE), CHERRYLYN N. AZARIAS (represented by her mother EMELISA N. AZARIAS), CRISTAN BALLETA (represented by his mother ANGELITA MONTE), IAN LHENOCKS B. BALUNSAY (represented by his grandmother PERPETUA B. BAJARO), LUIS EMMANUEL A. BERNARDO (represented by his mother MICHELLE A. BERNARDO), KAYLA DENICE L. BONGANAY and ASHLEY SALAR (represented by their mother ANGELITA SALAR), REISAL JAMES BONGANAY, RAFAEL JOSH BONGANAY, and RUSSEL JACOB BONGANAY (represented by their mother REALYN BONGANAY), HEARTLYN BOMBITA and LEAN BOMBITA (represented by their mother ANGELITA B. BOMBITA), DANIEL S. BOZAR (represented by his mother MARINA S. BOZAR), BABY LYKA G. BUENO (represented by her mother NANCITA G. BUNAO), DENMARK BUEZA, JOMALLYN BUEZA, JODELLYN BUEZA, APRILDELYN BUEZA (represented by their mother JOCELYN BUEZA), GERARD R. CAMPOS (represented by his mother ZENAIDA CAMPOS), ALYSSA CORTEZ and WILSON CORTEZ (represented by her mother MELBA VELO), GIECEL ESPIRITU and MAC RALDGIE ESPIRITU (represented by their mother MARICEL MORALES), KIM E. ESTARDO (represented by her mother LOLITA E. ESTARDO), CHRISTIAN JAY E. FERNANDEZ), EDGIE PALOMAR, EDGIELYN PALOMAR, and EMILY PALOMAR (represented by their mother AGUEDA FRIAS), CRYSTAL MAY GABAS and ANGEL MAY GABAS (represented by their mother NORLYN S. GALLERO), JANIAH DENISE GABRIEL (represented by her mother JANET GABRIEL), MAE BEATRIZ GIME, RJ GIME, and JENNY ROSE GIME (represented by their grandmother OLIVIA A. BAYONA, ROCHELLE MAY V. GRANDE (represented by her mother MELDEA L. VILLA), KJ PAUL GUEVARRA and MA. KAYE GUEVARRA (represented by RICK GUEVARRA), ALEYA SAM GOMEZ MAGDARAOG (represented by her mother KRISTEL MAY GOMEZ MAGDARAOG), MARIA LOURDES A. MONCADA (represented by her mother MARY JANE A. MONCADA), LORENZE V. NAGWE (represented by his mother LORNA NAGWE), JESSAREN PADUA, JHASSIE MAE PADUE, and JHESSICA MHAЕ PADUA (represented by their mother MARITES T. MAYUGA), SUNNY ROSE PAPIONA (represented by her mother SALVACION PAPIONA), JANINA S. PESTANO (represented by her mother MARICEL S. SANTOS), RHIAN A. PRECILLA (represented by JUDITH ABINES), JESON REX, ELLAIN REX, and JOVIELYN REX (represented by their mother ROSEMARIE M. REX), PRECIOUS SHAKIRA REYES and



PRECIOUS LADY BELLE REYES (represented by their grandmother **LOLITA ESTARDO**), **AIRA B. RICAFRANCA** (represented by her mother **CHRISTINA BALLETA**), **SHANELLE A. ROGA** (represented by his mother **ANGELINA T. MEDOLLAR**), **RONELLYN TROGUE** (represented by his mother **NELLY TROGUE**) **JAY VALLENTE** and **JEAN VALLENTE** (represented by their mother **ELSTER V. VALLENTE**), **ROLLY JOHN YBERA** (represented by his mother **MARITES N. YBERA**), **HON. ARLENE D. BROSAS**, **JOAN MAY SALVADOR** (in her capacity as Secretary-General of **GABRIELA National Alliance of Women**) and **MADELLA T. SANTIAGO** (in her capacity as the Executive Director of the Association for the Rights of Children in South East Asia – **ARCSEA**), *Petitioners*, v. **DR. FRANCISCO T. DUQUE III** (in his capacity as the Secretary of Health), **DR. LYNDON L. LEE SUY** (in his capacity as the Program Director of the **DOH-National Center for Disease Prevention and Control**), **NELA CHARADE G. PUNO, RPh** (in her capacity as the Director General of the Food and Drug Administration), **HON. LEONOR MAGTOLIS BRIONES** (in her capacity as the Secretary of Education), **HON. CATALINO S. CUY** (in his capacity as the Officer-in-Charge of the Department of Interior and Local Government), *Respondents*.

