

SPOUSES RENATO CONSTANTINO, JR. AND LOURDES CONSTANTINO AND THEIR MINOR CHILDREN RENATO REDENTOR, ANNA MARIKA LISSA, NINA ELISSA, AND ANNA KARMINA, FREEDOM FROM DEBT COALITION, ...*G.R. NO. 106064. October 13, 2005*

Ponente: TINGA, J.

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The quagmire that is the foreign debt problem has especially confounded developing nations around the world for decades. It has defied easy solutions acceptable both to debtor countries and their creditors. It has also emerged as cause celebre for various political movements and grassroots activists and the wellspring of much scholarly thought and debate.

The present petition illustrates some of the ideological and functional differences between experts on how to achieve debt relief. However, this being a court of law, not an academic forum or a convention on development economics, our resolution has to hinge on the presented legal issues which center on the appreciation of the constitutional provision that empowers the President to contract and guarantee foreign loans. The ultimate choice is between a restrictive reading of the constitutional provision and an alimentative application thereof consistent with time-honored principles on executive power and the alter ego doctrine.

This Petition for Certiorari, Prohibition and Mandamus assails said contracts which were entered into pursuant to the Philippine Comprehensive Financing Program for 1992 ("Financing Program" or "Program"). It seeks to enjoin respondents from executing additional debt-relief contracts pursuant thereto. It also urges the Court to issue an order compelling the Secretary of Justice to institute criminal and administrative cases against respondents for acts which circumvent or negate the provisions Art. XII of the Constitution.[1]

Parties and Facts

The petition was filed on 17 July 1992 by petitioners spouses Renato Constantino, Jr. and Lourdes Constantino and their minor children, Renato Redentor, Anna Marika Lissa, Nina Elissa, and Anna Karmina, Filomeno Sta. Ana III, and the Freedom from Debt Coalition, a non-stock, non-profit, non-government organization that advocates a "pro-people and just Philippine debt policy." [2] Named respondents were the then Governor of the Bangko Sentral ng Pilipinas, the Secretary of Finance, the National Treasurer, and the Philippine Debt Negotiation Chairman Emmanuel V. Pelaez. [3] All respondents were members of the Philippine panel tasked to negotiate with the country's foreign creditors pursuant to the Financing Program.

The operative facts are sparse and there is little need to elaborate on them.

The Financing Program was the culmination of efforts that began during the term of former President Corazon Aquino to manage the country's external debt problem through a negotiation-oriented debt strategy involving cooperation and negotiation with foreign creditors. [4] Pursuant to this strategy, the Aquino government entered

into three restructuring agreements with representatives of foreign creditor governments during the period of 1986 to 1991.[5] During the same period, three similarly-oriented restructuring agreements were executed with commercial bank creditors.[6]

On 28 February 1992, the Philippine Debt Negotiating Team, chaired by respondent Pelaez, negotiated an agreement with the country's Bank Advisory Committee, representing all foreign commercial bank creditors, on the Financing Program which respondents characterized as "a multi-option financing package." [7] The Program was scheduled to be executed on 24 July 1992 by respondents in behalf of the Republic. Nonetheless, petitioners alleged that even prior to the execution of the Program respondents had already implemented its "buyback component" when on 15 May 1992, the Philippines bought back P1.26 billion of external debts pursuant to the Program.[8]

The petition sought to enjoin the ratification of the Program, but the Court did not issue any injunctive relief. Hence, it came to pass that the Program was signed in London as scheduled. The petition still has to be resolved though as petitioners seek the annulment "of any and all acts done by respondents, their subordinates and any other public officer pursuant to the agreement and program in question." [9] Even after the signing of the Program, respondents themselves acknowledged that the remaining principal objective of the petition is to set aside respondents' actions.[10]

Petitioners characterize the Financing Program as a package offered to the country's foreign creditors consisting of two debt-relief options.[11] The first option was a cash buyback of portions of the Philippine foreign debt at a discount.[12] The second option allowed creditors to convert existing Philippine debt instruments into any of three kinds of bonds/securities: (1) new money bonds with a five-year grace period and 17 years final maturity, the purchase of which would allow the creditors to convert their eligible debt papers into bearer bonds with the same terms; (2) interest-reduction bonds with a maturity of 25 years; and (3) principal-collateralized interest-reduction bonds with a maturity of 25 years.[13]

On the other hand, according to respondents the Financing Program would cover about U.S. \$5.3 billion of foreign commercial debts and it was expected to deal comprehensively with the commercial bank debt problem of the country and pave the way for the country's access to capital markets.[14] They add that the Program carried three basic options from which foreign bank lenders could choose, namely: to lend money, to exchange existing restructured Philippine debts with an interest reduction bond; or to exchange the same Philippine debts with a principal collateralized interest reduction bond.[15]

Issues for Resolution

Petitioners raise several issues before this Court.

First, they object to the debt-relief contracts entered into pursuant to the Financing Program as beyond the powers granted to the President under Section 20,

Article VII of the Constitution.[16] The provision states that the President may contract or guarantee foreign loans in behalf of the Republic. It is claimed that the buyback and securitization/bond conversion schemes are neither "loans" nor "guarantees," and hence beyond the power of the President to execute.

Second, according to petitioners even assuming that the contracts under the Financing Program are constitutionally permissible, yet it is only the President who may exercise the power to enter into these contracts and such power may not be delegated to respondents.

Third, petitioners argue that the Financing Program violates several constitutional policies and that contracts

executed or to be executed pursuant thereto were or will be done by respondents with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioners contend that the Financing Program was made available for debts that were either fraudulently contracted or void. In this regard, petitioners rely on a 1992 Commission on Audit (COA) report which identified several "behest" loans as either contracted or guaranteed fraudulently during the Marcos regime.[17] They posit that since these and other similar debts, such as the ones pertaining to the Bataan Nuclear Power Plant,[18] were eligible for buyback or conversion under the Program, the resultant relief agreements pertaining thereto would be void for being waivers of the Republic's right to repudiate the void or fraudulently contracted loans.

For their part, respondents dispute the points raised by petitioners. They also question the standing of petitioners to institute the present petition and the justiciability of the issues presented.

The Court shall tackle the procedural questions ahead of the substantive issues.

The Court's Rulings

Standing of Petitioners

The individual petitioners are suing as citizens of the Philippines; those among them who are of age are suing in their additional capacity as taxpayers.[19] It is not indicated in what capacity the Freedom from Debt Coalition is suing.

