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[G.R. No. 199802, July 03, 2018]

CONGRESSMAN HERMILANDO I. MANDANAS; MAYOR EFREN B. DIONA; MAYOR ANTONINO A. AURELIO; KAGAWAD MARIO ILAGAN; BARANGAY CHAIR PERLITO MANALO; BARANGAY CHAIR MEDEL MEDRANO; BARANGAY KAGAWAD CRIS RAMOS; BARANGAY KAGAWAD ELISA D. BALBAGO, AND ATTY. JOSE MALVAR VILLEGAS, PETITIONERS, V. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.; SECRETARY CESAR PURISIMA, DEPARTMENT OF FINANCE; SECRETARY FLORENCIO H. ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT; COMMISSIONER KIM JACINTO-HENARES, BUREAU OF INTERNAL REVENUE; AND NATIONAL TREASURER ROBERTO TAN, BUREAU OF THE TREASURY, RESPONDENTS.

[G.R. No. 208488, July 3, 2018]

HONORABLE ENRIQUE T. GARCIA, JR., IN HIS PERSONAL AND OFFICIAL CAPACITY AS REPRESENTATIVE OF THE 2ND DISTRICT OF THE PROVINCE OF BATAAN, PETITIONER, V. HONORABLE [PAQUITO] N. OCHOA, JR., EXECUTIVE SECRETARY; HONORABLE CESAR V. PURISIMA, SECRETARY, DEPARTMENT OF FINANCE; HONORABLE FLORENCIO H. ABAD, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT; HONORABLE KIM S. JACINTO-HENARES, COMMISSIONER, BUREAU OF INTERNAL REVENUE; AND HONORABLE ROZZANO RUFINO B. BIAZON, COMMISSIONER, BUREAU OF CUSTOMS, RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

The petitioners hereby challenge the manner in which the *just share* in the national taxes of the local government units (LGUs) has been computed.

Antecedents

One of the key features of the 1987 Constitution is its push towards decentralization of government and local autonomy. Local autonomy has two facets, the administrative and the fiscal. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the National Government, as well as the power to allocate their resources in accordance with their own priorities.[1] Such autonomy is

as indispensable to the viability of the policy of decentralization as the other.

Implementing the constitutional mandate for decentralization and local autonomy, Congress enacted Republic Act No. 7160, otherwise known as the *Local Government Code* (LGC), in order to guarantee the fiscal autonomy of the LGUs by specifically providing that:

> SECTION 284. *Allotment of Internal Revenue Taxes*. — Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
>
> (b) On the second year, thirty-five percent (35%); and
>
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the National Government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

The share of the LGUs, heretofore known as the Internal Revenue Allotment (IRA), has been regularly released to the LGUs. According to the implementing rules and regulations of the LGC, the IRA is determined on the basis of the actual collections of the National Internal Revenue Taxes (NIRTs) as certified by the Bureau of Internal Revenue (BIR).[2]

G.R. No. 199802 (Mandanas, *et al.*) is a special civil action for *certiorari*, prohibition and *mandamus* assailing the manner the General Appropriations Act (GAA) for FY 2012 computed the IRA for the LGUs.

Mandanas, *et al*. allege herein that certain collections of NIRTs by the Bureau of Customs (BOC) – specifically: excise taxes, value added taxes (VATs) and documentary stamp taxes (DSTs) – have not been included in the base amounts for the computation of the IRA; that such taxes, albeit collected by the BOC, should form part of the base from which the IRA should be computed because they constituted NIRTs; that, consequently, the release of the additional amount of P60,750,000,000.00 to the LGUs as their IRA for FY 2012 should be ordered; and that for the same reason the LGUs should also be released their unpaid IRA for FY 1992 to FY 2011, inclusive, totaling P438,103,906,675.73.

In G.R. No. 208488, Congressman Enrique Garcia, Jr., the lone petitioner, seeks the writ of *mandamus* to compel the respondents thereat to compute the just share of the LGUs on the basis of *all national taxes*. His petition insists on a literal reading of Section 6, Article X of the 1987 Constitution. He avers that the insertion by Congress of the words *internal revenue* in the phrase *national taxes* found in Section 284 of the LGC caused the diminution of the base for determining the *just share* of the LGUs, and should be declared unconstitutional; that, moreover, the exclusion of certain taxes and accounts pursuant to or in accordance with special laws was similarly constitutionally untenable; that the VATs and excise taxes collected by the BOC should be included in the computation of the IRA; and that the respondents should compute the IRA on the basis of all national tax collections, and thereafter distribute any shortfall to the LGUs.

It is noted that named as common respondents were the then incumbent Executive Secretary, Secretary of Finance, the Secretary of the Department of Budget and Management (DBM), and the Commissioner of Internal Revenue. In addition, Mandanas, *et al*. impleaded the National Treasurer, while Garcia added the Commissioner of Customs.

The cases were consolidated on October 22, 2013.[3] In the meanwhile, Congressman Garcia, Jr. passed away. Jose Enrique Garcia III, who was subsequently elected to the same congressional post, was substituted for Congressman Garcia, Jr. as the petitioner in G.R. No. 208488 under the resolution promulgated on August 23, 2016.[4]

In response to the petitions, the several respondents, represented by the Office of the Solicitor General (OSG), urged the dismissal of the petitions upon procedural and substantive considerations.

Anent the procedural considerations, the OSG argues that the petitions are procedurally defective because, firstly, *mandamus* does not lie in order to achieve the reliefs sought because Congress may not be compelled to appropriate the sums allegedly illegally withheld for to do so will violate the doctrine of separation of powers; and, secondly, *mandamus* does not also lie to compel the DBM to release the amounts to the LGUs because such disbursements will be contrary to the purposes specified in the GAA; that Garcia has no clear legal right to sustain his suit for *mandamus*; that the filing of Garcia's suit violates the doctrine of hierarchy of courts; and that Garcia's petition seeks declaratory relief but the Court cannot grant such relief in the exercise of its original jurisdiction.

On the substantive considerations, the OSG avers that Article 284 of the LGC is consistent with the mandate of Section 6, Article X of the 1987 Constitution to the effect that the LGUs shall have a *just share* in the national taxes; that the determination of the *just share* is within the discretion of Congress; that the limitation under the LGC of the basis for the *just share* in the NIRTs was within the powers granted to Congress by the 1987 Constitution; that the LGUs have been receiving their *just share* in the national taxes based on the correct base amount; that Congress has the authority to exclude certain taxes from the base amount in computing the IRA; that there is a distinction between the VATs, excise taxes and DSTs collected by the BIR, on one hand, and the VATs, excise taxes and DSTs collected by the BOC, on the other, thereby warranting their different treatment; and that Development Budget Coordination Committee (DBCC) Resolution No. 2003-02 dated September 4, 2003 has limited the base amount for the computation of the IRA to the "cash collections based on the BIR data as reconciled with the Bureau of Treasury;" and that the collection

of such national taxes by the BOC should be excluded.

Issues

The issues for resolution are limited to the following, namely:

I.

> Whether or not *mandamus* is the proper vehicle to assail the constitutionality of the relevant provisions of the GAA and the LGC;

II.

> Whether or not Section 284 of the LGC is unconstitutional for being repugnant to Section 6, Article X of the 1987 Constitution;

III.

> Whether or not the existing shares given to the LGUs by virtue of the GAA is consistent with the constitutional mandate to give LGUs a "just share" to national taxes following Article X, Section 6 of the 1987 Constitution;

IV.

> Whether or not the petitioners are entitled to the reliefs prayed for.

Simply stated, the petitioners raise the novel question of whether or not the exclusion of certain national taxes from the base amount for the computation of the *just share* of the LGUs in the national taxes is constitutional.

Ruling of the Court

The petitions are partly meritorious.

I
***Mandamus* is an improper remedy**

Mandanas, *et al*. seek the writs of *certiorari,* prohibition and *mandamus*, while Garcia prays for the writ of *mandamus*. Both groups of petitioners impugn the validity of Section 284 of the LGC.