Promulgated: September 20, 2022

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

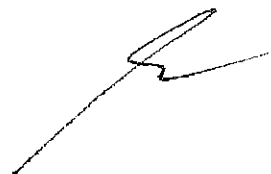
SEPARATE OPINION

SINGH, J.:

Senior Associate Justice, Hon. Marvic Mario Victor F. Leonen has discussed the issues in this case with utmost clarity and definitiveness. Nonetheless, I wish to add to the discussions of these issues, in particular, to detail the history and present status of our country's vaccination program, and to share some thoughts on the applicability of the relief of continuing *mandamus* in a case of this nature.

At the core of this controversy is whether it is proper for this Court to direct government agencies to provide specific services in relation to the 2015 Dengue Immunization Program through a writ of *mandamus* or a writ of continuing *mandamus*.

Petitioners, seventy-four (74) children inoculated with Dengvaxia represented by their parents, claim that they have sustained a direct and substantial injury due to the vaccination program. The other petitioners are private citizens and legislators, collectively invoking the Court's power to promulgate rules for the protection and enforcement of their constitutional right to health, a matter of transcendental import.



Collectively, the petitioners pray for the respondent agencies to provide the following services in connection with the Dengue Immunization Program:¹

1. Publicly disseminate, on a regular basis, the report of the task force created and designated to monitor and review the school-based immunization program involving Dengvaxia and to submit the same to the House of Representatives and Senate Committees on Health;
2. Conduct further study and review on the safety and efficacy of Dengvaxia, which should be open to the public and subject to review by independent medical experts;
3. Create a registry or list of all those who had been inoculated with Dengvaxia;
4. Provide free medical services to all inoculated children and monitor any adverse effects caused by the vaccine;
5. Provide free medical treatment and hospitalization to inoculated children if they suffer from a Dengvaxia-related illness; and
6. Conduct initial and free consultations of inoculated children in all areas covered by the program.

I agree with the *ponencia* that this Petition ought to be dismissed for insufficiency of substance. Petitioners' resort to a petition for *mandamus* under Rule 65 is untenable, there being no law that mandates the Food and Drug Administration (FDA), the Departments of Health (DOH), Education (DepEd), and the Interior and Local Government (DILG) to grant petitioners' prayers in relation to the immunization program. The actions sought from respondents are clearly subject to Executive discretion, which the Judiciary has no power to compel. Neither can a writ of continuing *mandamus* be issued as their prayers do not arise from a violation or enforcement of an environmental law.

At the risk of the Court encroaching on the duties of a co-equal branch of government, this Petition must be dismissed.

In *La Bugal-B'laan Tribal Association v. Ramos*,² the Court restrained itself from intruding into policy matters to allow the President and Congress

¹ Decision, p. 11.

² 465 Phil. 860-985 (2004).



maximum discretion in using the mineral resources of our country and in securing the assistance of foreign groups to eradicate the grinding poverty of our people and answer their cry for viable employment opportunities in the country. "The Judiciary is loath to interfere with the due exercise by co-equal branches of government of their official functions." In deciding on the legality of certain provisions of Republic Act (R.A.) No. 7942, or the Philippine Mining Act of 1995, the Court yielded the wisdom of the development of the mining industry to the political branches of government.

Assuming *arguendo* that the petitioners' claims carry substantial legal weight, the Judiciary must, in the same vein, allow the national government, primarily through the DOH, to develop and implement a national immunization program in accordance with its mandate.

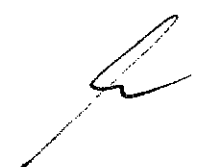
Section 2, Title IX of Executive Order (E.O.) No. 292 instituting the Revised Administrative Code of 1987 (**the Administrative Code**) provides that the DOH shall be primarily responsible for the formulation, planning, implementation, and coordination of policies and programs in the field of health.³ The primary function of the DOH is the promotion, protection, preservation, and restoration of the health of the people through the provision and delivery of health services and through the regulation and encouragement of providers of health goods and services.⁴ Likewise, the powers and functions indicated under Section 3, Title IX⁵ of the Administrative Code merely outline the scope of the DOH's powers, and does not pertain to ministerial acts which can immediately be implemented by the DOH without the further exercise of discretion.