Respondents point out that petitioners have no standing to file the present suit since the rule allowing taxpayers to assail executive or legislative acts has been applied only to cases where the constitutionality of a statute is involved. At the same time, however, they urge this Court to exercise its wide discretion and waive petitioners' lack of standing. They invoke the transcendental importance of resolving the validity of the questioned debt-relief contracts and others of similar import.

The recent trend on locus standi has veered towards a liberal treatment in taxpayer's suits. In *Tatad v. Garcia Jr.*,[20] this Court reiterated that the "prevailing doctrines in taxpayer's suits are to allow taxpayers to question contracts entered into by the national government or government owned and controlled corporations allegedly in contravention of law." [21] A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is a wastage of public funds through the enforcement of an invalid or unconstitutional law.[22]

Moreover, a ruling on the issues of this case will not only determine the validity or invalidity of the subject pre-termination and bond-conversion of foreign debts but also create a precedent for other debts or debt-related contracts executed or to be executed in behalf of the President of the Philippines by the Secretary of Finance. Considering the reported Philippine debt of P3.80 trillion as of November 2004, the foreign public borrowing component of which reached P1.81 trillion in November, equivalent to 47.6% of total government borrowings,[23] the importance of the issues raised and the magnitude of the public interest involved are indubitable.

Thus, the Court's cognizance of this petition is also based on the consideration that the determination of the issues presented will have a bearing on the state of the country's economy, its international financial ratings, and perhaps even the Filipinos' way of life. Seen in this light, the transcendental importance of the issues herein presented cannot be doubted.

Where constitutional issues are properly raised in the context of alleged facts, procedural questions acquire a relatively minor significance.[24] We thus hold that by the very nature of the power wielded by the President, the

effect of using this power on the economy, and the well-being in general of the Filipino nation, the Court must set aside the procedural barrier of standing and rule on the justiciable issues presented by the parties.

Ripeness/Actual Case Dimension

Even as respondents concede the transcendental importance of the issues at bar, in their Rejoinder they ask this Court to dismiss the Petition. Allegedly, petitioners' arguments are mere attempts at abstraction.[25] Respondents are correct to some degree. Several issues, as shall be discussed in due course, are not ripe for adjudication.

The allegation that respondents waived the Philippines' right to repudiate void and fraudulently contracted loans by executing the debt-relief agreements is, on many levels, not justiciable.

In the first place, records do not show whether the so-called behest loans-or other allegedly void or fraudulently contracted loans for that matter-were subject of the debt-relief contracts entered into under the Financing Program.

Moreover, asserting a right to repudiate void or fraudulently contracted loans begs the question of whether indeed particular loans are void or fraudulently contracted. Fraudulently contracted loans are voidable and, as such, valid and enforceable until annulled by the courts. On the other hand, void contracts that have already been fulfilled must be declared void in view of the maxim that no one is allowed to take the law in his own hands.[26] Petitioners' theory depends on a prior annulment or declaration of nullity of the pre-existing loans, which thus far have not been submitted to this Court. Additionally, void contracts are unratifiable by their very nature; they are null and void ab initio. Consequently, from the viewpoint of civil law, what petitioners present as the Republic's "right to repudiate" is yet a contingent right, one which cannot be allowed as an anticipatory basis for annulling the debt-relief contracts. Petitioners' contention that the debt-relief agreements are tantamount to waivers of the Republic's "right to repudiate" so-called behest loans is without legal foundation.

It may not be amiss to recognize that there are many advocates of the position that the Republic should renege on obligations that are considered as "illegitimate." However, should the executive branch unilaterally, and possibly even without prior court determination of the validity or invalidity of these contracts, repudiate or otherwise declare to the international community its resolve not to recognize a certain set of "illegitimate" loans, adverse repercussions[27] would come into play. Dr. Felipe Medalla, former Director General of the National Economic Development Authority, has warned, thus:

One way to reduce debt service is to repudiate debts, totally or selectively. Taken to its limit, however, such a strategy would put the Philippines at such odds with too many enemies. Foreign commercial banks by themselves and without the cooperation of creditor governments, especially the United States, may not be in a position to inflict much damage, but concerted sanctions from commercial banks, multilateral financial institutions and creditor governments would affect not only our sources of credit but also our access to markets for our exports and the level of development assistance. . . . [T]he country might face concerted sanctions even if debts were repudiated only selectively.

The point that must be stressed is that repudiation is not an attractive alternative if net payments to creditors in the short and medium-run can be reduced through an agreement (as opposed to a unilaterally set ceiling on debt service payments) which provides for both rescheduling of principal and capitalization of interest, or its equivalent in new loans, which would make it easier for the country to pay interest.[28]

Sovereign default is not new to the Philippine setting. In October 1983, the Philippines declared a moratorium on principal payments on its external debts that eventually lasted four years,[29] that virtually closed the country's access to new foreign money[30] and drove investors to leave the Philippine market, resulting in some devastating consequences.[31] It would appear then that this beguilingly attractive and dangerously simplistic solution

deserves the utmost circumspect cogitation before it is resorted to.

In any event, the discretion on the matter lies not with the courts but with the executive. Thus, the Program was conceptualized as an offshoot of the decision made by then President Aquino that the Philippines should recognize its sovereign debts^[32] despite the controversy that engulfed many debts incurred during the Marcos era. It is a scheme whereby the Philippines restructured its debts following a negotiated approach instead of a default approach to manage the bleak Philippine debt situation.

As a final point, petitioners have no real basis to fret over a possible waiver of the right to repudiate void contracts. Even assuming that spurious loans had become the subject of debt-relief contracts, respondents unequivocally assert that the Republic did not waive any right to repudiate void or fraudulently contracted loans, it having incorporated a "no-waiver" clause in the agreements.^[33]

Substantive Issues

It is helpful to put the matter in perspective before moving on to the merits. The Financing Program extinguished portions of the country's pre-existing loans through either debt buyback or bond-conversion. The buyback approach essentially pre-terminated portions of public debts while the bond-conversion scheme extinguished public debts through the obtention of a new loan by virtue of a sovereign bond issuance, the proceeds of which in turn were used for terminating the original loan.

