

**Presentation of DBM Sec. Florencio B. Abad to the Senate Committee on Finance
on the Disbursement Acceleration Program (DAP)**

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With the permission of the chairman.

Senate President Franklin Drilon, Chairman of the Finance Committee Senator Chiz Escudero and members of the committee on finance, my colleagues from the DBCC, Secretary of Finance Cesar Purisima and the NEDA Director General Arsenio Balisacan, as well as my colleagues from the Cabinet and the Executive. Ladies and gentlemen, good morning.

Allow me first to thank the honorable Senators for giving the Department of Budget and Management and my colleagues in the Executive another opportunity to speak about the Disbursement Acceleration Program.

As you may remember, I had already presented DAP to the Senate Committee on Finance in October 2011, during the presentation of the proposed 2012 National Budget. I am very grateful that you have once again welcomed us into these halls to explain DAP anew, and this time for the benefit of the larger public.

Over the last ten months, DAP has risen to the fore of public consciousness but—and most unfortunately—for all the wrong reasons. Since September 2013, this spending acceleration program has been accused of being several things. Those who may have misunderstood the nature and purpose of DAP have labeled it "pork." And then there are those who, operating from spite, malice, or misinformation, have tagged it as "bribery."

But what exactly is DAP? Simply put, the Disbursement Acceleration Program was a spending reform measure for speeding up public expenditure to catalyze economic growth. By implementing DAP, we wanted to ensure that funds are properly used so that social services and public goods are delivered to the people—especially the poor—as swiftly as possible, and with minimal leakages and wastage.

The first question I usually get is: why was DAP needed at all? Why did the Aquino administration have to implement it? Allow me to explain, Mr. Chairman.

As soon as President Aquino assumed his post in 2010, the Administration embarked on an aggressive campaign—one that continues to this day—of bringing greater transparency, accountability, and openness to the Philippine bureaucracy.

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A comprehensive house-cleaning of sorts was thus in order: government departments and agencies were tasked to review their processes and transactions. The Administration was especially keen on overhauling major implementing agencies, where the sheer size and complexity of the organization created prime spaces for graft and corruption to thrive.

Reforming government agencies wasn't just a matter of preventing irregularities from happening. It was also a matter of freeing up operational bottlenecks that prevented the quick and efficient delivery of public services to our people.

How did this happen? In the past, projects in some agencies languished in a maze of paperwork and signatures. The situation was also compounded by poor planning and slow procurement: if funds were released to an agency for a particular project, it usually took more than a year before the project itself could finally get started and completed.

But curing our public institutions of corruption and inefficiency required more than just a strong sense of principle. It required time, energy, and resolve. This became clear enough to us when agencies with the largest projects took on the responsibility of internal reform alongside their regular tasks.

The DPWH is a good example. The agency had gained notoriety for the anomalies and substandard work that many of its projects previously suffered from. But the demands of reforming the DPWH took its toll on the agency's ability to spend its allocation and ultimately implement projects on time.

By the third quarter of 2011, it became clear to us that if we wanted public spending to accelerate enough to spur economic growth, we had to use idle funds—money that was not moving—for projects that could not only be implemented quickly, but which could also create a real impact on the country's economy and the lives of ordinary Filipinos.

Before this, we had already established some key reforms to make spending more transparent, efficient, and responsive to the citizens' needs.

One of these was Zero-Based Budgeting, or ZBB. Through ZBB, we studied the effectiveness of various programs and projects, and modified or removed budgetary support for these items as needed.

We also began the meticulous work of disaggregating lump-sum funds. A lump-sum fund is an allocation that does not specify exactly where the money will go. So, for example, if the Department of Health has P10 billion in lump-sum funds for its Health Facilities Enhancement Program, if it is not disaggregated, there's virtually no way to know where the funds will go until the agency spends it. In many instances, lump sum funds create opportunities for fund misuse and even anomalies.

Despite these interventions for budget transparency and efficiency, low spending levels in the 3rd quarter of 2011 showed us that we had to do more to move expenditures faster and prevent the economy from slipping further. As you can see in this slide, government spending decreased by over 11 percent in the first six months of 2011. By the third quarter of the same year, the country's GDP level peaked only at 3.1 percent, down from the 7.3-percent growth rate posted in the previous year. The situation was hardly an encouraging one.

After careful consideration, we thought it best to use funds that had lain dormant in various places—such as in agencies where the DBM's releases were not used—and to use the money for fast-moving projects that would have an immediate effect on the country's economic health and the well-being of Filipinos.