³ ADMINISTRATIVE CODE, sec. 2.

⁴ *Id.*

⁵ *Id.*, sec. 3, viz: "Section 3. Powers and Functions. - The Department shall:

- (1) Define the national health policy and formulate and implement a national health plan within the framework of the government's general policies and plans, and present proposals to appropriate authorities on national issues which have health implications;
- (2) Provide for health programs, services, facilities and other requirements as may be needed, subject to availability of funds and administrative rules and regulations;
- (3) Coordinate or collaborate with, and assist local communities, agencies and interested groups including international organizations in activities related to health;
- (4) Administer all laws, rules and regulations in the field of health, including quarantine laws and food and drug safety laws;
- (5) Collect, analyze and disseminate statistical and other relevant information on the country's health situation, and require the reporting of such information from appropriate sources;
- (6) Propagate health information and educate the population on important health, medical and environmental matters which have health implications;
- (7) Undertake health and medical research and conduct training in support of its priorities, programs and activities;
- (8) Regulate the operation of and issue licenses and permits to government and private hospitals, clinics and dispensaries, laboratories, blood banks, drugstores and such other establishments which by the nature of their functions are required to be regulated by the Department;
- (9) Issue orders and regulations concerning the implementation of established health policies; and
- (10) Perform such other functions as may be provided by law."



Policy and science behind immunization

Vaccines have been around for over 200 hundred years and are recognized to be among the greatest advances in public health. They are also considered among the most cost-effective public health interventions.⁶

Each year, up to three million children worldwide are saved by vaccines from deadly diseases. Since 1988, the number of children paralyzed by polio has fallen by over 99%. In the past two decades, measles vaccination has averted over 23 million deaths.⁷ Thanks to vaccines, more than 20 life-threatening diseases are now preventable.⁸

While used interchangeably and intimately related, vaccination and immunization are not synonymous. Vaccination more precisely refers to the act of inoculating or injecting the vaccine, or the “act of introducing a vaccine into the body to produce protection from a specific disease.”⁹ Immunization is what happens to the body after inoculation, the “process by which a person becomes protected against a disease through vaccination.”¹⁰ Thus, our health authorities can vaccinate; however, whether such vaccination eventually leads to immunization is beyond their control. This can be aptly illustrated by looking at the efficacy rate of well-known vaccines – a dose of Measles Mumps Rubella vaccine is 93% effective against measles, 78% against mumps, and 97% against rubella,¹¹ while two doses of inactivated polio vaccine are 90% effective.¹² A 100% vaccine efficacy rate cannot be guaranteed.¹³

⁶ WHO, *Vaccines and Immunization*, https://www.who.int/health-topics/vaccines-and-immunization?adgroupsurvey={adgroupsurvey}&gclid=Cj0KCOjwrs2XBhDjARIsAHVymRyAmzcubjxEGvdAiOZ8VOI3FrywRpJRV7YVpL1w_YUUIwOLIJWDIaAunIEALw_wcB#tab=tab_1 (accessed last August 10, 2022).

⁷ UNICEF on Immunization, <https://www.unicef.org/immunization> (accessed last August 12, 2022).

⁸ WHO Vaccines and Immunization, https://www.who.int/health-topics/vaccines-and-immunization?adgroupsurvey={adgroupsurvey}&gclid=Cj0KCOjwrs2XBhDjARIsAHVymRyAmzcubjxEGvdAiOZ8VOI3FrywRpJRV7YVpL1w_YUUIwOLIJWDIaAunIEALw_wcB#tab=tab_1 (accessed last August 10, 2022).

⁹ US Centers for Disease Control & Prevention, *Vaccines and Immunizations, Immunization: The Basics*, <https://www.cdc.gov/vaccines/vac-gen/immz-basics.htm> (accessed last August 12, 2022).

¹¹ US Centers for Disease Control & Prevention, *Vaccines and Preventable Disease, Measles, Mumps, and Rubella, Vaccination: What Everyone Should Know*, [https://www.cdc.gov/vaccines/vpd/mmr/public/index.html#:~:text=One%20dose%20of%20MMR%20vaccine%20is%2093%25%20effective%20against%20measles,\(weakened\)%20live%20virus%20vaccine](https://www.cdc.gov/vaccines/vpd/mmr/public/index.html#:~:text=One%20dose%20of%20MMR%20vaccine%20is%2093%25%20effective%20against%20measles,(weakened)%20live%20virus%20vaccine) (accessed last August 12, 2022).