First Issue: The Scope of Section 20, Article VII

For their first constitutional argument, petitioners submit that the buyback and bond-conversion schemes do not constitute the loan "contract" or "guarantee" contemplated in the Constitution and are consequently prohibited. Sec. 20, Art. VII of the Constitution provides, viz:

The President may contract or guarantee foreign loans in behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board and subject to such limitations as may be provided under law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

On Bond-conversion

Loans are transactions wherein the owner of a property allows another party to use the property and where customarily, the latter promises to return the property after a specified period with payment for its use, called interest.^[34] On the other hand, bonds are interest-bearing or discounted government or corporate securities that obligate the issuer to pay the bondholder a specified sum of money, usually at specific intervals, and to repay the principal amount of the loan at maturity.^[35] The word "bond" means contract, agreement, or guarantee. All of these terms are applicable to the securities known as bonds. An investor who purchases a bond is lending money to the issuer, and the bond represents the issuer's contractual promise to pay interest and repay principal according to specific terms. A short-term bond is often called a note.^[36]

The language of the Constitution is simple and clear as it is broad. It allows the President to contract and guarantee foreign loans. It makes no prohibition on the issuance of certain kinds of loans or distinctions as to which kinds of debt instruments are more onerous than others. This Court may not ascribe to the Constitution meanings and restrictions that would unduly burden the powers of the President. The plain, clear and unambiguous language of the Constitution should be construed in a sense that will allow the full exercise of the power provided therein. It would be the worst kind of judicial legislation if the courts were to misconstrue and

change the meaning of the organic act.

The only restriction that the Constitution provides, aside from the prior concurrence of the Monetary Board, is that the loans must be subject to limitations provided by law. In this regard, we note that Republic Act (R.A.) No. 245 as amended by Pres. Decree (P.D.) No. 142, s. 1973, entitled An Act Authorizing the Secretary of Finance to Borrow to Meet Public Expenditures Authorized by Law, and for Other Purposes, allows foreign loans to be contracted in the form of, inter alia, bonds. Thus:

Sec. 1. In order to meet public expenditures authorized by law or to provide for the purchase, redemption, or refunding of any obligations, either direct or guaranteed of the Philippine Government, the Secretary of Finance, with the approval of the President of the Philippines, after consultation with the Monetary Board, is authorized to borrow from time to time on the credit of the Republic of the Philippines such sum or sums as in his judgment may be necessary, and to issue therefor evidences of indebtedness of the Philippine Government." Such evidences of indebtedness may be of the following types:

. . . .

c. Treasury bonds, notes, securities or other evidences of indebtedness having maturities of one year or more but not exceeding twenty-five years from the date of issue. (Emphasis supplied.)

Under the foregoing provisions, sovereign bonds may be issued not only to supplement government expenditures but also to provide for the purchase,[37] redemption,[38] or refunding[39] of any obligation, either direct or guaranteed, of the Philippine Government.

Petitioners, however, point out that a supposed difference between contracting a loan and issuing bonds is that the former creates a definite creditor-debtor relationship between the parties while the latter does not.[40] They explain that a contract of loan enables the debtor to restructure or novate the loan, which benefit is lost upon the conversion of the debts to bearer bonds such that "the Philippines surrenders the novatable character of a loan contract for the irrevocable and unpostponable demandability of a bearer bond."[41] Allegedly, the Constitution prohibits the President from issuing bonds which are "far more onerous" than loans.[42]

This line of thinking is flawed to say the least. The negotiable character of the subject bonds is not mutually exclusive with the Republic's freedom to negotiate with bondholders for the revision of the terms of the debt. Moreover, the securities market provides some flexibility-if the Philippines wants to pay in advance, it can buy out its bonds in the market; if interest rates go down but the Philippines does not have money to retire the bonds, it can replace the old bonds with new ones; if it defaults on the bonds, the bondholders shall organize and bring about a re-negotiation or settlement.[43] In fact, several countries have restructured their sovereign bonds in view either of inability and/or unwillingness to pay the indebtedness.[44] Petitioners have not presented a plausible reason that would preclude the Philippines from acting in a similar fashion, should it so opt.

This theory may even be dismissed in a perfunctory manner since petitioners are merely expecting that the Philippines would opt to restructure the bonds but with the negotiable character of the bonds, would be prevented from so doing. This is a contingency which petitioners do not assert as having come to pass or even imminent. Consummated acts of the executive cannot be struck down by this Court merely on the basis of petitioners' anticipatory cavils.

On the Buyback Scheme

In their Comment, petitioners assert that the power to pay public debts lies with Congress and was deliberately withheld by the Constitution from the President.[45] It is true that in the balance of power between the three branches of government, it is Congress that manages the country's coffers by virtue of its taxing and spending

powers. However, the law-making authority has promulgated a law ordaining an automatic appropriations provision for debt servicing^[46] by virtue of which the President is empowered to execute debt payments without the need for further appropriations. Regarding these legislative enactments, this Court has held, viz:

Congress ... deliberates or acts on the budget proposals of the President, and Congress in the exercise of its own judgment and wisdom formulates an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law.

Debt service is not included in the General Appropriation Act, since authorization therefor already exists under RA Nos. 4860 and 245, as amended, and PD 1967. Precisely in the light of this subsisting authorization as embodied in said Republic Acts and PD for debt service, Congress does not concern itself with details for implementation by the Executive, but largely with annual levels and approval thereof upon due deliberations as part of the whole obligation program for the year. Upon such approval, Congress has spoken and cannot be said to have delegated its wisdom to the Executive, on whose part lies the implementation or execution of the legislative wisdom.^[47]

Specific legal authority for the buyback of loans is established under Section 2 of Republic Act (R.A.) No. 240, viz:

Sec. 2. The Secretary of Finance shall cause to be paid out of any moneys in the National Treasury not otherwise appropriated, or from any sinking funds provided for the purpose by law, any interest falling due, or accruing, on any portion of the public debt authorized by law. He shall also cause to be paid out of any such money, or from any such sinking funds the principal amount of any obligations which have matured, or which have been called for redemption or for which redemption has been demanded in accordance with terms prescribed by him prior to date of issue: Provided, however, That he may, if he so chooses and if the holder is willing, exchange any such obligation with any other direct or guaranteed obligation or obligations of the Philippine Government of equivalent value. In the case of interest-bearing obligations, he shall pay not less than their face value; in the case of obligations issued at a discount he shall pay the face value at maturity; or, if redeemed prior to maturity, such portion of the face value as is prescribed by the terms and conditions under which such obligations were originally issued. (Emphasis supplied.)

The afore-quoted provisions of law specifically allow the President to pre-terminate debts without further action from Congress.

Petitioners claim that the buyback scheme is neither a guarantee nor a loan since its underlying intent is to extinguish debts that are not yet due and demandable.^[48] Thus, they suggest that contracts entered pursuant to the buyback scheme are unconstitutional for not being among those contemplated in Sec. 20, Art. VII of the Constitution.

Buyback is a necessary power which springs from the grant of the foreign borrowing power. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.^[49] The President is not empowered to borrow money from foreign banks and governments on the credit of the Republic only to be left bereft of authority to implement the payment despite appropriations therefor.