The remedy of *mandamus* is defined in Section 3, Rule 65 of the *Rules of Court*, which provides:

> Section 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to

> be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

For the writ of *mandamus* to issue, the petitioner must show that the act sought to be performed or compelled is ministerial on the part of the respondent. An act is ministerial when it does not require the exercise of judgment and the act is performed pursuant to a legal mandate. The burden of proof is on the *mandamus* petitioner to show that he is entitled to the performance of a legal right, and that the respondent has a corresponding duty to perform the act. The writ of *mandamus* may not issue to compel an official to do anything that is not his duty to do, or that is his duty not to do, or to obtain for the petitioner anything to which he is not entitled by law.[5]

Considering that its determination of what constitutes the *just share* of the LGUs in the national taxes under the 1987 Constitution is an entirely discretionary power, Congress cannot be compelled by writ of *mandamus* to act either way. The discretion of Congress thereon, being exclusive, is not subject to external direction; otherwise, the delicate balance underlying our system of government may be unduly disturbed. This conclusion should at once then demand the dismissal of the Garcia petition in G.R. No. 208488, but we do not dismiss it. Garcia has attributed the non-release of some portions of their IRA balances to an alleged congressional indiscretion – the diminution of the base amount for computing the LGU's just share. He has asserted that Congress altered the constitutional base not only by limiting the base to the NIRTs instead of including therein all national taxes, but also by excluding some national taxes and revenues that only benefitted a few LGUs to the detriment of the rest of the LGUs.

Garcia's petition, while dubbed as a petition for *mandamus*, is also a petition for *certiorari* because it alleges that Congress thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction. It is worth reminding that the actual nature of every action is determined by the allegations in the body of the pleading or the complaint itself, not by the nomenclature used to designate the same.[6] Moreover, neither should the prayer for relief be controlling; hence, the courts may still grant the proper relief as the facts alleged in the pleadings and the evidence introduced may warrant even without a prayer for specific remedy.[7]

In this regard, Garcia's allegation of the unconstitutionality of the insertion by Congress of the words internal revenue in the phrase *national taxes* justifies treating his petition as one for *certiorari*. It becomes our duty, then, to assume jurisdiction over his petition. In *Araullo v. Aquino III*,[8] the Court has emphatically opined that the Court's *certiorari* jurisdiction under the expanded judicial power as stated in the second paragraph of Section 1, Article VIII of the Constitution can be asserted:

> xxxx to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive

> action. This entrustment is consistent with the republican system of checks and balances.[9]

Further, observing that one of the reliefs being sought by Garcia is identical to the main relief sought by Mandanas, *et al*., the Court should rightly dwell on the substantive arguments posited by Garcia to the extent that they are relevant to the ultimate resolution of these consolidated suits.

II.
Municipal corporations and their relationship with Congress

The correct resolution and fair disposition of the issues interposed for our consideration require a review of the basic principles underlying our system of local governments, and of the extent of the autonomy granted to the LGUs by the 1987 Constitution.

Municipal corporations are now commonly known as local governments. They are the bodies politic established by law partly as agencies of the State to assist in the civil governance of the country. Their chief purpose has been to regulate and administer the local and internal affairs of the cities, municipalities or districts. They are legal institutions formed by charters from the sovereign power, whereby the populations within communities living within prescribed areas have formed themselves into bodies politic and corporate, and assumed their corporate names with the right of continuous succession and for the purposes and with the authority of subordinate self-government and improvement and the local administration of the affairs of the State.[10]

Municipal corporations, being the mere creatures of the State, are subject to the will of Congress, their creator. Their continued existence and the grant of their powers are dependent on the discretion of Congress. On this matter, Judge John F. Dillon of the State of Iowa in the United States of America enunciated in *Merriam v. Moody's Executors*[11] the rule of statutory construction that came to be oft-mentioned as Dillon's Rule, to wit:

> [A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation-not simply convenient but indispensible; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation-against the existence of the powers.[12]

The formulation of Dillon's Rule has since undergone slight modifications. Judge Dillon himself introduced some of the modifications through his post-*Merriam* writings with the objective of alleviating the original formulation's harshness. The word *fairly* was added to the second proviso; the word absolutely was deleted from the third proviso; and the words *reasonable* and *substantial* were added to the fourth proviso, thusly:

> x x x second, those necessarily or *fairly* implied in or incident to the powers expressly granted; third, those essential to x x x. Any fair, reasonable, doubt.[13]

The modified Dillon's Rule has been followed in this jurisdiction, and has remained despite both the

1973 Constitution and the 1987 Constitution mandating autonomy for local governments. This has been made evident in several rulings of the Court, one of which was that handed down in *Magtajas v. Pryce Properties Corporation, Inc.*:[14]

> In light of all the above considerations, we see no way of arriving at the conclusion urged on us by the petitioners that the ordinances in question are valid. On the contrary, we find that the ordinances violate P.D. 1869, which has the character and force of a statute, as well as the public policy expressed in the decree allowing the playing of certain games of chance despite the prohibition of gambling in general.
>
> The rationale of the requirement that the ordinances should not contravene a statute is obvious. **Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.**
>
> > **Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.**
>
> **This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.** [Bold underscoring supplied for emphasis]

Also, in the earlier ruling in *Ganzon v. Court of Appeals*,[15] the Court has pointed out that the 1987 Constitution, in mandating autonomy for the LGUs, did not intend to deprive Congress of its

authority and prerogatives over the LGUs.

Nonetheless, the LGC has tempered the application of Dillon's Rule in the Philippines by providing a norm of interpretation in favor of the LGUs in its Section 5(a), to wit:

> x x x x
>
> (a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the local government unit. **Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned**; [Bold underscoring supplied for emphasis]
>
> x x x x

III.
The extent of local autonomy in the Philippines

Regardless, there remains no question that Congress possesses and wields plenary power to control and direct the destiny of the LGUs, subject only to the Constitution itself, for Congress, just like any branch of the Government, should bow down to the majesty of the Constitution, which is always supreme.

The 1987 Constitution limits Congress' control over the LGUs by ordaining in Section 25 of its Article II that: "*The State shall ensure the autonomy of local governments*." The autonomy of the LGUs as thereby ensured does not contemplate the fragmentation of the Philippines into a collection of mini-states,[16] or the creation of *imperium in imperio*.[17] The grant of autonomy simply means that Congress will allow the LGUs to perform certain functions and exercise certain powers in order not for them to be overly dependent on the National Government subject to the limitations that the 1987 Constitution or Congress may impose.[18] Local autonomy recognizes the wholeness of the Philippine society in its ethnolinguistic, cultural, and even religious diversities.[19]

The constitutional mandate to ensure local autonomy refers to decentralization.[20] In its broad or general sense, decentralization has two forms in the Philippine setting, namely: the decentralization of power and the decentralization of administration. The decentralization of power involves the abdication of political power in favor of the autonomous LGUs as to grant them the freedom to chart their own destinies and to shape their futures with minimum intervention from the central government. This amounts to *self-immolation* because the autonomous LGUs thereby become accountable not to the central authorities but to their constituencies. On the other hand, the decentralization of administration occurs when the central government delegates administrative powers to the LGUs as the means of broadening the base of governmental powers and of making the LGUs more responsive and accountable in the process, and thereby ensure their fullest development as self-reliant communities and more effective partners in the pursuit of the goals of national development and social progress. This form of decentralization further relieves the central government of the burden of managing local affairs so that it can concentrate on national concerns.[21]

Two groups of LGUs enjoy decentralization in distinct ways. The decentralization of power has been given to the regional units (namely, the Autonomous Region for Muslim Mindanao [ARMM] and the constitutionally-mandated Cordillera Autonomous Region [CAR]). The other group of LGUs (*i.e.*, provinces, cities, municipalities and barangays) enjoy the decentralization of administration.[22] The distinction can be reasonably understood. The provinces, cities, municipalities and barangays are given decentralized administration to make governance at the local levels more directly responsive and effective. In turn, the economic, political and social developments of the smaller political units are expected to propel social and economic growth and development.[23] In contrast, the regional autonomy of the ARMM and the CAR aims to permit determinate groups with common traditions and shared social-cultural characteristics to freely develop their ways of life and heritage, to exercise their rights, and to be in charge of their own affairs through the establishment of a special governance regime for certain member communities who choose their own authorities from within themselves, and exercise the jurisdictional authority legally accorded to them to decide their internal community affairs.[24]

It is to be underscored, however, that the decentralization of power in favor of the regional units is not unlimited but involves only the powers enumerated by Section 20, Article X of the 1987 Constitution and by the acts of Congress. For, with various powers being devolved to the regional units, the grant and exercise of such powers should always be consistent with and limited by the 1987 Constitution and the national laws.[25] In other words, the powers are guardedly, not absolutely, abdicated by the National Government.