¹² US Centers for Disease Control & Prevention, *Vaccines and Preventable Disease, Polio Vaccine Effectiveness and Duration of Protection*, [https://www.cdc.gov/vaccines/vpd/polio/hcp/effectiveness-duration-protection.html#:~:text=Two%20doses%20of%20inactivated%20polio,polio%20vaccine%20\(TOPV\)%2C%20or](https://www.cdc.gov/vaccines/vpd/polio/hcp/effectiveness-duration-protection.html#:~:text=Two%20doses%20of%20inactivated%20polio,polio%20vaccine%20(TOPV)%2C%20or) (accessed last August 12, 2022).

¹³ US Centers for Disease Control & Prevention, *Vaccine Safety: Overview, History, and How the Safety Process Works*, <https://www.cdc.gov/vaccinesafety/ensuringsafety/history/index.html> (accessed last November 21, 2022).

When vaccines induce immunity, they protect an individual directly. However, vaccination does not guarantee immunity for a multitude of reasons; some vaccinated persons do not mount an immune response. There are also some individuals who cannot be vaccinated altogether. While unvaccinated individuals remain susceptible to disease, vaccines can still offer an indirect protection as when a significant number of individuals in the population are vaccinated and immunized. Vaccinated individuals, who become immunized, are not only protected from the disease, but are also able to prevent further transmission to other persons, thereby indirectly protecting those who are otherwise susceptible to the disease. Thus, health authorities aim to vaccinate enough individuals within a population to achieve what is known as “herd immunity” or “herd protection.”¹⁴

Vaccination in the Philippines

The Expanded Program on Immunization (**EPI**) was conceived in 1974 by the World Health Organization (**WHO**), following the 27th World Health Assembly, based on the Member-States’ collective aspiration to promote and develop vaccination in all countries, particularly to “promote measures to assist countries in extending their immunization programmes to cover the greatest possible percentage of susceptible populations.”¹⁵

The Philippines’ very own EPI was established in 1976 through Presidential Decree (**P.D.**) No. 996,¹⁶ which made basic vaccination compulsory for all infants and children below eight years of age.¹⁷ The vaccines against the following diseases were included in the EPI: (1) tuberculosis (BCG vaccine); (2) diphtheria, tetanus, and pertussis; (3) polio (oral poliomyelitis vaccine); (4) measles; and (5) rubella. Apart from these, P.D. No. 996 allowed for the provision of additional vaccine services upon the recommendation of the Council for the Welfare of Children to the Secretary of Health.¹⁸

Under P.D. No. 996, the DOH was tasked to provide vaccination services for free. Meanwhile, institutions where children were educated, treated, or cared for have also been directed to provide basic vaccination services under P.D. No. 996 in coordination with the DOH.¹⁹ All schools,

¹⁴ Pollard AJ, Bijker EM. *A guide to vaccinology: from basic principles to new developments*. *Nat Rev Immunol*. 2021;21(2):83–100. doi: 10.1038/s41577-020-00479-7, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7754704/> (accessed last August 10, 2022).

¹⁵ World Health Assembly Resolution WHA.27.57 (May 23, 1974).

¹⁶ Providing for Compulsory Basic Immunization for Infants and Children Below Eight Years of Age. Presidential Decree No. 996. (September 22, 1976).

¹⁷ PRES. DEC. No. 996, Providing for Compulsory Basic Immunization for Infants and Children Below Eight Years of Age (September 16, 1976).

¹⁸ PRES. DEC. No. 996, sec.2.

¹⁹ *Id.* sec.5.



public and private, have been mandated to provide vaccination services to school entrants who have yet to be vaccinated.²⁰

A decade later, the Philippines, through Presidential Proclamation No. 6, Series of 1986, expressed its support for the international goal, adopted by the United Nations General Assembly in 1985, to achieve Universal Child Immunization by 1990.²¹ All national government agencies, under the leadership of the then Ministries of Health and of Social Services, were mandated to mobilize their networks to immunize all Filipino children against leading causes of child mortality and morbidity – polio, measles, diphtheria, pertussis, tetanus, and tuberculosis – while civil society was likewise called to join efforts towards the goal.²² In the same year, a National Immunization Committee was formed to handle the coordination for the EPI.²³

In 1992, as part of its commitment to the global goal to eradicate polio by the year 2020, the Philippines Poliomyelitis Eradication Project was launched. Under Presidential Proclamation No. 46, the DOH was tasked to lead the project and make the country polio-free by 1995. To do this, the agency was given authority to call on government agencies and non-government organizations for assistance.²⁴

The EPI was further expanded with the enactment of R.A. No. 7846²⁵ in 1994. The law required compulsory vaccination against Hepatitis B in addition to the basic vaccination services for children under eight years under P.D. No. 996.