Even petitioners concede that "[t]he Constitution, as a rule, does not enumerate-let alone enumerate all-the acts which the President (or any other public officer) may not do,"^[50] and "[t]he fact that the Constitution does not explicitly bar the President from exercising a power does not mean that he or she does not have that power."^[51] It is inescapable from the standpoint of reason and necessity that the authority to contract foreign loans and

guarantees without restrictions on payment or manner thereof coupled with the availability of the corresponding appropriations, must include the power to effect payments or to make payments unavailing by either restructuring the loans or even refusing to make any payment altogether.

More fundamentally, when taken in the context of sovereign debts, a buyback is simply the purchase by the sovereign issuer of its own debts at a discount. Clearly then, the objection to the validity of the buyback scheme is without basis.

Second Issue: Delegation of Power

Petitioners stress that unlike other powers which may be validly delegated by the President, the power to incur foreign debts is expressly reserved by the Constitution in the person of the President. They argue that the gravity by which the exercise of the power will affect the Filipino nation requires that the President alone must exercise this power. They submit that the requirement of prior concurrence of an entity specifically named by the Constitution-the Monetary Board-reinforces the submission that not respondents but the President "alone and personally" can validly bind the country.

Petitioners' position is negated both by explicit constitutional^[52] and legal^[53] imprimaturs, as well as the doctrine of qualified political agency.

The evident exigency of having the Secretary of Finance implement the decision of the President to execute the debt-relief contracts is made manifest by the fact that the process of establishing and executing a strategy for managing the government's debt is deep within the realm of the expertise of the Department of Finance, primed as it is to raise the required amount of funding, achieve its risk and cost objectives, and meet any other sovereign debt management goals.^[54]

If, as petitioners would have it, the President were to personally exercise every aspect of the foreign borrowing power, he/she would have to pause from running the country long enough to focus on a welter of time-consuming detailed activities-the propriety of incurring/guaranteeing loans, studying and choosing among the many methods that may be taken toward this end, meeting countless times with creditor representatives to negotiate, obtaining the concurrence of the Monetary Board, explaining and defending the negotiated deal to the public, and more often than not, flying to the agreed place of execution to sign the documents. This sort of constitutional interpretation would negate the very existence of cabinet positions and the respective expertise which the holders thereof are accorded and would unduly hamper the President's effectivity in running the government.

Necessity thus gave birth to the doctrine of qualified political agency, later adopted in *Villena v. Secretary of the Interior*^[55] from American jurisprudence, viz:

With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority" (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U.

S., 52 at 133; 71 Law. ed., 160).[56]

As it was, the backdrop consisted of a major policy determination made by then President Aquino that sovereign debts have to be respected and the concomitant reality that the Philippines did not have enough funds to pay the debts. Inevitably, it fell upon the Secretary of Finance, as the alter ego of the President regarding "the sound and efficient management of the financial resources of the Government,"[57] to formulate a scheme for the implementation of the policy publicly expressed by the President herself.

Nevertheless, there are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or alter ego of the President. Justice Laurel, in his ponencia in Villena, makes this clear:

Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, in his power to suspend the writ of habeas corpus and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, idem).[58]

These distinctions hold true to this day. There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of habeas corpus, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import.

We cannot conclude that the power of the President to contract or guarantee foreign debts falls within the same exceptional class. Indubitably, the decision to contract or guarantee foreign debts is of vital public interest, but only akin to any contractual obligation undertaken by the sovereign, which arises not from any extraordinary incident, but from the established functions of governance.

Another important qualification must be made. The Secretary of Finance or any designated alter ego of the President is bound to secure the latter's prior consent to or subsequent ratification of his acts. In the matter of contracting or guaranteeing foreign loans, the repudiation by the President of the very acts performed in this regard by the alter ego will definitely have binding effect. Had petitioners herein succeeded in demonstrating that the President actually withheld approval and/or repudiated the Financing Program, there could be a cause of action to nullify the acts of respondents. Notably though, petitioners do not assert that respondents pursued the Program without prior authorization of the President or that the terms of the contract were agreed upon without the President's authorization. Congruent with the avowed preference of then President Aquino to honor and restructure existing foreign debts, the lack of showing that she countermanded the acts of respondents leads us to conclude that said acts carried presidential approval.

With constitutional parameters already established, we may also note, as a source of suppletory guidance, the provisions of R.A. No. 245. The afore-quoted Section 1 thereof empowers the Secretary of Finance with the approval of the President and after consultation[59] of the Monetary Board, "to borrow from time to time on the credit of the Republic of the Philippines such sum or sums as in his judgment may be necessary, and to issue therefor evidences of indebtedness of the Philippine Government." Ineluctably then, while the President wields the borrowing power it is the Secretary of Finance who normally carries out its thrusts.

In our recent rulings in *Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp.*,^[60] this Court had occasion to examine the authority granted by Congress to the Department of Trade and Industry (DTI) Secretary to impose safeguard measures pursuant to the Safeguard Measures Act. In doing so, the Court was impelled to construe Section 28(2), Article VI of the Constitution, which allowed Congress, by law, to authorize the President to "fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government."^[61]

While the Court refused to uphold the broad construction of the grant of power as preferred by the DTI Secretary, it nonetheless tacitly acknowledged that Congress could designate the DTI Secretary, in his capacity as alter ego of the President, to exercise the authority vested on the chief executive under Section 28(2), Article VI.^[62] At the same time, the Court emphasized that since Section 28(2), Article VI authorized Congress to impose limitations and restrictions on the authority of the President to impose tariffs and imposts, the DTI Secretary was necessarily subjected to the same restrictions that Congress could impose on the President in the exercise of this taxing power.

Similarly, in the instant case, the Constitution allocates to the President the exercise of the foreign borrowing power "subject to such limitations as may be provided under law." Following *Southern Cross*, but in line with the limitations as defined in *Villena*, the presidential prerogative may be exercised by the President's alter ego, who in this case is the Secretary of Finance.

It bears emphasis that apart from the Constitution, there is also a relevant statute, R.A. No. 245, that establishes the parameters by which the alter ego may act in behalf of the President with respect to the borrowing power. This law expressly provides that the Secretary of Finance may enter into foreign borrowing contracts. This law neither amends nor goes contrary to the Constitution but merely implements the subject provision in a manner consistent with the structure of the Executive Department and the alter ego doctrine. In this regard, respondents have declared that they have followed the restrictions provided under R.A. No. 245,^[63] which include the requisite presidential authorization and which, in the absence of proof and even allegation to the contrary, should be regarded in a fashion congruent with the presumption of regularity bestowed on acts done by public officials.