Illustrative of the limitation is what transpired in *Sema v. Commission on Elections*,[26] where the Court struck down Section 19, Article VI of Republic Act No. 9054 (*An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, Amending for the Purpose Republic Act No. 6734, entitled "An Act Providing for the Autonomous Region in Muslim Mindanao, " as Amended*) insofar as the provision granted to the ARMM the power to create provinces and cities, and consequently declared as void Muslim Mindanao Autonomy Act No. 201 creating the Province of Shariff Kabunsuan for being contrary to Section 5, Article VI and Section 20, Article X of the 1987 Constitution, as well as Section 3 of the Ordinance appended to the 1987 Constitution. The Court clarified therein that only Congress could create provinces and cities. This was because the creation of provinces and cities necessarily entailed the creation of legislative districts, a power that only Congress could exercise pursuant to Section 5, Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the Constitution; as such, the ARMM would be thereby usurping the power of Congress to create legislative districts and national offices.[27]

The 1987 Constitution has surely encouraged decentralization by mandating that a system of decentralization be instituted through the LGC in order to enable a more responsive and accountable local government structure.[28] It has also delegated the power to tax to the LGUs by authorizing them to create their own sources of income that would make them self-reliant.[29] It further ensures that each and every LGU will have a just share in national taxes as well in the development of the national wealth.[30]

The LGC has further delineated in its Section 3 the different operative principles of decentralization

to be adhered to consistently with the constitutional policy on local autonomy, *viz.*:

> Sec. 3. Operative Principles of Decentralization –
>
> The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:
>
> > (a) There shall be an effective allocation among the different local government units of their respective powers, functions, responsibilities, and resources;
> >
> > (b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities;
> >
> > (c) Subject to civil service law, rules and regulations, local officials and employees paid wholly or mainly from local funds shall be appointed or removed, according to merit and fitness, by the appropriate appointing authority;
> >
> > (d) The vesting of duty, responsibility, and accountability in local government units shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions: hence, they shall have the power to create and broaden their own sources of revenue and the right to a just share in national taxes and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas;
> >
> > (e) Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions;
> >
> > (f) Local government units may group themselves, consolidate or coordinate their efforts, services, and resources commonly beneficial to them;
> >
> > (g) The capabilities of local government units, especially the municipalities and barangays, shall be enhanced by providing them with opportunities to participate actively in the implementation of national programs and projects;
> >
> > (h) There shall be a continuing mechanism to enhance local autonomy not only by legislative enabling acts but also by administrative and organizational reforms;
> >
> > (i) Local government units shall share with the national government the

responsibility in the management and maintenance of ecological balance within their territorial jurisdiction, subject to the provisions of this Code and national policies;

(j) Effective mechanisms for ensuring the accountability of local government units to their respective constituents shall be strengthened in order to upgrade continually the quality of local leadership;

(k) The realization of local autonomy shall be facilitated through improved coordination of national government policies and programs an extension of adequate technical and material assistance to less developed and deserving local government units;

(l) The participation of the private sector in local governance, particularly in the delivery of basic services, shall be encouraged to ensure the viability of local autonomy as an alternative strategy for sustainable development; and

(m) The national government shall ensure that decentralization contributes to the continuing improvement of the performance of local government units and the quality of community life.

Based on the foregoing delineation, decentralization can be considered as the decision by the central government to empower its subordinates, whether geographically or functionally constituted, to exercise authority in certain areas. It involves decision-making by subnational units, and is typically a delegated power, whereby a larger government chooses to delegate authority to more local governments.[31] It is also a process, being the set of policies, electoral or constitutional reforms that transfer responsibilities, resources or authority from the higher to the lower levels of government.[32] It is often viewed as a shift of authority towards local governments and away from the central government, with total government authority over society and economy imagined as fixed.[33]

As a system of transferring authority and power from the National Government to the LGUs, decentralization in the Philippines may be categorized into four, namely: (1) political decentralization or devolution; (2) administrative decentralization or deconcentration; (3) fiscal decentralization; and (4) policy or decision-making decentralization.

Political decentralization or devolution occurs when there is a transfer of powers, responsibilities, and resources from the central government to the LGUs for the performance of certain functions. It is a more liberal form of decentralization because there is an actual transfer of powers and responsibilities. It aims to grant greater autonomy to the LGUs in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities.[34] It is an act by which the National Government confers power and authority upon the various LGUs to perform specific functions and responsibilities.[35] It encompasses reforms to open sub-national representation and policies to "devolve political authority or electoral capacities to subnational actors."[36] Section 16 to Section 19 of the LGC characterize political decentralization in

the LGC as different LGUs empowered to address the different needs of their constituents. In contrast, devolution in favor of the regional units is more expansive because they are given the authority to regulate a wider array of subjects, including personal, family and property relations.

Administrative decentralization or deconcentration involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local offices.[37] Consistent with this concept, the LGC has created the Local School Boards,[38] the Local Health Boards[39] and the Local Development Councils,[40] and has transferred some of the authority from the agencies of the National Government, like the Department of Education and the Department of Health, to such bodies to better cope up with the needs of particular localities.

Fiscal decentralization means that the LGUs have the power to create their own sources of revenue in addition to their just share in the national taxes released by the National Government. It includes the power to allocate their resources in accordance with their own priorities. It thus extends to the preparation of their budgets, so that the local officials have to work within the constraints of their budgets. The budgets are not formulated at the national level and imposed on local governments, without regard as to whether or not they are relevant to local needs and resources. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials, who in any case are partners in the attainment of national goals, is recognized and addressed.[41]

Fiscal decentralization emanates from a specific constitutional mandate that is expressed in several provisions of Article X (*Local Government*) of the 1987 Constitution, specifically: Section 5;[42] Section 6;[43] and Section 7.[44]

The constitutional authority extended to each and every LGU to create its own sources of income and revenue has been formalized from Section 128 to Section 133 of the LGC. To implement the LGUs' entitlement to the just share in the national taxes, Congress has enacted Section 284 to Section 288 of the LGC. Congress has further enacted Section 289 to Section 294 of the LGC to define the share of the LGUs in the national wealth. Indeed, the requirement for the automatic release to the LGUs of their just share in the national taxes is but the consequence of the constitutional mandate for fiscal decentralization.[45]

For sure, fiscal decentralization does not signify the absolute freedom of the LGUs to create their own sources of revenue and to spend their revenues unrestrictedly or upon their individual whims and caprices. Congress has subjected the LGUs' power to tax to the guidelines set in Section 130 of the LGC and to the limitations stated in Section 133 of the LGC. The concept of local fiscal autonomy does not exclude any manner of intervention by the National Government in the form of supervision if only to ensure that the local programs, fiscal and otherwise, are consistent with the national goals.[46]

Lastly, policy- or decision-making decentralization exists if at least one sub-national tier of government has exclusive authority to make decisions on at least one policy issue.[47]

In fine, certain limitations are and can be imposed by Congress in all the forms of decentralization, for local autonomy, whether as to power or as to administration, is not absolute. The LGUs remain

to be the tenants of the will of Congress subject to the guarantees that the Constitution itself imposes.

IV.
Section 284 of the LGC deviates from the plain language of Section 6 of Article X of the 1987 Constitution

Section 6, Article X the 1987 Constitution textually commands the allocation to the LGUs of a *just share* in the national taxes, *viz.*:

> Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Section 6, when parsed, embodies three mandates, namely: (1) the LGUs shall have a *just share* in the *national taxes*; (2) the *just share* shall be *determined by law*; and (3) the *just share* shall be *automatically released* to the LGUs.[48]

Congress has sought to carry out the second mandate of Section 6 by enacting Section 284, Title III (*Shares of Local Government Units in the Proceeds of National Taxes*), of the LGC, which is again quoted for ready reference:

> Section 284. *Allotment of Internal Revenue Taxes*. - Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
>
> (b) On the second year, thirty-five percent (35%); and
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> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

There is no issue as to what constitutes the LGUs' *just share* expressed in percentages of the national taxes (*i.e.*, 30%, 35% and 40% stipulated in subparagraphs (a), (b), and (c) of Section 284).

Yet, Section 6, *supra*, mentions *national taxes* as the source of the *just share* of the LGUs while Section 284 ordains that the *share* of the LGUs be taken from *national internal revenue* taxes instead.

Has not Congress thereby infringed the constitutional provision?

Garcia contends that Congress has exceeded its constitutional boundary by limiting to the NIRTs the base from which to compute the *just share* of the LGUs.

We agree with Garcia's contention.