With the enactment of R.A. No. 10152, or the Mandatory Infants and Children Immunization Act of 2011, mandatory basic vaccination for all infants and children was expanded to eight diseases, along with vaccines for such other diseases as may be determined by the Secretary of Health. This authority of the Secretary of Health reiterates the authority granted through P.D. No. 996, while dispensing with the need for recommendations from the CWC.

Sec. 3. Coverage. – The mandatory basic immunization for all infants and children provided under this Act shall cover the following vaccine-preventable diseases:

²⁰ *Id.* sec.6.

²¹ PRES. PROC. NO. 6, series of 1986, Implementing A United Nations Goal on Universal Child Immunization by 1990.

²² *Id.*

²³ Reyes, MSG, Dee, EC, and Ho, BL, *Vaccination in the Philippines: experiences from history and lessons for the future*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8115747/> (accessed last August 8, 2022).

²⁴ PRES. PROC. Reaffirming the Commitment to the Universal Child and Mother Immunization Goal by Launching the Polio Eradication Project.

²⁵ REP. ACT NO. 7846 (1994). An Act requiring compulsory immunization against Hepatitis B for infants and children below eight years old, amending for the purpose Presidential Decree No. 996, December 30, 1994.



- (a) Tuberculosis;
- (b) Diphtheria, tetanus and pertussis;
- (c) Poliomyelitis;
- (d) Measles;
- (e) Mumps;
- (f) Rubella or German measles;
- (g) Hepatitis-B;
- (h) H. Influenza type B (H1B); and
- (i) Such other types as may be determined by the Secretary of Health in a department circular.

X X X

As a result of the foregoing efforts and policies, the Philippines was able to achieve significant milestones in EPI over the last four decades.

From 1989 to 2009, data from the DOH shows that deaths and illnesses due to diphtheria, pertussis, neonatal tetanus, tuberculosis, and measles have been significantly reduced. There were zero deaths from pertussis since 1989, and zero deaths for diphtheria since 1996. Measles deaths have declined in the 1990s. In 2000, the Philippines reached polio-free status.²⁶ Deaths due to tetanus have continuously decreased, and the country was able to eliminate maternal neonatal tetanus in 2017.²⁷

It bears stressing that while successful in reducing the burden of vaccine-preventable diseases, the program has not been able to prevent occasional outbreaks. Measles outbreaks occurred in 2013-2014,²⁸ 2018, and almost two decades after being declared polio-free, a polio outbreak was declared in 2019.²⁹ In response, the DOH intensified nationwide polio campaigns, together with WHO, UNICEF, and other partners, and in 2021 the closure of the polio-outbreak was declared.³⁰

The Court must uphold Executive discretion in the conduct of the vaccination program

²⁶ Department of Health, *National Immunization Program Manual of Operations*, pp. 30.

²⁷ Ulep, VGT, & Uy, J, *An Assessment of the Expanded Program on Immunization (EPI) in the Philippines: Challenges and Ways Forward*, Philippine Institute for Development Studies, Discussion Paper Series No. 2021-04, February 2021, <https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps2104.pdf> (accessed last August 8, 2022).

²⁸ Department of Health, *National Immunization Program Manual of Operations*.

²⁹ WHO Joint News Release, *WHO, UNICEF and partners support Philippine Department of Health's polio outbreak response*, 9 September 2019, <https://www.who.int/philippines/news/detail/19-09-2019-who-unicef-and-partners-support-philippine-department-of-health-s-polio-outbreak-response> (accessed last August 8, 2022).

³⁰ WHO Joint News Release, *WHO, UNICEF laud end of polio outbreak in the Philippines*, 11 June 2021, <https://www.who.int/philippines/news/detail/11-06-2021-who-unicef-laud-end-of-polio-outbreak-in-the-philippines> (accessed last August 8, 2022).