Moreover, in praying that the acts of the respondents, especially that of the Secretary of Finance, be nullified as being in violation of a restrictive constitutional interpretation, petitioners in effect would have this Court declare R.A. No. 245 unconstitutional. We will not strike down a law or provisions thereof without so much as a direct attack thereon when simple and logical statutory construction would suffice.

Petitioners also submit that the unrestricted character of the Financing Program violates the framers' intent behind Section 20, Article VII to restrict the power of the President. This intent, petitioners note, is embodied in the proviso in Sec. 20, Art. VII, which states that said power is "subject to such limitations as may be provided under law." However, as previously discussed, the debt-relief contracts are governed by the terms of R.A. No. 245, as amended by P.D. No. 142 s. 1973, and therefore were not developed in an unrestricted setting.

Third Issue: Grave Abuse of Discretion and Violation of Constitutional Policies

We treat the remaining issues jointly, for in view of the foregoing determination, the general allegation of grave abuse of discretion on the part of respondents would arise from the purported violation of various state policies as expressed in the Constitution.

Petitioners allege that the Financing Program violates the constitutional state policies to promote a social order that will "ensure the prosperity and independence of the nation" and free "the people from poverty,"^[64] foster

"social justice in all phases of national development,"[65] and develop a self-reliant and independent national economy effectively controlled by Filipinos;"[66] thus, the contracts executed or to be executed pursuant thereto were or would be tainted by a grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondents cite the following in support of the propriety of their acts:[67] (1) a Department of Finance study showing that as a result of the implementation of voluntary debt reductions schemes, the country's debt stock was reduced by U.S. \$4.4 billion as of December 1991;[68] (2) revelations made by independent individuals made in a hearing before the Senate Committee on Economic Affairs indicating that the assailed agreements would bring about substantial benefits to the country;[69] and (3) the Joint Legislative-Executive Foreign Debt Council's endorsement of the approval of the financing package containing the debt-relief agreements and issuance of a Motion to Urge the Philippine Debt Negotiating Panel to continue with the negotiation on the aforesaid package.[70]

Even with these justifications, respondents aver that their acts are within the arena of political questions which, based on the doctrine of separation of powers,[71] the judiciary must leave without interference lest the courts substitute their judgment for that of the official concerned and decide a matter which by its nature or law is for the latter alone to decide.[72]

On the other hand, in furtherance of their argument on respondents' violation of constitutional policies, petitioners cite an article of Jude Esguerra, *The 1992 Buyback and Securitization Agreement with Philippine Commercial Bank Creditors*,[73] in illustrating a best-case scenario in entering the subject debt-relief agreements. The computation results in a yield of \$218.99 million, rather than the \$2,041.00 million claimed by the debt negotiators.[74] On the other hand, the worst-case scenario allegedly is that a net amount of \$1.638 million will flow out of the country as a result of the debt package.[75]

Assuming the accuracy of the foregoing for the nonce, despite the watered-down parameters of petitioners' computations, we can make no conclusion other than that respondents' efforts were geared towards debt-relief with marked positive results and towards achieving the constitutional policies which petitioners so hastily declare as having been violated by respondents. We recognize that as with other schemes dependent on volatile market and economic structures, the contracts entered into by respondents may possibly have a net outflow and therefore negative result. However, even petitioners call this latter event the worst-case scenario. Plans are seldom foolproof. To ask the Court to strike down debt-relief contracts, which, according to independent third party evaluations using historically-suggested rates would result in "substantial debt-relief,"[76] based merely on the possibility of petitioners' worst-case scenario projection, hardly seems reasonable.

Moreover, the policies set by the Constitution as litanized by petitioners are not a panacea that can annul every governmental act sought to be struck down. The gist of petitioners' arguments on violation of constitutional policies and grave abuse of discretion boils down to their allegation that the debt-relief agreements entered into by respondents do not deliver the kind of debt-relief that petitioners would want. Petitioners cite the aforementioned article in stating that that "the agreement achieves little that cannot be gained through less complicated means like postponing (rescheduling) principal payments,"[77] thus:

[T]he price of success in putting together this "debt-relief package" (indicates) the possibility that a simple rescheduling agreement may well turn out to be less expensive than this comprehensive "debt-relief" package. This means that in the next six years the humble and simple rescheduling process may well be the lesser evil because there is that distinct possibility that less money will flow out of the country as a result.

Note must be taken that from these citations, petitioners submit that there is possibly a better way to go about debt rescheduling and, on that basis, insist that the acts of respondents must be struck down. These are rather tenuous

grounds to condemn the subject agreements as violative of constitutional principles.

Conclusion

The *raison d'etre* of the Financing Program is to manage debts incurred by the Philippines in a manner that will lessen the burden on the Filipino taxpayers—thus the term "debt-relief agreements." The measures objected to by petitioners were not aimed at incurring more debts but at terminating pre-existing debts and were backed by the know-how of the country's economic managers as affirmed by third party empirical analysis.

That the means employed to achieve the goal of debt-relief do not sit well with petitioners is beyond the power of this Court to remedy. The exercise of the power of judicial review is merely to check—not supplant—the Executive, or to simply ascertain whether he has gone beyond the constitutional limits of his jurisdiction but not to exercise the power vested in him or to determine the wisdom of his act.^[78] In cases where the main purpose is to nullify governmental acts whether as unconstitutional or done with grave abuse of discretion, there is a strong presumption in favor of the validity of the assailed acts. The heavy onus is in on petitioners to overcome the presumption of regularity.

We find that petitioners have not sufficiently established any basis for the Court to declare the acts of respondents as unconstitutional.

WHEREFORE the petition is hereby DISMISSED. No costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.

Davide, Jr., C.J., joins Mr. Justice Puno in the result.

Panganiban, J., see separate opinion.

[1] Acts which under Sec. 22, Article XII of the Constitution shall be considered inimical to the national interest and subject to criminal and civil sanctions, as may be provided by law.

[2] Rollo, pp. 3-4.

[3] Former Vice-President of the Philippines, since deceased.

[4] Rollo, p. 58.

[5] *Id.* at 59. According to respondents, these agreements involved the rescheduling of public sector debts to bilateral creditors, thereby lengthening the maturity for its repayments and whereby portions of interest of maturing debts were capitalized in the process of rescheduling.

[6] *Ibid.*

[7] *Id.* at 60. Per respondents, the deal consisted of three debt-relief agreements, the "Principle Collateralized Interest Reduction Bond Issuance and Exchange Agreement," the "Philippine Bond Issuance and Exchange Agreement," and the "Interest Reduction Bond Issuance and Exchange Agreement."