Although the power of Congress to make laws is plenary in nature, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution.[49] The phrase *national internal revenue taxes* engrafted in Section 284 is undoubtedly more restrictive than the term *national taxes* written in Section 6. As such, Congress has actually departed from the letter of the 1987 Constitution stating that *national taxes* should be the base from which the *just share* of the LGU comes. Such departure is impermissible. *Verba legis non est recedendum* (from the words of a statute there should be no departure).[50] Equally impermissible is that Congress has also thereby curtailed the guarantee of fiscal autonomy in favor of the LGUs under the 1987 Constitution.

Taxes are the enforced proportional contributions exacted by the State from persons and properties pursuant to its sovereignty in order to support the Government and to defray all the public needs. Every tax has three elements, namely: (a) it is an enforced proportional contribution from persons and properties; (b) it is imposed by the State by virtue of its sovereignty; and (c) it is levied for the support of the Government.[51] Taxes are classified into national and local. National taxes are those levied by the National Government, while local taxes are those levied by the LGUs.[52]

What the phrase *national internal revenue taxes* as used in Section 284 included are all the taxes enumerated in Section 21 of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, *viz*.:

> Section 21. *Sources of Revenue*. — The following taxes, fees and charges are deemed to be national internal revenue taxes:
>
> (a) Income tax;
> (b) Estate and donor's taxes;
> (c) Value-added tax;
> (d) Other percentage taxes;
> (e) Excise taxes;
> (f) Documentary stamp taxes; and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

In view of the foregoing enumeration of what are the national internal revenue taxes, Section 284 has effectively deprived the LGUs from deriving their *just share* from *other* national taxes, like the customs duties.

Strictly speaking, customs duties are also taxes because they are exactions whose proceeds become public funds. According to *Garcia v. Executive Secretary*,[53] *customs duties* is the nomenclature given to taxes imposed on the importation and exportation of commodities and merchandise to or from a foreign country. Although customs duties have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes, it is often difficult to say which of the two is the principal objective in a particular instance, for, verily, customs duties, much like internal revenue taxes, are rarely designed to achieve only one policy objective.[54] We further note that Section 102(oo) of R.A. No. 10863 (*Customs Modernization and Tariff Act*) expressly includes all fees and charges imposed under the Act under the blanket term of *taxes*.

It is clear from the foregoing clarification that the exclusion of *other* national taxes like customs duties from the base for determining the *just share* of the LGUs contravened the express constitutional edict in Section 6, Article X the 1987 Constitution.

Still, the OSG posits that Congress can manipulate, by law, the base of the allocation of the just share in the national taxes of the LGUs.

The position of the OSG cannot be sustained. Although it has the primary discretion to determine and fix the *just share* of the LGUs in the national taxes (*e.g.*, Section 284 of the LGC), Congress cannot disobey the express mandate of Section 6, Article X of the 1987 Constitution for the *just share* of the LGUs to be derived from the *national taxes*. The phrase as *determined by law* in Section 6 follows and qualifies the phrase *just share*, and cannot be construed as qualifying the succeeding phrase *in the national taxes*. The intent of the people in respect of Section 6 is really that the base for reckoning the *just share* of the LGUs should includes all national taxes. To read Section 6 differently as requiring that *the just share of LGUs in the national taxes shall be determined by law* is tantamount to the unauthorized revision of the 1987 Constitution.

V.
Congress can validly exclude taxes
that will constitute the base amount
for the computation of the IRA only if
a Constitutional provision allows such exclusion

Garcia submits that even assuming that the present version of Section 284 of the LGC is constitutionally valid, the implementation thereof has been erroneous because Section 284 does not authorize any exclusion or deduction from the collections of the NIRTs for purposes of the computation of the allocations to the LGUs. He further submits that the exclusion of certain NIRTs diminishes the fiscal autonomy granted to the LGUs. He claims that the following NIRTs have been illegally excluded from the base for determining the fair share of the LGUs in the IRA, to wit:

(1) NIRTs collected by the cities and provinces and divided exclusively among the LGUs of the Autonomous Region for Muslim Mindanao (ARMM), the regional government and the central government, pursuant to Section 15[55] in relation to Section 9,[56] Article IX of R.A. No. 9054 (*An Act to Strengthen and Expand the Organic Act for the Autonomous Region in Muslim Mindanao, amending for the purpose Republic Act No.*

6734, entitled An Act providing for an Organic Act for the Autonomous Region in Muslim Mindanao);

(2) The shares in the excise taxes on mineral products of the different LGUs, as provided in Section 287 of the NIRC[57] in relation to Section 290 of the LGC;[58]

(3) The shares of the relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc.[59] and Philippine Racing Club, Inc.;[60]

(4) The shares of various municipalities in VAT collections under R.A. No. 7643 (*An Act to Empower the Commissioner of Internal Revenue to Require the Payment of the Value Added Tax Every Month and to Allow Local Government Units to Share in VAT Revenue, Amending for this Purpose Certain Sections of the National Internal Revenue Code*) as embodied in Section 283 of the NIRC;[61]

(5) The shares of relevant LGUs in the proceeds of the sale and conversion of former military bases in accordance with R.A. No. 7227 (*Bases Conversion and Development Act of 1992*);[62]

(6) The shares of different LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products as provided in Section 3 of R.A. No. 7171 (*An Act to Promote the Development of the Farmers in the Virginia Tobacco Producing Provinces*), and as now provided in Section 289 of the NIRC;[63]

(7) The shares of different LGUs in the incremental revenues from Burley and native tobacco products under Section 8 of R.A. No. 8240 (*An Act Amending Sections 138, 140 and 142 of the National Internal Revenue Code as Amended and for Other Purposes*) and as now provided in Section 288 of the NIRC;[64] and

(8) The share of the Commission of Audit (COA) in the NIRTs as provided in Section 24(3) of P.D. No. 1445 (*Government Auditing Code of the Philippines*)[65] in relation to Section 284 of the NIRC.[66]

Garcia insists that the foregoing taxes and revenues should have been included by Congress and, by extension, the BIR in the base for computing the IRA on the strength of the cited provisions; that the LGC did not authorize such exclusion; and that the continued exclusion has undermined the fiscal autonomy guaranteed by the 1987 Constitution.

The insistence of Garcia is valid to an extent.

An examination of the above-enumerated laws confirms that the following have been excluded from the base for reckoning the just share of the LGUs as required by Section 6, Article X of the 1987 Constitution, namely:

(a) The share of the affected LGUs in the proceeds of the sale and conversion of former military bases in accordance with R.A. No. 7227;

(b) The share of the different LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products as provided for in Section 3, R.A. No. 7171, and as now provided in Section 289of the NIRC;

(c) The share of the different LGUs in incremental revenues from Burley and native tobacco products under Section 8 of R.A. No. 8240, and as now provided for in Section 288 of the NIRC;

(d) The share of the COA in the NIRTs as provided in Section 24(3) of P.D. No. 1445[67] in relation to Section 284 of the NIRC;

(e) The shares of the different LGUs in the excise taxes on mineral products, as provided in Section 287 of the NIRC in relation to Section 290 of the LGC;

(f) The NIRTs collected by the cities and provinces and divided exclusively among the LGUs of the ARMM, the regional government and the central government, pursuant to Section 15[68] in relation to Section 9,[69] Article IX of R. A. No. 9054; and

(g) The shares of the relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc., and the Philippine Racing Club, Inc.

Anent the share of the affected LGUs in the proceeds of the sale and conversion of the former military bases pursuant to R.A. No. 7227, the exclusion is warranted for the reason that such proceeds do not come from a tax, fee or exaction imposed on the sale and conversion.