The foregoing exposition shows that from its very inception, the vaccination program has been under the leadership and stewardship of the DOH. Apart from implementing the program for the prescribed vaccines, the DOH, through the Secretary of Health, has been given sufficient discretion to determine which additional vaccines should be included in the program since its inception. The authority for innovating and steering strategies to achieve vaccination goals, as well as to address incidents such as outbreaks, has likewise been ceded to the DOH.

The laws passed by Congress as regards the DOH's implementation of the vaccination program clearly demonstrate how the Legislature has consistently recognized the Executive's technical expertise in the field of public health, and this Court is wont to similarly recognize the same.

As aptly explained in the *ponencia*, the DOH is primarily responsible for the formulation, planning, implementation, and coordination of policies and programs in the field of health. In turn, RA. No. 9155, or the Governance of Basic Education Act of 2001, tasks the DepEd to set the general directions for educational policies and standards and establish authority, accountability and responsibility for achieving higher learning outcomes,³¹ *inter alia*. Meanwhile, the DILG, under E.O. No. 292, is mandated to primarily assist the President in the exercise of general supervision over local governments.

Clearly, these offices are outside the province of the Judiciary, lest it is the petitioners' true desire for the Court to decide on the science behind any national vaccination program, and its implementation and monitoring across schools and communities. Jurisprudence instructs that regulations enacted by administrative agencies to implement and interpret laws they are entrusted to enforce are entitled to great respect.³² They partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, administrative regulations have the force and effect of law and enjoy the presumption of legality. Unless and until they are overcome by sufficient evidence showing that they exceeded the bounds of the law,³³ their validity and legality must be upheld.

The Court consistently avoids ruling on constitutional questions and presumes that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary, in deference to the doctrine of separation of powers.³⁴ This means that the measure had first been carefully

³¹ REP. ACT NO. 9155 (2001), sec. 3. Lapsed into law on August 11, 2001, without the President's signature, pursuant to Sec. 27(1), Article VI of the Constitution.

³² *Cawad v. Abad*, 764 Phil.705-764 (2015), *Dacudao v. Secretary of Justice*, 688 SCRA 109, 123, (2013) citing *ABAKADA Guro Party List v. Purisima*, 584 Phil. 246, 283 (2008).

³³ *Cawad v. Abad*, 764 Phil. 705-764 (2015).

³⁴ *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. Nos. 209271, 209276, 209301 & G.R. No. 209430 (Resolution), July 26, 2016.



studied by the executive department and found to be in accord with the Constitution before it was finally enacted and approved.³⁵

Verily, I join the ponente's exhaustive disquisition on the principle of separation of powers of government that warns of encroaching on powers belonging to a different branch. Thus, the legislature cannot enforce laws nor participate in their execution.³⁶ In the same way, the Executive cannot legislate and interpret laws.³⁷ The Judiciary, on the other hand, "cannot inquire into the wisdom or expediency of the acts of the executive or the legislative."³⁸ Each branch is independent and supreme within its own sphere and the encroachment by one branch on another is to be avoided at all costs.³⁹

The case is moot and academic

This Petition has become moot and academic.

The respondents have already performed the petitioners' requests, save for the release of the master list, which the DOH cannot do without running afoul of prevailing data privacy laws. No less than the National Privacy Commission, through then-Privacy Commissioner Raymund Enriquez Liboro, in its advisory opinion dated February 26, 2018, warned that the disclosure to another government agency or private entity of a copy of the DOH master list of individuals vaccinated with Dengvaxia must be "provided for by existing laws and regulations or a data subject has given his or her consent."⁴⁰ The requested list was classified as sensitive personal information, and relates to minors, which the NPC identifies as a vulnerable group of data subjects. Thus, the disclosure of information concerning these individuals is proscribed absent proof of consent from the minor data subject:

The release of a copy of the master list of students and individuals who were vaccinated with Dengvaxia®, which contains sensitive personal information to the requesting (sic), to any requesting public, could constitute an unwarranted invasion of personal privacy.

We urge the DOH to be circumspect in releasing information relating to sensitive personal information of individuals. It should do so only if it is satisfied that such release is authorized under law and adheres to data privacy principles, and reasonable and appropriate security measures are in place for the protection of said data. In order to fulfill its own mandate, the DOH collects the health information of Filipinos, who should be able to

³⁵ *Id.*

³⁶ *Belgica v. Ochoa*, 721 Phil. 416-732 (2013).