[8] Rollo, p. 7 citing a newspaper article in the *Daily Globe* dated 15 May 1992. Petitioners make no indication whether the loans identified in the COA report are among those included in the questioned debt-relief agreements. Cf: note 17.

[9] Id. at 25.

[10] Id. at 58.

[11] Id. at 5.

[12] Ibid.

[13] Ibid citing a Newsday article dated 27 April 1992, Annex "A" of the Petition.

[14] Rollo, p. 60 citing a speech given by former Central Bank Governor Jose L. Cuisia, Jr. at the joint meeting of FINEX, Makati Business Club and Management Association of the Philippines held on 19 November 1991 at the Grand Ballroom of the Hotel Intercontinental Manila.

[15] Ibid.

[16] "The President may contract or guarantee foreign loans in behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board and subject to such limitations as may be provided under law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law."

[17]

1. North Davao Mining Corp.

\$117.712

(In millions of U.S. Dollars)

2. Bukidnon Sugar Milling Co., Inc.

68.940

3. United Planters Sugar Milling Co.

62.669

4. Northern Cotabato Sugar Ind. Inc.

45.200

5. Asia Industries Inc.

25.000

6. Domestic Satellite Philippines

18.540

7. PNB Deposit Facility/AMEXCO

17.000

8. Pamplona Redwood Veneer Inc.

15.160

9. Mindanao Coconut Oil Mills

6.900

10. Government Service Insurance System

10.650

11. Philippine Phosphate Fertilizer Corp.
565.514

12. Pagdanganan Timbre Products Inc.
13.500

13. Menzi Development Corp.
13.000

14. Sabena Mining Corp.
27.500

[18] Rollo, p. 6.

[19]Id. at 4.

[20] 313 Phil. 296 (1995).

[21]Id. at 320, citing Kilosbayan v. Morato, G.R. No. 113375, 5 May 1994, 232 SCRA 110, 139. Del Mar v. PAGCOR, 346 SCRA 485, 501 (2000) citing Kilosbayan, Inc., et al. v. Morato, 250 SCRA 333 (1976); Dumlao v. Comelec, 95 SCRA 392 (1980); Sanidad v. Commission on Elections, 73 SCRA 333 (1976); Philconsa v. Mathay, 18 SCRA 300 (1966); Pascual v. Secretary of Public Works, 110 Phil. 331 (1960); Pelaez v. Auditor General, 15 SCRA 569 (1965); Philconsa v. Gimenez, 15 SCRA 479 (1965); Iloilo Palay & Corn Planters Association v. Feliciano, 13 SCRA 377 (1965).

[22]Francisco v. House of Representatives, G.R. No. 160405, November 10, 2003, 415 SCRA 44, 136.

[23]; See also newspaper article by Maricel E. Burgonio, Govt debts reach P4T in January, The Manila Times, April 28, 2005 reporting that the national government incurred a total outstanding debt of P4 trillion as of January 2005, representing an increase of 5.1 percent from the reported P3.81 trillion as of end-2004, per Department of Finance data and of the government's total debt, about P1.97 trillion is owed to foreign creditors; P2.04 trillion is owed to domestic creditors, <http://www.manilatimes.net/national/2005/apr/28/yehey/business/20050428bus2.html>>, "reported also in the "news item" site of the Department of Budget and Management, .

[24]Guingona, Jr. v. Gonzales, G.R. No. 106971, 20 October 1992, 214 SCRA 709, 794.

[25] Rollo, p. 105.

[26] See Arturo M. Tolentino, The Civil Code, Vol. IV, c. 1987, p. 632.

[27] Among the consequences discussed hereunder, the standard cross-default provisions in Philippine foreign loans may come into effect, in which case, default even in one loan would be a ground for other creditors to declare default on other loans. See Innovative Solutions to the Philippine Debt Problem by Gov. Gabriel C. Singson, speaking at a debt forum held 28 March 2005, hosted by the Management Association of the Philippines.

[28] Dr. Felipe Medalla, The Management of External Debt, PIDS Development Research News, Volume V, No. 2, (1987), p. 2. Dr. Medalla is an Associate Professor at the School of Economics, University of the Philippines.

[29] External Debt: Developments, Issues, and Options, speech delivered by former Finance Secretary Vicente R. Jayme during the general membership meeting of the Makati Business Club on 31 May 1988, at the Hotel Inter-Continental, Manila.

[30]Thus the period that followed was characterized by stringent foreign exchange rationing. See talk delivered by

former Finance Secretary Edgardo B. Espiritu at the Freedom From Debt Coalition's Fiscal and Debt Discussion at the University of the Philippines in December 2002.

[31] "In less than a year after the country sought debt moratorium, the exchange rate went as high as 100 percent, bellwether interest rate shot up to 43 percent and inflation soared to 47.1 percent, after investors raced each other in leaving a deteriorating economy." Former Central Bank Governor Gabriel Singson in the "news item" site of the Department of Budget and Management, http://www.map.com.ph/articles_innovative%20solution%20for%20phil%20problem.htm; "Thus far, the Philippines is the only country in Asia that experienced a debt moratorium. I believe that no single event has brought more damage to the economy " not even the 1997 Asian financial crisis - than the 1983 debt moratorium. P - \$ exchange rate went up by almost 100% from P 9.17 on January 3, 1983 to P 18.02 to the dollar on June 6, 1984, a period of less than one year and a half; interest rates. The 91-day T-bill hit 43% in Nov. 1984; GNP in 1984 was negative 9.11; Inflation - average inflation for 1984 jumped to 47.1%. At the height of the Asian financial crisis in 1998 the average inflation was 9.7%; the country had no access to the voluntary capital markets for almost 10 years, 1983 to 1992." Speech of former Central Bank Governor Gabriel C. Singson, *supra* note 27.

[32] The debt crisis has effectively snagged the debtor countries in a financial vise. Meanwhile, the creditors generally insist on debt service payment, often in amounts that were greater than national spending on health and education. The crisis must be addressed at the global level. See Jeffrey Sachs, *The End of Poverty*, Penguin Group (USA), Inc., 375 Hudson St., New York, N.Y., 10014, U.S.A. Jeffrey Sachs is the Director of the Earth Institute, Quetelet Professor of Sustainable Development, and Professor of Health Policy and Management at Columbia University as well as Special Advisor to United Nations Secretary General Kofi Annan.

[33] Annex "D" of Comment, *id.* at 130.

[34] John Downes and Jordan Elliot Goodman, *Barron's Financial Guides Dictionary of Finance and Investment Terms*, (2003, 6th ed.), p. 389.