This was the situation that gave rise to DAP. The Disbursement Acceleration Program was an urgent response to an urgent problem, where low government expenditures posed a significant threat to the country's economic development.

As the honorable Senators must recall, we presented DAP to the Senate Finance Committee in October 2011 as a viable solution for accelerating government expenditures. We knew that this could be done. After all, the generation and use of savings—of which DAP is an example—is not a new practice.

Under the leadership of then-President Cory Aquino, the use of savings took the form of the imposition of reserves, where allocations were withheld because of a fiscal deficit; the practice was thus named the Reserve Control Account. This way of using savings continued on in the Ramos and Estrada administrations. Under the Arroyo administration, the practice was plainly dubbed the "use of Overall Savings".

The practice of generating and using savings bore different names because each administration faced its own unique set of economic and fiscal challenges.

Historically speaking, cross-border transfers from one branch of government to another or to fiscally autonomous agencies—were not uncommon. The slides show that over the last 22 years, savings have been used to augment the budgets of Congress, the Judiciary, and other Constitutional bodies independent from all three branches of government.

Not only has it been done before. We knew that we could implement DAP because the law permitted it.

Chapter 5, Sec. 38 of the Administrative Code explicitly says that the President is authorized to suspend or stop the use of funds allotted to an agency—and to do the same of all other expenditures in the National Budget—if public interest so requires it.

The use of savings is likewise supported by Section 39 of the same chapter, which says that savings can be used to cover a deficit in any other item in the National Budget if the President so approves it.

Finally, Section 49 says that savings provided in the General Appropriations Act may be used to settle the obligations of priority activities that will promote the economic well-being of the nation, among others.

The Aquino administration therefore launched DAP in 2011 to no fanfare, with the exception of a statement by the DBM announcing the program's implementation. However, when DAP finally began making headlines in 2013, we were frequently told that nobody had heard of it. Some groups even implied that the program had been deliberately kept under wraps so that the DBM could avoid the burden of accountability.

But this is ridiculous. Not only did the DBM announce the existence of DAP from its very inception; the launching of DAP was covered by major broadsheets, including the Manila Bulletin, Business Mirror, and Philippine Daily Inquirer.

We later informed the press about fund releases made through DAP, including those for ARMM infrastructure projects, the procurement of Doppler radars for accurate weather forecasting, and the rehabilitation of agri-fishery infrastructure damaged by calamities. These stories were also covered by our beat reporters and published in various newspapers and online websites.

But DAP is more than just a collection of press releases and news stories. Its positive effect on our economy and the lives of ordinary citizens is certain and far-ranging.

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Before launching the program, our GDP grew only by 3.7 percent in 2011. We launched DAP immediately, and from there, we see a dramatic improvement in the country's GDP growth. The country's GDP rose by 6.8 percent in 2012, later soaring higher by 7.23 percent in 2013.

As earlier mentioned, DAP wasn't implemented without thought or design. It was strategic not only in its purpose, but also in its implementation. Remember that we designed DAP not just to speed up spending, but to use public funds to spur socio-economic development.

This is why DAP mostly supported programs that could either fire up the economy or ensure the delivery of critical social services to the country's poorest.

In fact, of the P144.4-billion released through DAP, a whopping 37 percent of those funds were used to support economic services. Infrastructure projects also got a 34-percent share, while Social Services—such as those for education and health care—received 21 percent of total releases.

These figures are fairly impressive, but the public may perhaps be more interested in finding out how DAP benefited the Filipino people. Because we implemented DAP without pomp and circumstance, most of the public are unaware that some of the services we've been delivering were made possible by DAP.

These include the payment of unremitted GSIS Premiums for DepEd Teachers, Sitio Electrification Projects, and TESDA training for work scholarships.

DAP also supported the construction of roads and bridges, as well as various disaster risk management programs and requirements, including DREAM under DOST's Project NOAH and the acquisition of Doppler radars.

The program has even helped bring carabaos to a remote community in Compostela Valley, where the animals have allowed the lumad to transport their banana and corn harvests to the town center in Monkayo at very little cost.

Despite the undeniable benefits brought about by DAP to the country's economy, the Supreme Court nonetheless declared the program partly unconstitutional. This is a point that I wish to reemphasize, however, as there seems to be a common misunderstanding among the public on the High Court's decision. The Supreme Court did not declare DAP as unconstitutional—only some acts and practices made through it.