As to the share of the affected LGUs in the excise taxes imposed on locally manufactured Virginia tobacco products under R.A. No. 7171 (now Section 289 of the NIRC); the share of the affected LGUs in incremental revenues from Burley and native tobacco products under Section 8, R.A. No. 8240 (now Section 288 of the NIRC); the share of the COA in the NIRTs pursuant to Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC; and the share of the host LGUs in the franchise taxes paid by the Manila Jockey Club, Inc., and Philippine Racing Club, Inc., under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, respectively, the exclusion is also justified. Although such shares involved national taxes as defined under the NIRC, Congress had the authority to exclude them by virtue of their being taxes imposed for special purposes. A reading of Section 288 and Section 289 of the NIRC and Section 24(3) of P.D. No. 1445 in relation to Section 284 of the NIRC reveals that all such taxes are levied and collected for a special purpose.[70] The same is true for the franchise taxes paid under Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632, inasmuch as certain percentages of the franchise taxes go to different beneficiaries. The exclusion conforms to Section 29(3), Article VI of the 1987 Constitution, which states:

Section 29. x x x

x x x x

(3) **All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only.** If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government. [Bold emphasis supplied]

The exclusion of the share of the different LGUs in the excise taxes imposed on mineral products pursuant to Section 287 of the NIRC in relation to Section 290 of the LGC is premised on a different constitutional provision. Section 7, Article X of the 1987 Constitution allows affected LGUs to have an equitable share in the proceeds of the utilization of the nation's national wealth "within their respective areas," to wit:

Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

This constitutional provision is implemented by Section 287 of the NIRC and Section 290 of the LGC thusly:

SEC. 287. *Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth*. - Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

(A) Amount of Share of Local Government Units. - **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.**

(B) Share of the Local Governments from Any Government Agency or Government-owned or - Controlled Corporation. - Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

(1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or

(2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government owned or -controlled corporations would have paid

if it were not otherwise exempt. [Bold emphasis supplied]

SEC. 290. *Amount of Share of Local Government Units*. - **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges**, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. [Bold emphasis supplied]

Lastly, the NIRTs collected by the provinces and Cities within the ARMM whose portions are distributed to the ARMM's provincial, city and regional governments are also properly excluded for such taxes are intended to truly enable a sustainable and feasible autonomous region as guaranteed by the 1987 Constitution. The mandate under Section 15 to Section 21, Article X of the 1987 Constitution is to allow the separate development of peoples with distinctive cultures and traditions in the autonomous areas.[71] The grant of autonomy to the autonomous regions includes the right of self determination – which in turn ensures the right of the peoples residing therein to the necessary level of autonomy that will guarantee the support of their own cultural identities, the establishment of priorities by their respective communities' internal decision-making processes and the management of collective matters by themselves.[72] As such, the NIRTs collected by the provinces and cities within the ARMM will ensure local autonomy and their very existence with a continuous supply of funding sourced from their very own areas. The ARMM will become self-reliant and dynamic consistent with the dictates of the 1987 Constitution.

The shares of the municipalities in the VATs collected pursuant to R.A. No. 7643 should be included in determining the base for computing the *just share* because such VATs are national taxes, and nothing can validly justify their exclusion.

In recapitulation, the national taxes to be included in the base for computing the just share the LGUs shall henceforth be, but shall not be limited to, the following:

1. The NIRTs enumerated in Section 21 of the NIRC, as amended, to be inclusive of the VATs, excise taxes, and DSTs collected by the BIR and the BOC, and their deputized agents;

2. Tariff and customs duties collected by the BOC;

3. 50% of the VATs collected in the ARMM, and 30% of all other national taxes collected in the ARMM; the remaining 50% of the VATs and 70% of the collections of the other national taxes in the ARMM shall be the exclusive share of the ARMM pursuant to Section 9 and Section 15 of R.A. No. 9054;

4. 60% of the national taxes collected from the exploitation and development of the national wealth; the remaining 40% will exclusively accrue to the host LGUs pursuant to Section 290 of the LGC;

5. 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products; the remaining 15% shall accrue to the special purpose funds pursuant created in R.A. No. 7171 and R.A. No. 7227;

6. The entire 50% of the national taxes collected under Section 106, Section 108 and Section 116 of the NIRC in excess of the increase in collections for the immediately preceding year; and

7. 5% of the franchise taxes in favor of the national government paid by franchise holders in accordance with Section 6 of R.A. No. 6631 and Section 8 of R.A. No. 6632.

VI.
Entitlement to the reliefs sought

The petitioners' prayer for the payment of the arrears of the LGUs' *just share* on the theory that the computation of the base amount had been unconstitutional all along cannot be granted.

It is true that with our declaration today that the IRA is not in accordance with the constitutional determination of the just share of the LGUs in the national taxes, logic demands that the LGUs should receive the difference between the *just share* they should have received had the LGC properly reckoned such just share from all national taxes, on the one hand, and the share – represented by the IRA – the LGUs have actually received since the effectivity of the IRA under the LGC, on the other. This puts the National Government in arrears as to the *just share* of the LGUs. A legislative or executive act declared void for being unconstitutional cannot give rise to any right or obligation.[73]

Yet, the Court has conceded in *Araullo v. Aquino III*[74] that:

> x x x **the generality of the rule makes us ponder whether rigidly applying the rule may at times be impracticable or wasteful. Should we not recognize the need to except from the rigid application of the rule the instances in which the void law or executive act produced an almost irreversible result**?
>
> **The need is answered by the doctrine of operative fact.** The doctrine, definitely not a novel one, has been exhaustively explained in *De Agbayani v. Philippine National Bank*:
>
> > The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: 'When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.' Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is

understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: 'The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official.'

The doctrine of operative fact recognizes the existence of the law or executive act prior to the determination of its unconstitutionality as an operative fact that produced consequences that cannot always be erased, ignored or disregarded. In short, it nullifies the void law or executive act but sustains its effects. It provides an exception to the general rule that a void or unconstitutional law produces no effect.[75] But its use must be subjected to great scrutiny and circumspection, and it cannot be invoked to validate an unconstitutional law or executive act, but is resorted to only as a matter of equity and fair play.[76] It applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application.

Conformably with the foregoing pronouncements in *Araullo v. Aquino III*, the effect of our declaration through this decision of the unconstitutionality of Section 284 of the LGC and its related laws as far

as they limited the source of the just share of the LGUs to the NIRTs is prospective. It cannot be otherwise.

VII.
Automatic release of the LGUs' just share in the National Taxes

Section 6, Article X of the 1987 Constitution commands that the *just share* of the LGUs in national taxes shall be *automatically released* to them. The term *automatic* connotes something mechanical, spontaneous and perfunctory; and, in the context of this case, the LGUs are not required to perform any act or thing in order *to receive* their *just share* in the national taxes.[77]

Before anything, we must highlight that the 1987 Constitution includes several provisions that actually deal with and authorize the automatic release of funds by the National Government.

To begin with, Section 3 of Article VIII favors the Judiciary with the automatic and regular release of its appropriations:

> Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

Then there is Section 5 of Article IX(A), which contains the common provision in favor of the Constitutional Commissions:

> Section 5. The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

Section 14 of Article XI extends to the Office of the Ombudsman a similar privilege:

> Section 14. The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.

Section 17(4) of Article XIII replicates the privilege in favour of the Commission on Human Rights:

> Section 17(4) The approved annual appropriations of the Commission shall be automatically and regularly released.

The foregoing constitutional provisions share two aspects. The first relates to the grant of *fiscal autonomy*, and the second concerns the *automatic release of funds*.[78] The *common denominator* of the provisions is that the automatic release of the appropriated amounts is predicated on the approval of the annual appropriations of the offices or agencies concerned.

Directly contrasting with the foregoing provisions is Section 6, Article X of the 1987 Constitution because the latter provision forthrightly ordains that the "(l)ocal government units shall have a just share, as determined by law, in the national taxes **which shall be automatically released to them**." Section 6 does not mention of appropriation as a condition for the automatic release of the just share to the LGUs. This is because Congress not only already determined the *just share* through the LGC's fixing the percentage of the collections of the NIRTs to constitute such *fair share*

subject to the power of the President to adjust the same in order to manage public sector deficits subject to limitations on the adjustments, but also explicitly authorized such *just share* to be "*automatically released*" to the LGUs in the proportions and regularity set under Section 285[79] of the LGC without need of annual appropriation. To operationalize the automatic release without need of appropriation, Section 286 of the LGC clearly provides that the automatic release of the *just share* directly to the provincial, city, municipal or barangay treasurer, as the case may be, shall be "*without need of any further action*," *viz.*:

> **Section 286. *Automatic Release of Shares.*— (a) The share of each local government unit shall be released, without need of any further action; directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.** x x x (Bold emphasis supplied)

The 1987 Constitution is forthright and unequivocal in ordering that the *just share* of the LGUs in the national taxes shall be *automatically released* to them. With Congress having established the *just share* through the LGC, it seems to be beyond debate that the inclusion of the *just share* of the LGUs in the annual GAAs is unnecessary, if not superfluous. Hence, the just share of the LGUs in the national taxes shall be released to them without need of yearly appropriation.

WHEREFORE, the petitions in G.R. No. 199802 and G.R. No. 208488 are **PARTIALLY GRANTED**, and, **ACCORDINGLY**, the Court:

1. DECLARES the phrase "internal revenue" appearing in Section 284 of Republic Act No. 7160 (*Local Government Code*) **UNCONSTITUTIONAL**, and **DELETES** the phrase from Section 284.