[35] *Id.* at 70.

[36] Mark Levinson, *Guide to Financial Markets*, (3rd ed.), p. 60.

[37] Purchase Fund - provision in some PREFERRED STOCK contracts and BOND indentures requiring the issuer to use its best efforts to purchase a specified number of shares or bonds annually at a price not to exceed par value. Unlike SINKING FUND provisions, which require that a certain number of bonds be retired annually, purchase funds require only that a tender offer be made; if no securities are tendered, none are retired. Purchase fund issued benefit the investor in a period of rising rates when the redemption price is higher than the market price and the proceeds can be put to work at a higher return. *Barron's Financial Guides Dictionary of Finance and Investment Terms*, *supra* note 34 at 548.

[38] Redemption - repayment of a debt security or preferred stock issue, at or before maturity, at PAR or at a premium price. *Id.* at 566.

[39] Refunding - replacing an old debt with a new one, usually in order to lower the interest cost of the issuer. For instance, a corporation or municipality that has issued 10% bonds may want to refund them by issuing 7% bonds if interest rates have dropped. *Id.* at 567.

[40] Rollo, p. 10.

[41] *Id.* at 11.

[42] *Id.* at 12.

[43] Cesar G. Saldaña, Ph D., "A Market Valuation Under Bargaining Game Perspective to the Philippine Debt Package of 1991," a paper read before the Senate Committee on Economic Affairs at the public hearing on "Inquiry Into the Proposed Financial Debt Restructuring Package" on Thursday, 16 January 1992 at the Executive House Building, Philippine Senate, Manila. Rollo, p. 112.

[44] Argentina began swapping defaulted bonds for new securities - to restructure \$104 billion of debt; Charts Investment Management Service Ltd., 25 May 2005, ; Pakistan restructured its bonds with no major systemic effects. IMF staff study, Bard discussion examine experience with sovereign bond restructurings, IMF Survey Vol. 30 No. 4, 19 February 2001, p. 58, <<http://www.imf.org/external/pubs/ft/survey/2001/021901.pdf>>; The government of Uruguay officially accepted the outcome of the sovereign debt restructuring initiative, as 90% of the bondholders participated in the swap. Latin America Weekly Outlook, 23 May 2003, .

[45] Rollo, p. 163.

[46]P.D. No. 1177 (July 30, 1977), SECTION 31. Automatic Appropriations."All expenditures for (a) personnel retirement premiums, government service insurance, and other similar fixed expenditures, (b) principal and interest on public debt, (c) national government guarantees of obligations which are drawn upon, are automatically appropriated: provided, that no obligations shall be incurred or payments made from funds thus automatically appropriated except as issued in the form of regular budgetary allotments.

[47] Guingona v. Carague, G.R. No. 94571, 22 April 1991, 196 SCRA, 221, 236.

[48]Rollo, p. 10.

[49] Go Chico v. Martinez, 45 Phil. 256 (1923).

[50] Id. at 161.

[51] Ibid.

[52]Sec. 20, Art. VII, 1987 Const.

[53]R.A. No. 245, as amended.

[54]Guidelines for Public Debt Management, Prepared by the Staffs of the International Monetary Fund and the World Bank, 21 March 2001, .

[55] 67 Phil. 451 (1939).

[56]Id. at 464.

[57] The Administrative Code, E.O. 292, Book II Title II Chapter 1.

[58] Villena v. Secretary of the Interior, supra note 44 at 462-463.

[59] Now concurrence under the 1987 Constitution.

[60] G.R. No. 158540, 8 July 2004, 434 SCRA 65.

[61] Section 28, Article VI. . . .

2) The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

[62]1987 Const.

[63] Id. at 77.

[64] Sec. 9, Art. II, 1987 Const.

[65] Sec. 10, id.

[66] Sec. 19, id

[67] Id. at pp. 95-97.

[68] Rollo, p. 96, referring to Annex "E" of Respondent's Comment, id. at pp. 131-141.

[69] Rollo, p. 96, referring to Annexes "B" and "C" of Respondent's Comment, id. at pp. 102-120 and 121-129 respectively.

[70] Annex "A" of Respondent's Comment, id. at 101.

[71] Id. at 87-93.

[72] Id. at 95.

[73] Rollo, pp. 44-51, reprinted by the Freedom From Debt Coalition entitled Caught in a One Way Street and Feeling Groovy, Rollo, pp. 187-194.

[74] According to Jude Esguerra, applying the Central Bank's assumptions and a criticism against methodology devised by Professors Philip Medalla and Solita Monsod of the UP School of Economics, the cost of the debt-relief package over the next six years comes up to only \$930.03 million. Over the next six years and under the most optimistic assumptions the most that can be yielded is allegedly \$218.99 million, not \$2,041.00 million as claimed by the debt negotiators.

[75] According to Jude Esguerra, using a scenario where: (1) the interest rate assumptions of Governor Cuisia (52%) in the first year, increasing gradually to 7% by the 6th year) turn out to be wrong and the average interest rate over the next six years is around 5.5%, and (2) the Philippines uses up its own dollar reserves rather than loans from WB, Japan and the IMF to pay for the costs of the package-over the next six years.

[76] A Market Valuation Under Bargaining Game Perspective to the Philippine Debt Package of 1991 by Cesar G. Saldaña, Ph.D, a paper read before the Senate Committee on Economic Affairs at the public hearing on "Inquiry Into the Proposed Financial Debt Restructuring Package" on Thursday, 16 January 1992 at the Executive House Building, Philippine Senate, Manila. Rollo, pp. 102-120; See also Statement On the Philippine Foreign Debt Problem by O.V. Espiritu, President of the Bankers Association of the Philippines and speaking in behalf thereof, Rollo, pp. 121-128.

[77] Rollo, p. 183.

[78] In the Matter of the Petition for Habeas Corpus of Lansang, et al., 149 Phil. 547 (1971).

SEPARATE OPINION

PANGANIBAN, J.:

I agree that the Petition should be dismissed, insofar as it seeks to nullify the subject debt-relief Contracts executed by respondents under the authority of the President.

Decision to Honor Debtsan Executive Call

Indubitably, former President Corazon C. Aquino's decision to honor the outstanding debts of the Republic at the time she assumed the presidency was a policy matter well within her prerogative. It was purely an executive call; hence, beyond judicial scrutiny. The Petition has failed to show grave abuse of discretion that would warrant judicial intervention. I agree with the ponencia of the distinguished Mr. Justice Dante O. Tinga: not only was the act of President Aquino impliedly granted via her vast executive powers; it was also explicitly authorized under Section 20[1] of Article VII of the Constitution.