³⁷ *Id.*

³⁸ *Department of Environment and Natural Resources v. DENR Region 12 Employees*, 456 Phil. 635-648 (2003).

³⁹ *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil 374-773 (2010).

⁴⁰ *Id.*



trust that their information will be protected and used only for the purpose by which they are collected.⁴¹

The Court may likewise take judicial notice that the DOH issued several Administrative Orders (A.O.) to implement policies that address the petitioners' appeals.

1. A.O. No. 2018-0004 (February 9, 2018), *Interim Guidelines on the Surveillance of Adverse Events among Dengvaxia Vaccinees (AEDV Surveillance)*, directing health facilities and health professionals from both the public and private sectors to cater to and manage individuals who have received at least one (1) dose of Dengvaxia and have thereafter experienced adverse events.
2. A.O. No. 2018-0005, (February 13, 2018), *Interim Guidelines on Dengue Diagnosis, Referral and Management for Dengvaxia Vaccinated Individuals*, to provide technical guidance to health workers on the diagnosis, referral, and management of Dengvaxia-vaccinated individuals who acquire dengue infection.
3. A.O. No. 2018-0006 (February 20, 2018), *Interim Guidelines for Specimen Collection, Initial Testing, Storage, Packaging and Transport for Confirmatory Testing of Cases from Surveillance of Adverse Events among Dengvaxia Vaccinees (AEDV) and Designation of Sub-National Laboratories and Partner Testing Laboratories* to address several challenges in the collection, storage, and transport of specimens resulting from confusion regarding the protocol for the same; it likewise identified several subnational laboratories to augment the capacity of the Research Institute for Tropical Medicine, which serves as the National Reference Laboratory for Dengue and other arboviruses, and central laboratory for confirmatory testing.
4. A.O. No. 2018-0007 (February 28, 2018), *Interim Guidelines on Investigating Deaths related to Dengvaxia Immunization*, to institute standard operating procedures in the conduct of autopsy and in the investigation of deaths associated with Dengvaxia vaccines (it was subsequently amended by A.O. 2018-0007-A, in June 2018).
5. A.O. No. 2018-0008 (March 1, 2018), *Interim Guidelines Risk Communication for Dengue/Dengvaxia Immunization Concerns*, which covers the delivery of key messages on immunization, dengue prevention, and actions undertaken by the DOH, and outlines the

⁴¹ *Press Release: Privacy Commission cautions DOH on sharing of Dengvaxia master list*, 6 March 2018, | 11:00 AM GMT+0800 Last Edit: November 11, 2021.
<https://www.privacy.gov.ph/2018/03/privacy-commission-cautions-doh-on-sharing-of-dengvaxia-master-list/> (August 15, 2022).



strategies and tools that shall be utilized to address public concerns about Dengvaxia vaccination and rebuild the public's trust in the vaccination program of the DOH.

6. A.O. No. 2018-0010 (March 14, 2018), *Interim Guidelines on Health Financing for Medical Needs of Dengvaxia Vaccinees*, on 14 March 2018, which allowed for the identification and profiling of vaccinees in Regions III, IV-A, and the NCR, where the vaccine was first introduced, and outlines the health financing and payment mechanisms for the medical needs of vaccinees, to ensure their timely and equitable access to healthcare services.

As for the FDA, the *ponencia* notes that it has been studying and reviewing the safety and efficacy of Dengvaxia, and coordinating with the manufacturer for periodic safety reports and alerts on possible issues, in keeping with its mandate for post-market surveillance for health products.⁴²

Clearly, all the reliefs prayed for by the petitioners have already been addressed by the respondents.

The writs of mandamus and continuing mandamus cannot issue

Similar to an ordinary *mandamus*, the Rules of Procedure for Environmental Cases⁴³ provide that a writ of continuing *mandamus* may be invoked to compel government agencies to perform acts specifically enjoined by law.

RULE 8
WRIT OF CONTINUING MANDAMUS

SECTION 1. Petition for continuing mandamus.—**When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins** as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason of the malicious neglect to perform the duties of the respondent,

⁴² REP. ACT NO. 9711, sec. 5.

⁴³ A.M. No. 09-6-8-SC (2010).



under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping. (emphasis supplied)

In this case, the petitioners, apart from citing the scope of the agencies' powers and functions, have failed to point to specific provisions of the law where the supposed duties are purportedly required.