Section 284, as hereby modified, shall henceforth read as follows:

> **Section 284.** *Allotment of Taxes*. – Local government units shall have a share in the national taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
>
> (b) On the second year, thirty-five percent (35%); and
>
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national taxes of the third fiscal year preceding the current fiscal year; Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to

the thirty percent (30%) allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

The phrase "internal revenue" is likewise hereby **DELETED** from the related sections of Republic Act No. 7160 (*Local Government Code*), specifically Section 285, Section 287, and Section 290, which provisions shall henceforth read as follows:

Section 285. *Allocation to Local Government Units*. – The share of local government units in the allotment shall be collected in the following manner:

(a) Provinces – Twenty-three percent (23%);

(b) Cities – Twenty-three percent (23%);

(c) Municipalities –Thirty-four percent (34%); and

(d) Barangays – Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population – Fifty percent (50%);

(b) Land Area – Twenty-five percent (25%); and

(c) Equal sharing – Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the allotment, and the balance to be a1located on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population Forty percent (40%); and

(2) Equal sharing – Sixty percent (50%)

(b) On the second year:

(1) Population – Fifty percent (50%); and

(2) Equal sharing – Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population – Sixty percent (60%); and

(2) Equal sharing – Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

x x x x

Section 287. *Local Development Projects*. – Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government.

x x x x

Section 290. *Amount of Share of Local Government Units*. – Local government units shall, in addition to the allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

Article 378, Article 379, Article 380, Article 382, Article 409, Article 461, and related provisions of the Implementing Rules and Regulations of R.A. No. 7160 are hereby **MODIFIED** to reflect the deletion of the phrase "internal revenue" as directed herein.

Henceforth, any mention of "Internal Revenue Allotment" or "IRA" in Republic Act No. 7160 (*Local Government Code*) and its Implementing Rules and Regulations shall be understood as pertaining to the allotment of the Local Government Units derived from the national taxes;

2. **ORDERS the SECRETARY OF THE DEPARTMENT OF FINANCE; the SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; the COMMISSIONER OF INTERNAL REVENUE; the COMMISSIONER OF CUSTOMS;** and **the NATIONAL TREASURER** to include **ALL COLLECTIONS OF NATIONAL TAXES** in the computation of the base of the just share of the Local Government Units according to the ratio provided in the now-modified Section 284 of Republic Act No. 7160 (*Local Government Code*) except those accruing to special purpose funds and special allotments for the utilization and development of the national wealth.

For this purpose, the collections of national taxes for inclusion in the base of the just share the Local Government Units shall include, but shall not be limited to, the following:

(a) The national internal revenue taxes enumerated in Section 21 of the *National Internal Revenue Code*, as amended, collected by the Bureau of Internal Revenue and the Bureau of Customs;

(b) Tariff and customs duties collected by the Bureau of Customs;

(c) 50% of the value-added taxes collected in the Autonomous Region in Muslim Mindanao, and 30% of all other national tax collected in the Autonomous Region in Muslim Mindanao.

The remaining 50% of the collections of value-added taxes and 70% of the collections of the other

national taxes in the Autonomous Region in Muslim Mindanao shall be the exclusive share of the Autonomous Region in Muslim Mindanao pursuant to Section 9 and Section 15 of Republic Act No. 9054.

(d) 60% of the national taxes collected from the exploitation and development of the national wealth.

The remaining 401% of the national taxes collected from the exploitation and development of the national wealth shall exclusively accrue to the host Local Government Units pursuant to Section 290 of Republic Act No. 7160 (*Local Government Code*);

(e) 85% of the excise taxes collected from locally manufactured Virginia and other tobacco products.

The remaining 15% shall accrue to the special purpose funds created by Republic Act No. 7171 and Republic Act No. 7227;

(f) The entire 50% of the national taxes collected under Sections 106, 108 and 116 of the NIRC as provided under Section 283 of the NIRC; and

(g) 5% of the 25% franchise taxes given to the National Government under Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632.

3. **DECLARES** that:

(a) The apportionment of the 25% of the franchise taxes collected from the Manila Jockey Club and Philippine Racing Club, Inc. – that is, five percent (5%) to the National Government; five percent (5%) to the host municipality or city; seven percent (7%) to the Philippine Charity Sweepstakes Office; six percent (6%) to the Anti-Tuberculosis Society; and two percent (2%) to the White Cross pursuant to Section 6 of Republic Act No. 6631 and Section 8 of Republic Act No. 6632 – is **VALID**;

(b) Section 8 and Section 12 of Republic Act No. 7227 are VALID; and, **ACCORDINGLY**, the proceeds from the sale of the former military bases converted to alienable lands thereunder are **EXCLUDED** from the computation of the national tax allocations of the Local Government Units; and

(c) Section 24(3) of Presidential Decree No. 1445, in relation to Section 284 of the National Internal Revenue Code, apportioning one-half of one percent (1/2 of 1%) of national tax collections as the auditing fee of the Commission on Audit is **VALID**;

4. **DIRECTS** the Bureau of Internal Revenue and the Bureau of Customs and their deputized collecting agents to certify all national tax collections, pursuant to Article 378 of the Implementing Rules and Regulations of R.A. No. 7160;

5. **DISMISSES** the claims of the Local Government Units for the settlement by the National Government of arrears in the just share on the ground that this decision shall have **PROSPECTIVE APPLICATION**; and

6. **COMMANDS** the **AUTOMATIC RELEASE WITHOUT NEED OF FURTHER ACTION** of the just shares of the Local Government Units in the national taxes, through their respective provincial, city, municipal, or barangay treasurers, as the case may be, on a quarterly basis but not beyond five (5)

days from the end of each quarter, as directed in Section 6, Article X of the 1987 Constitution and Section 286 of Republic Act No. 7160 (*Local Government Code*), and operationalized by Article 383 of the Implementing Rules and Regulations of RA 7160.

Let a copy of this decision be furnished to the President of the Republic of the Philippines, the President of the Senate, and the Speaker of the House of Representatives for their information and guidance.

SO ORDERED.

Carpio, (Acting C.J.) Leonardo-De Castro, Peralta, Del Castillo, Perlas-Bernabe, Martires, Tijam, and *Gesmundo, JJ.*, concur.
Velasco, Jr., concur. Please see separate opinion.
Leonen, Gaguioa, and *Reyes J., JJ.,* dissent. See separate opinions.
Jardeleza, J., no part prior OSG action.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on **July 3, 2018** a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 23, 2018 at 3:36 p.m.

Very truly yours,

EDGAR O. ARICHETA
Clerk of Court

By:

(SGD.) ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court *En Banc*

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[1] *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201, 218.

[2] Article 378, Administrative Order No. 270, Series of 1992.

[3] *Rollo* (G.R. No. 208488), p. 50.

[4] Id. at 310.

[5] *In the Matter of Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund (JDF) and Reduction of Fiscal Autonomy*, UDK-15143, January 21, 2015, 746 SCRA 352, 371, citing *Uy Kiao Eng v. Lee,* G.R. No. 176831, January 15,

2010, 610 SCRA 211, 217.

[6] *Ruby Shelter Builders and Realty Development Corporation v. Formaran, III*, G.R. No. 175914, February 10, 2009.

[7] *Evangelista v. Santiago*, G.R. No. 157447, April 29, 2005, 457 SCRA 744, 762.

[8] G.R. No. 209287, July 1, 2014, 728 SCRA 1.

[9] Id. at 75.

[10] Black's Law Dictionary, 6th ed., Nolan, J., & Nolan-Haley, J., West Group, St. Paul, Minnesota, 1990, p. 1017.

[11] 25 Iowa 163 (1868).

[12] Id. at 170.

[13] 1 J. Dillon, Municipal Corporations,§ 89 (3rd Ed. 1881). See Dean, K.D., T*he Dillon Rule – a Limit on Local Government Powers*, Missouri Law Review, Vol. 41, Issue 4, Fall 1976, p. 547.

[14] G.R. No. 111097, July 20, 1994, 234 SCRA 255, 272-273, citing *The City of Clinton v. The Cedar Rapids and Missouri River Railroad Company*, 24 Iowa (1868): 455 at 475.

[15] G.R. No. 93252, August 5, 1991, 200 SCRA 271, 281.

[16] Id. at 281.

[17] *Land Transportation Office v. City of Butuan*, G.R. No. 131512, January 20, 2000, 322 SCRA 805, 808.