No Evidence Supporting Criminal or Administrative Charges Against Respondents

For the above reasons, neither can respondents be faulted for drawing up and implementing the Philippine Comprehensive Financing Program for 1992 ("Financing Program"). The Program was a product of the "negotiated-oriented debt strategy" adopted by the Aquino government.[2] Likewise, the assailed debt relief agreements were executed pursuant to that constitutional executive policy.

In addition to questioning respondents' authority to execute the subject agreements, petitioners also claim that several foreign loans that were allegedly fraudulent (if not void for being contrary to public policy) were among the public debts assumed by the government and made eligible for restructuring under the Financing Program. Specifically, they contend that those debts included 14 loans assumed by the government, but which the Commission on Audit (COA) had found to have been contracted or guaranteed fraudulently by former President Ferdinand Marcos and/or his cronies.[3]

Allegedly, by borrowing new money to liquidate those fraudulent or "behest" loans, the country's right to repudiate them were thereby waived by respondents. Thus, the filing of administrative and criminal charges against them are being sought by petitioners. Understandably, the ponencia does not address this argument, because the Petition has failed to substantiate the charges.

A proper resolution of these claims obviously necessitates, inter alia, a review of the assailed contracts. Petitioners have failed, however, to furnish this Court certified copies of the questioned debt-relief agreements. Hence, the Court has no valid basis to determine whether among the public debts assumed and refinanced by the government was any of the fraudulently contracted foreign loan. It is a hornbook rule that whoever alleges the fraud or invalidity of a public document has the burden of proving the allegation with clear, convincing and more than merely preponderant evidence.[4] Unfortunately, absolutely no proof has been offered in the present Petition.

At bottom, a determination of the validity of petitioners' allegation requires a review of factual matters. Certiorari seeks only to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[5] It has often been repeated that the Supreme Court is not a trier of facts.[6] Since factual bases were needed, petitioners could have initially filed their Petition in the lower courts,[7] which had concurrent jurisdiction over the subject matter and which were better equipped to conduct a firsthand examination of factual evidence in support of their allegations.

Besides, as respondents stated in their Comment, "most of the loans covered by the agreement have not yet been the subject of judicial scrutiny as to their validity. Until annulled by proper court decree, such debts continue to be outstanding obligations of the Republic." [8] Unless voided by the courts, the loan contracts are presumed valid.[9] Moreover, unless they themselves are proven to have participated in corrupt or unlawful acts in obtaining the loans, respondents should not be held criminally liable for the allegedly fraudulent contracts entered into by their predecessors in office. As it is, the Petition does not even allege that any of them had any role in the execution of any of the 14 loans reported by COA to be fraudulent.

Thus, I believe that under the circumstances, and insofar as it seeks an order from this Court to have respondents

investigated for any administrative or criminal culpability in relation to the execution of the questioned contracts, the Petition cannot be granted. As I said earlier, no evidence at all has been proffered to warrant such order.

Let me hasten to state, though, that nothing here should preclude the Department of Justice (DOJ) or the Office of the Ombudsman (OMB) from initiating an investigation regarding the 14 loans reported by the COA to have been fraudulently contracted during the Marcos regime.

Criminal Prosecution Proper When There Is Sufficient Evidence

Relevantly, may I add that *PCGG v. Desierto*,^[10] which I had the honor of writing for the Court, had directed the OMB to file the necessary criminal charges against Herminio T. Disini in relation to the awarding of the Philippine Nuclear Power Plant (PNPP) project, which is also mentioned in the present case. The Court found that, contrary to the OMB's findings, there was sufficient evidence establishing a probable cause for the filing of charges against Disini, who "had capitalized, exploited and taken advantage of his close personal relations with the former President x x x [and had] requested and received pecuniary considerations from Westinghouse and Burns & Roe, which were endeavoring to close the PNPP contract with the Philippine government."

Included in the records of that case were Affidavits of key witnesses and various documents supporting the charges of corruption, bribery and other unlawful acts committed during the negotiation for and execution of the PNPP Contract.

The point is that this Court cannot order the prosecution of anyone unless probable cause is shown, as it was in *PCGG v. Desierto*.^[11]

WHEREFORE, I vote to DISMISS the Petition.

[1]This provision states: "The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

"Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority."

[2]Respondents' Comment, p. 3; rollo, p. 58.

[3]Audit Report on the Philippine Public Debt, June 1992, Commission on Audit. Annex "B" of the Petition. Among those debts and the amounts involved are as the following:

Debtor Amount
(\$U.S. M)

1. North Davao Mining Corp. \$117.712
2. Bukidnon Sugar Milling Co., Inc. 68.940
3. United Planters Sugar Milling Co. 62.669
4. Northern Cotabato Sugar Ind. Inc. 45.200

5. Asia Industries Inc. 25.000
6. Domestic Satellite Philippines 18.540
7. PNB Deposit Facility/AMEXCO 17.000
8. Pamplona Redwood Veneer Inc. 15.160
9. Mindanao Coconut Oil Mills 6.900
10. Government Service Insurance System 10.650
11. Philippine Phosphate Fertilizer Corp. 565.514
12. Pagdanganan Timber Products Inc. 13.500
13. Menzi Development Corp. 13.000
14. Sabena Mining Corp. 27.500

Total U.S.\$1,007.285

[4] *Mendezona v. Ozamiz*, 426 Phil. 888, February 6, 2002; *Alonso v. Cebu Country Club, Inc.*, 417 SCRA 115, December 5, 2003.

[5] *Land Bank of the Philippines v. Court of Appeals*, 409 SCRA 455, August 25, 2003; *Oaminal v. Castillo*, 413 SCRA 189, October 8, 2003.

[6] *Republic v. Sandiganbayan*, 402 SCRA 84, April 30, 2003; *Samson v. Office of the Ombudsman*, 439 SCRA 315, September 29, 2004; *First Philippine International Bank v. Court of Appeals*, 252 SCRA 259, January 24, 1996.

[7] The Supreme Court's original jurisdiction to issue writs of certiorari is concurrent with the jurisdictions of the Court of Appeals and the regional trial courts in proper cases within their respective regions. *Ouano v. PGTT International Investment Corp.*, 384 SCRA 589, July 17, 2002; *Celestial v. Cachopero*, 413 SCRA 469, October 15, 2003.

[8] Respondents' Comment, p. 29.

[9] *Mialhe v. Court of Appeals*, 354 SCRA 675, March 20, 2001.

[10] 397 SCRA 171, 201, February 10, 2003, per Panganiban, J.

[11] *Supra*.

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