Two of the practices that the High Court decision struck down are the declaration of savings from unreleased appropriations and withdrawn unobligated allotments and their availability, and the use of Unprogrammed or Standby Appropriations as practiced in DAP. While we recognize the Supreme Court's authority and respect its judgment on these two acts, I believe it may also benefit the public to know exactly what these two practices are, and why we believed that these were our best course of action at a time when underspending was a formidable fiscal challenge.

The declaration of savings under DAP was based on the principle of "Use it or Lose it." In other words: agencies should use the funds released to them as quickly and efficiently as possible, or within the first six months of the fiscal year. Otherwise, they stand to lose their released allocations.

This was an important move, because if agencies waited until the second half of the year to obligate their funds, project implementation is likely to carry on through the *next* fiscal year, and not completed within the year, as planned.

This was unfortunately a regular sight in the bureaucracy, and the sluggish movement of releases towards obligation and project implementation compromised the government's spending performance. More important, though, is its effect on project implementation and service delivery: it doesn't make sense to develop a budget for projects that the people can't benefit from, all because the agency did not use its funds quickly enough.

Through DAP, we decided to withdraw unobligated allotments from agencies not using them, and declare them, together with unreleased appropriations, as savings the moment they hit the midyear mark. This allowed us to augment the funding for other programs and projects that needed the budgetary support more, and which had to be implemented very quickly within the year. Working this way, we were able to get more projects rolled out by the end of the fiscal year.

However, the Supreme Court also ruled that savings could only be declared at the very end of the fiscal year.

Unprogrammed or Standby Appropriations are authorized by Congress in the annual General Appropriations Act. The government can only activate these standby appropriations when revenues are collected from sources that are not in the program or new sources from revenues. The standby appropriations can also be used when proceeds from perfected loan agreements are secured.

As soon as the National Treasurer certifies that excess or new sources of revenues have been generated, or loan proceeds secured, these additional funds can then be used for urgent or new projects or priority fund requirements, as provided for in the GAA.

The budgets are then released to agencies immediately after that, and because the bidding process can take four to six months, projects can already be rolled out before the fiscal year ends.

However, if we are to follow the Supreme Court's ruling on Standby appropriations, excess revenues or new sources of revenues should be considered as a whole and not individually, can only be declared at the end of the Fiscal Year, and not as soon as they are realized. The Treasurer's certification on the availability of funds can only be secured within the first quarter of the *next* fiscal year.

By the time the budget is released to agencies or programs in urgent need of support, project implementation would have begun too late. This would defeat the very purpose of a Standby Appropriation as authorized by Congress.

As you can see, DAP's take on Standby Appropriations and the declaration of savings allowed government to make optimal use of funds, so that public money moved quickly towards more efficient project implementation and service delivery. At the same time, the acceleration of these expenditures played a sure role in the expansion of our economy, and ultimately, in the consistent socio-economic growth that we have enjoyed over the last four years.

While I bow to the wisdom of the Supreme Court, I must say, with all due respect, that its decision on these issues may undo the progress we have achieved so far. To approach Standby Appropriations and the declaration of savings within such rigid parameters will not encourage quick and efficient public spending. Nor will it push agencies to make the most of the funds released to them so that citizens can benefit from the public services due them.

I likewise respect the Supreme Court's position on cross-border transfers, which it found unconstitutional as practiced under DAP. Nonetheless, I think it also behooves us in the Executive to clarify why cross-border transfers were made through the Disbursement Acceleration Program, and why these fund transfers do not jeopardize the principle of separation of powers.

As separate as the three branches of government are, there remains a relationship of interdependence among them, belonging as they are to a single government. This interdependence is such that the success of one hinges on the ability of the other two to support it.

Certain instances make cross-border transfers necessary to achieve an urgent public good. Take the case in 2012 when the Supreme Court mandated COMELEC to buy, instead of lease, the PCOS machines that were needed for the 2013 elections. This led to an additional funding requirement of 4.1 Billion, which COMELEC savings could not accommodate. With the elections looming near, restoring to supplemental funding through Congress was not practical, leaving the COMELEC with no other option but to seek the Executive's assistance to ensure that we do not return to manual elections.

It's also worth noting that cross-border transfers under the Aquino Administration have all been made based on the request of the receiving government agency. The greater risk to independence and the principle of check and balances, happens not when funds are augmented upon the request of the receiving entity, but rather likely more when funds intended for independent agencies are withheld by the Executive, as was done in previous administrations.