[18] See *Ganzon v. Court of Appeals*, note 15.

[19] *Disomangcop v. Datumanong*, G.R. No. 149848, November 25, 2004, 444 SCRA 203, 227.

[20] *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52, 65.

[21] *Limbona v. Mangelin*, G.R. No. 80391, February 28, 1989, 170 SCRA 786, 795.

[22] In *Cordillera Board Coalition v. Commission on Audit*, G.R. No. 79956, January 29, 1990, 181 SCRA 495, 506, the Court observed that: "It must be clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, sec. 2] refers to the *administrative* autonomy of local government units or, cast in more technical language, the decentralization of government authority [Villegas v. Subido, G.R. No. L-31004, January 8, 1971, 37 SCRA 1]. Local autonomy is not unique to the 1987 Constitution, it being guaranteed also under the 1973 Constitution [Art. II, sec. 10]. And while there was no express guarantee under the 1935 Constitution, the Congress enacted the Local

Autonomy Act (R.A. No. 2264) and the Decentralization Act (R.A. No. 5185), which ushered the irreversible march towards further enlargement of local autonomy in the country [Villegas v. Subido, *supra*.]

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of *political* autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions [Art. X, sec. 18]"

[23] *Pimentel v. Aguirre*, supra note 1, at 217.

[24] *Disomangcop v. Datumanong*, supra note 19, at 231.

[25] Section 20, Article X of the 1987 Constitution states:

> Section 20. Within its territorial jurisdiction and **subject to the provisions of this Constitution and national laws**, the organic act of autonomous regions shall provide for legislative powers over:
>
> (1) Administrative organization;
> (2) Creation of sources of revenues;
> (3) Ancestral domain and natural resources;
> (4) Personal, family, and property relations;
> (5) Regional urban and rural planning development;
> (6) Economic, social, and tourism development;
> (7) Educational policies;
> (8) Preservation and development of the cultural heritage; and
> (9) Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region.

[26] G.R. No. 177597, July 16, 2008, 558 SCRA 700, 743-744.

[27] Id. at 730-732.

[28] *See* Article X, Section 3.

[29] Id., Section 5.

[30] Id., Section 5 and Section 6.

[31] *Disomangcop v. Datumanong*, supra note 19, at 233.

[32] *Does Decentralization Improve Perceptions of Accountability? Attitudinal Evidence from Colombia.* Escobar-Lemmon, M. & Ross, A. Midwest Political Science Association, American Journal of Political Science, Vol. 58, No. 1 (January 2014), p. 176 accessed at

http://www.jstor.org/stable/10.1017/s0022381612000667 last October 4, 2017.

[33] *Comparative Federalism and Decentralization: On Meaning and Measurement*. Rodden, J. Comparative Politics, Ph.D. Programs in Political Science, City University of New York. Comparative politics, Vol. 36, No.4 (July 2004), p. 482. Accessed at http://www.jstor.org/stable/4150172 last October 6, 2017.

[34] *Disomangcop v. Datumanong*, supra note 19, at 234.

[35] Section 17, LGC.

[36] *Does Decentralization Improve Perceptions of Accountability? Attitudinal Evidence from Colombia*. Escobar-Lemmon, M. & Ross, A. Midwest Political Science Association, American Journal of Political Science, Vol. 58, No. 1 (January 2014), p. 176 accessed at http://www.jstor.org/stable/10.1017/s0022381612000667 last October 4, 2017.

[37] *Disomangcop v. Datumanong*, supra note 19, at 233.

[38] Section 98, LGC.

[39] Section 102, LGC.

[40] Section 107, LGC.

[41] *Pimentel, Jr. v. Aguirre*, supra note 1, at 218.

[42] Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

[43] Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

[44] Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

[45] *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736, 760.

[46] *Pimentel, Jr. v. Aguirre*, supra note 1.

[47] *Decentralization and Intrastate Struggles: Chechnya, Punjab, and Quebec*. Bakke, K. Cambridge University Press, New York, 2015, p. 12.

[48] *Province of Batangas v. Romulo*, supra note 45.

[49] See *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, 689.

[50] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598.

[51] *Republic v. COCOFED*, G.R. No. 147062-64, December 14, 2001, 372 SCRA 462, 482.

[52] Aban, *Law of Basic Taxation in the Philippines*, Revised Ed. 2001, p. 27.

[53] G.R. No. 101273, July 3, 1992, 211 SCRA 219, 227.

[54] Id.

[55] SECTION 15. Collection and Sharing of Internal Revenue Taxes. — **The share of the central government or national government of all current year collections of internal revenue taxes, within the area of autonomy shall, for a period of five (5) years be allotted for the Regional Government in the Annual Appropriations Act.**

The Bureau of Internal Revenue (BIR) or the duly authorized treasurer of the city or municipality concerned, as the case may be, shall continue to collect such taxes and remit the share to the Regional Autonomous Government and the central government or national government through duly accredited depository bank within thirty (30) days from the end of each quarter of the current year;

Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under Sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

> (a) twenty percent (20%) shall accrue to the city or municipality where such taxes are collected; and
> (b) eighty percent (80%) shall accrue to the Regional Government.

In all cases, the Regional Government shall remit to the local government units their respective shares within sixty (60) days from the end of each quarter of the current taxable year. The provinces, cities, municipalities, and barangay within the area of autonomy shall continue to receive their respective shares in the Internal Revenue Allotment (IRA), as provided for in Section 284 of Republic Act No. 7160, the Local Government Code of 1991. The five-year (5) period herein abovementioned may be extended upon mutual agreement of the central government or national government and the Regional Government.

[56] **Section 9.** *Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges*. - The collections of a province or city from national internal revenue taxes, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

> (a) **Thirty-five percent (35%) to the province or city**;

(b) **Thirty-five percent (35%) to the regional government**; and
(c) **Thirty percent (30%) to the central government or national government.**

The share of the province shall be apportioned as follows: forty-five percent (45%) to the province, thirty-five percent (35%) to the municipality and twenty percent (20%) to the barangay.

The share of the city shall be distributed as follows: fifty percent (50%) to the city and fifty percent (50%) to the barangay concerned.

The province or city concerned shall automatically retain its share and remit the shares of the Regional Government and the central government or national government to their respective treasurers who shall, after deducting the share of the Regional Government as mentioned in paragraphs (b) and (c) of this Section, remit the balance to the national government within the first five (5) days of every month after the collections were made.

The remittance of the shares of the provinces, cities, municipalities, and barangay in the internal revenue taxes, fees, and charges and the taxes, fees, and charges on the use, development, and operation of natural resources within the autonomous region shall be governed by law enacted by the Regional Assembly.

The remittances of the share of the central government or national government of the internal revenue taxes, fees, and charges and on the taxes, fees, and charges on the use, development, and operation of the natural resources within the autonomous region shall be governed by the rules and regulations promulgated by the Department of Finance of the central government or national government.

Officials who fail to remit the shares of the central government or national government, the Regional Government and the local government units concerned in the taxes, fees, and charges mentioned above may be suspended or removed from office by order of the Secretary of Finance in cases involving the share of the central government or national government or by the Regional Governor in cases involving the share of the Regional Government and by the proper local government executive in cases involving the share of local government. [Bold emphasis supplied]

[57] **SEC. 287.** *Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth*. - Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

(A) Amount of Share of Local Government Units. - **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.**

(B) Share of the Local Governments from Any Government Agency or Government-owned or - Controlled Corporation. - Local Government Units shall have a share, based on the preceding fiscal

year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

> (1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or
> (2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government-owned or -controlled corporations would have paid if it were not otherwise exempt.
>
> (C) Allocation of Shares. - The share in the preceding Section shall be distributed in the following manner:
>
> > (1) Where the natural resources are located in the province:
> > (a) Province - twenty percent (20%)
> > (b) Component city/municipality - forty-five percent (45%); and
> > (c) Barangay - thirty-five percent (35%)
>
> Provided, however, That where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of: (l) Population - seventy percent (70%); and (2) Land area - thirty percent (30%).
>
> > (2) Where the natural resources are located in a highly urbanized or independent component city:
> > (a) City - sixty-five percent (65%); and
> > (b) Barangay - thirty-five percent (35%)
>
> Provided, however, That where the natural resources are located in two (2) or more Cities, the allocation of shares shall be based on the formula on population and land area as specified in subsection (C)(1) hereof. [Bold emphasis supplied]

[58] SEC. 290. *Amount of Share of Local Government Units*. - **Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges**, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction. (Bold emphasis supplied)