Assuming *arguendo* that the powers and functions they cite constitute positive duties that respondents must perform, there is also no showing of unlawful neglect on the part of the respondent agencies. Clearly, the respondents have not been remiss, as the preceding discussion would show that they have actively and willingly implemented programs to address the concerns of the petitioners, within their respective authorities, without need for a judicial directive.

The writ of continuing *mandamus* was brought about by the necessity for urgent action and to ensure that the Court's orders will not be rendered futile through the inaction of concerned administrative agencies. In *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,⁴⁴ the Court explained:

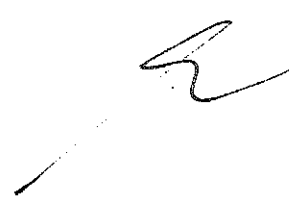
It thus behooves the Court to put the heads of the petitioner-department-agencies and the bureaus and offices under them on continuing notice about, and to enjoin them to perform, their mandates and duties towards cleaning up the Manila Bay and preserving the quality of its water to the ideal level. Under what other judicial discipline describes as "continuing *mandamus*": *the Court may, under extraordinary circumstances, issue directives with the end in view of ensuring that its decision would not be set to naught by administrative inaction or indifference. In India, the doctrine of continuing mandamus was used to enforce directives of the court to clean up the length of the Ganges River from industrial and municipal pollution.*

x x x

In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.

The importance of the Manila Bay as a sea resource, playground, and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals,

⁴⁴ 595 Phil 305-352 (2008).



mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the State, through petitioners, has to take the lead in the preservation and protection of the Manila Bay.

The era of delays, procrastination, and *ad hoc* measures is over. Petitioners must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. We are disturbed by petitioners' hiding behind two untenable claims: (1) that there ought to be a specific pollution incident before they are required to act; and (2) that the cleanup of the bay is a discretionary duty. (emphasis in the original; citations omitted)⁴⁵

Again, assuming that the respondents have a duty to perform the acts prayed for by the petitioners, unlike in the *Manila Bay*⁴⁶ case, records do not bare neglect on the part of the respondents, nor any indicia that the respondents will renege on their obligations once this Court issues a directive. Thus, even if we disregard the fact that this case involves a public health issue, and not an environmental one, or any other issue under any other related law, rule, regulation, or right, the Petition must still fail. The extraordinary circumstances prevailing in *Manila Bay*⁴⁷ are not present here. There is no basis for the Court to extend the application of the writ of continuing *mandamus* to the public health issue before us, based on the attendant facts and circumstances.

The *ponencia* lays down the following guidelines for the issuance of a Writ of Continuing Mandamus.

Thus, every Petition for a Writ of Continuing Mandamus should clearly allege (a) the serious and systemic inability of respondents to meet their constitutional or statutory obligations to protect and preserve the environment despite repeated demands, (b) convincing circumstances that the non-issuance of the writ will result in irreparable damage to our ecology within the scope provided in our rules, and (c) specific, measurable, attainable, realistic and timebound objectives that have rational relation to the irreparable damage sought to be avoided.⁴⁸

I wholeheartedly agree with the statement in the *ponencia* that “judicial relief to health and environmental rights should always be based upon reasonable scientific as well as established and sufficient bases.” This should, of course, be viewed in light of the precautionary principle in the Rules of Procedure for Environmental Cases, and should not be construed as imposing a higher standard. The precautionary principle allows the court to err on the

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Decision*, p. 5.



side of caution in the absence of scientific certainty. The Rules of Procedure for Environmental Cases provide:

RULE 1
GENERAL PROVISIONS

Section 2 (f) Precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat.

x x x

RULE 20
PRECAUTIONARY PRINCIPLE


Section 1. Applicability.—When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

Section 2. Standards for application.—In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.⁴⁹

In conclusion, I wish to emphasize that the antecedents of the government's vaccination program and the foregoing discussions clearly evince that the Judiciary has no authority to interfere in the Executive's implementation and administration of the vaccination program. Therefore, I concur in the erudite *ponencia*, subject to the foregoing discussions.


MARIA FILOMENA D. SINGH

CERTIFIED TRUE COPY


MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
CCC-Ha. B. of Supreme Court

⁴⁹ A.M. No. 09-6-8-SC (2010).