Nonetheless, the High Court ruled that it was "beyond debate that the implementation of the DAP yielded undeniably positive results that enhanced the economic welfare of the country." This was exactly our position, and we believed as well that we had sufficiently established the legal and historical bases of DAP.

It was therefore a shock to us in the Executive to find that the Supreme Court ruling bore two startling paragraphs saying, quite simply, that "the doctrine of operative fact and its attendant presumption of good faith cannot apply to the authors, proponents, and implementers of the DAP, unless they prove otherwise." But how can criminal, civil, and administrative liability be suggested in this case when the court earlier found that the doctrine of operative fact applies to the adoption and implementation of DAP?

And here I must quote Associate Justice Marvic Leonen who, in his concurring opinion, said that "the declaration of unconstitutionality per se is the basis for determining liability is a dangerous proposition. It is not proper that there are suggestions of administrative or criminal liability even before the proper charges are raised, investigated, and filed."

He went on to add that "in [the Supreme Court's jurisdiction], the presumption of good faith is a universal one. It assures the fundamental requisites of due process and fairness. It frames a judicial attitude that requires us to be impartial."

If my humble recollection serves me right, this unprecedented departure from the long-held interpretation of the doctrine of operative fact as applied to actors in DAP, is worrisome because

it is discordant with the presumption of good faith and the presumption of regularity that public officials are accorded in the performance of their duties and functions. More troubling is the chilling effect of those two stray paragraphs on the Aquino administration's momentum for reform. Because if public servants are presumed to have acted in bad faith in the course of their reform efforts, we can only expect a bureaucracy that second-guesses itself before taking creative action, a bureaucracy which shakes in its boots while performing just the bare minimum of its duties.

What a shame if we now presume bad faith of those who have in fact acted in the country's best interests. At no other period in our recent history has the Philippine bureaucracy achieved so much in so little time, thanks to innovative governance. The Philippines did not become one of Asia's best-performing economies by playing it safe. We did not become global pioneers in government transparency and openness by playing it safe. We did all these through the bold and single-minded pursuit of innovation and reform under the leadership of President Aquino.

But how can we compel our public institutions to find inventive solutions to persistent problems when we stifle creativity? If a reform measure works exactly as it should, if one must test the boundaries of a system to find the best possible solution for a challenge that—until then—could not be resolved, shouldn't the law respond as inventively and legitimize these measures? Mustn't the law encourage innovation?

Honorable senators, we in the Executive launched DAP because the unique fiscal challenges we confronted in 2011 demanded as unique a solution. DAP was successful—even the Supreme Court says as much—and we believed that the integrity and soundness of the program's design was and continuous to be defensible.

The Supreme Court, unfortunately, did not see it this way, and we respect and accept its decision. And while the High Court's ruling represents a setback for the Executive, it will not paralyze us into inaction.

Already, we are finding ways to address the issues raised by the Supreme Court in the course of our preparations for the 2015 Budget. Within the DBM, we're looking at sharpening and tightening budget operations and policies so we leave no room for inefficiency or ambiguity. We are also beginning to codify budget operations, besides committing ourselves further on reforms we've already established.

Furthermore, we are now in discussion with some of the leaders of both houses of Congress on how we can address the other problems that the ruling raised, which we in the Executive cannot

resolve without the Legislature's aid. All contentions around DAP—except that on the cross-border transfers—are rooted in the differing interpretations of the GAA, applicable laws, and budget rules: what exactly do "Savings" mean? When can we declare savings as such? How exactly should we define the use of savings and "augmentation"? These are some of the questions that we in the Executive can jointly address with our colleagues in the Legislature.

In the interest of transparency and accountability, I likewise present to the Senate through this honorable committee a copy of the complete list of all projects facilitated through DAP from 2011 to 2013. The list identifies the name of every project implemented through the program, as well as the implementing agency, SARO details, the Programs/Activities/Projects augmented, and their respective status.

Finally, on Friday last week, Mr. Chairman, we filed a motion for the Supreme Court to reconsider its decision on DAP. Whichever way it decides we wish to assure the public that the Aquino administration—through the Department of Budget and Management—will continue to open up spaces for wide-reaching budget reform. We will still endeavor towards a standard of government expenditure that we ourselves set in DAP, where the government spends funds quickly and efficiently, where the utilization of public funds is guided by the principles of transparency, accountability, and citizen empowerment, and where every peso spent by government goes exactly where it should: to the Filipino people's own benefit.

Thank you.