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Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

MAR 21 2023

Undersecretary MARIA ROSARIO S. VERGEIRE, MD, MPH, CESO IV
Officer-in-Charge
Department of Health
San Lazaro Compound
Tayuman, Sta. Cruz, Manila

Dear Undersecretary Vergere:

This refers to your request for “further legal guidance and legal opinion on the applicability of Presidential Decree (PD) 1807 to the agreements for donation of vaccines and in respect to the waiver of sovereign immunity or whether there are laws authorizing the waiver of sovereign immunity for the particular transaction.” You likewise ask “whether or not the formerly signed COVAX Agreements legally subsists, particularly the provision on the waiver of immunity” in light of Presidential Decree (PD) No. 1807.¹

At the outset, we must state that we are neither privy to nor have we reviewed in full any COVAX agreement, past or present. The discussions below are based only on general principles of law as applied to the information obtained from your Department.

In our previous letter dated 16 March 2023 on the same subject, we stated that the State’s² express consent to be sued is made through a general law. We also mentioned that such general law is Act No. 3083, entitled “An Act Defining the Conditions Under Which the Government of the Philippine Islands May Be Sued.”² To wit:

Basic is the rule that the State may only be sued with its consent,³ which may be express or implied. Express consent may be made through a general law or a special law. In *Philippine Textile Research Institute v. Court of Appeals*,⁴ the Court reiterated its ruling in *Department of Agriculture v. National Labor Relations Commission*,⁵ saying that “the

¹ Entitled “Prescribing the Procedure Whereby the Republic of the Philippines May Waive Sovereign Immunity from Suit and Other Legal Proceeding with Respect to Itself or Its Property in Connection with Foreign Obligations Contracted by it Pursuant to Law,” dated 16 January 1981.

² Dated March 16, 1923

³ Article XVI, Section 3 of the 1987 Constitution

⁴ G.R. Nos. 223319 & 247736, 09 October 2019

⁵ *Department of Agriculture v. National Labor Relations Commission*, G.R. No. 104269, 11 November 1993

general law waiving the immunity of the state from suit is found in Act No. 3083, where the Philippine government 'consents and submits to be sued upon any money claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties.'" xxx

Act No. 3083 applies to the obligation we are taking on in the donation agreement subject of this letter. In other words, based on Act No. 3083, the Philippine government consents to be sued should any money claim involving liability arise from the said donation agreement. Thus, signing the document with the accompanying waiver of sovereignty is sanctioned.

PD No. 1807, on the other hand, provides the procedure in waiving sovereign immunity in instances where the law expressly authorizes the Republic of the Philippines to contract or incur a foreign obligation.

Section 1 of PD No. 1807 reads as follows:

Section 1. Procedure for, and Conditions of, Waiver of Sovereign Immunity. In instances where the law expressly authorizes the Republic of the Philippines to contract or incur a foreign obligation, it may consent to be sued in connection therewith. The President of the Philippines or his duly designated representative may, in behalf of the Republic of the Philippines, contractually agree to waive any claim to sovereign immunity from suit or legal proceedings and from set-off, attachment or executive with respect to its property, and to be sued in any appropriate jurisdiction in regard to such foreign obligation.

For purposes of this decree, a foreign obligation means any direct, indirect, or contingent obligation or liability capable of pecuniary estimation and payable in a currency other than Philippine currency.

Note that the law expressly authorizing the contracting of a foreign obligation may very well name the official/s authorized to sign such waiver, but in cases that they are left unnamed, PD No. 1807 may apply. The existence of PD No. 1807, particularly the first line of its Section 1, does not proscribe the Republic of the Philippines from contracting foreign obligations in the absence of a law expressly authorizing the same. To interpret otherwise would fetter the conduct of government service. PD No. 1807 only seeks to provide a procedure to follow.

At this juncture, we would also like to note that we have not found any law expressly repealing PD No. 1807, a 1981 law. At the same time, we did not find any recent Supreme Court case mentioning the same. This being so, the procedure laid down PD No. 1807 may very well be applicable to the agreements pertaining to the donation of bivalent vaccines especially since, based on your description of the subject donation agreement, it falls under the definition of a "foreign obligation" in the said decree.

Finally, we regret that we must refrain from giving our opinion on whether the previous signed COVAX Agreements legally subsist since we have not reviewed these

agreements and the circumstances surrounding them. We can say this with confidence, though, "the presumption is that in making contracts[,] the government has acted in good faith."⁶

Please be guided accordingly.

Very truly yours,


JESUS CRISPIN C. REMULLA
Secretary

Department of Justice
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⁶ *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, 17 July 1995