[59] Section 6 of R.A. No. 6631 (*An Act granting Manila Jockey Club, Inc. a Franchise to Construct, Operate and Maintain a Race Track for Horse Racing in the City of Manila or in the Province of Bulacan*) states:

> Section 6. In consideration of the franchise and rights herein granted to the Manila Jockey Club, Inc., the grantee shall pay into the national Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized

to be held under this franchise which is equivalent to the eight and one-half per centum (8 ½%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section four hereof, allotted as follows: a) National Government, five per centum (5%); b) **the city or municipality where the race track is located, five per centum (5%)**; c) Philippine Charity Sweepstakes Office, seven per centum (7%); d) Philippine Anti-Tuberculosis Society, six per centum (6%); and e) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, now or in the future, on its properties, whether real or personal, and profits, from which taxes the grantee is hereby expressly excepted. (Bold emphasis supplied)

[60] Section 8 of Republic Act 6632 (*An Act granting the Philippine Racing Club, Inc., a franchise to operate and maintain a race track for Horse Racing in the Province of Rizal*) provides:

Section 8. In consideration of the franchise and rights herein granted to the Philippine Racing Club, Inc., the grantee shall pay into the National Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one fourth per centum (8 1/4%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section six hereof, allotted as follows: a) National Government, five per centum (5%); **the Municipality of Makati, five per centum (5%)**; b) Philippine Charity Sweepstakes Office, seven per centum (7%); c) Philippine Anti-Tuberculosis Society, six per centum (6%); and d) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax, of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, on its properties, whether real or personal, from which taxes the grantee is hereby expressly exempted. (Bold emphasis supplied)

[61] *Disposition of National Internal Revenue*. - National Internal revenue collected and not applied as herein above provided or otherwise specially disposed of by law shall accrue to the National Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

In addition to the internal revenue allotment as provided for in the preceding paragraph, **fifty percent (50%) of the national taxes collected under Sections 106, 108 and 116 of this Code in excess of the increase in collections for the immediately preceding year shall be distributed as follows**:

(a) **Twenty percent (20%) shall accrue to the city or municipality where such taxes are collected and shall be allocated in accordance with Section 150 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991**; and

(b) Eighty percent (80%) shall accrue to the National Government. (Bold emphasis supplied)

[62] R.A. No. 7227 (*Bases Conversion and Development Act of 1992*) states:

Section 8. *Funding Scheme*. — x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties: *Provided*, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (2) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

> (1) Thirty-two and five-tenths percent (35.5%) — To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP's medical facilities;
> (2) Fifty percent (50%) — To finance the conversion and the commercial uses of the Clark and Subic military reservations and their extentions;
> (3) Five Percent (5%) — To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein; and
> (4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people.

***Provided*, That, in the case of Fort Bonifacio, two and five tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig and Pateros: *Provided, further*, That in no case shall farmers affected be denied due compensation.**

With respect to the military reservations and their extensions, the President upon recommendation of the Conversion Authority or the Subic Authority when it concerns the Subic Special Economic Zone shall likewise be authorized to sell or dispose those portions of lands which the Conversion Authority or the Subic Authority may find

essential for the development of their projects. (Bold emphasis supplied)

Section 12. *Subic Special Economic Zone*. — Subject to the concurrence by resolution of the sangguniang panlungsod of the City of Olongapo and the sangguniang bayan of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the office of the President. Thereafter, the President of the Philippines shall issue a proclamation defining the metes and bounds of the Zone as provided herein.

The abovementioned zone shall be subject to the following policies:

x x x x

(c) The provisions of existing laws, rules and regulations to the contrary notwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government, **one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors**. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.

In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter; (Bold emphasis supplied)

x x x x

[63] The NIRC provides in Section 289 as follows:

Section 289. Special Financial Support to Beneficiary Provinces Producing Virginia Tobacco. - The financial support given by the National Government for the beneficiary provinces shall be constituted and collected from the proceeds of fifteen percent (15%) of the excise taxes on locally manufactured Virginia-type of cigarettes.

The funds allotted shall be divided among the beneficiary provinces pro-rata according to the volume of Virginia tobacco production.

Provinces producing Virginia tobacco shall be the beneficiary provinces under Republic Act No. 7171. Provided, however, that to qualify as beneficiary under R.A. No. 7171, a province must have an average annual production of Virginia leaf tobacco in an amount not less than one million kilos: Provided, further, that the Department of Budget and Management (DBM) shall each year determine the beneficiary provinces and their computed share of the funds under R.A. No. 7171, referring to the National Tobacco Administration (NTA) records of tobacco acceptances, at the tobacco trading centers for the immediate past year.

The Secretary of Budget and Management is hereby directed to retain annually the said funds equivalent to fifteen percent (15%) of excise taxes on locally manufactured Virginia type cigarettes to be remitted to the beneficiary provinces qualified under R.A. No. 7171.

The provisions of existing laws to the contrary notwithstanding, the fifteen percent (15%) share from government revenues mentioned in R.A. No. 7171 and due to the Virginia tobacco-producing provinces shall be directly remitted to the provinces concerned.

Provided, That this Section shall be implemented in accordance with the guidelines of Memorandum Circular No. 61-A dated November 28, 1993, which amended Memorandum Circular No. 61, entitled '*Prescribing Guidelines for Implementing Republic Act No. 7171*', dated January 1, 1992.

Provided, further, That in addition to the local government units mentioned in the above circular, the concerned officials in the province shall be consulted as regards the identification of projects to be financed. [Bold emphasis supplied]

[64] Section 288. Disposition of Incremental Revenues.

x x x x

(B) Incremental Revenues from Republic Act No. 8240. - Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under R. A. No. 8240 shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. The fund shall be exclusively utilized for programs to promote economically viable alternatives for tobacco farmers and workers such as:

(1) Programs that will provide inputs, training, and other support for tobacco farmers who shift to production of agricultural products other than tobacco including, but not limited to, high-value crops, spices, rice, com, sugarcane, coconut, livestock and fisheries;
(2) Programs that will provide financial support for tobacco farmers who are displaced or who cease to produce tobacco;
(3) Cooperative programs to assist tobacco fanners in planting alternative crops or

implementing other livelihood projects;
(4) Livelihood programs and projects that will promote, enhance, and develop the tourism potential of tobacco-growing provinces;
(5) Infrastructure projects such as farm to market roads, schools, hospitals, and rural health facilities; and
(6) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects, such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.

The Department of Budget and Management, in consultation with the Department of Agriculture, shall issue rules and regulations governing the allocation and disbursement of this fund, not later than one hundred eighty (180) days from the effectivity of this Act. [Bold emphasis supplied]

[65] **Section 24.** *Appropriations and funding*.

x x x x

3. A maximum of one-half of one per-centum (1/2 of 1%) of the collections from national internal revenue taxes not otherwise accruing to Special Funds or Special Accounts in the General Fund of the National Government, upon authority from the Minister (Secretary) of Finance, shall be deducted from such collections and shall be remitted to the National Treasury to cover the cost of auditing services rendered to local government units;

[66] **SEC. 284. Allotment for the Commission on Audit.** - One-half of one percent (1/2 of 1%) of the collections from the national internal revenue taxes not otherwise accruing to special accounts in the general fund of the national government shall accrue to the Commission on Audit as a fee for auditing services rendered to local government units, excluding maintenance, equipment, and other operating expenses as provided for in Section 21 of Presidential Decree No. 898.

The Secretary of Finance is hereby authorized to deduct from the monthly internal revenue tax collections an amount equivalent to the percentage as herein fixed, and to remit the same directly to the Commission on Audit under such rules and regulations as may be promulgated by the Secretary of Finance and the Chairman of the Commission on Audit.

[67] S**ection 24.** *Appropriations and funding*.

x x x x

3. A maximum of one-half of one per-centum (1/2 of 1%) of the collections from national internal revenue taxes not otherwise accruing to Special Funds or Special Accounts in the General Fund of the National Government, upon authority from the Minister (Secretary) of Finance, shall be deducted from such collections and shall be remitted to the National Treasury to cover the cost of auditing services rendered to local government units;

[68] SECTION 15. Collection and Sharing of Internal Revenue Taxes. — **The share of the central government or national government of all current year collections of internal revenue taxes, within the area of autonomy shall, for a period of five (5) years be allotted for the Regional**

Government in the Annual Appropriations Act.

The Bureau Of Internal Revenue (BIR) or the duly authorized treasurer of the city or municipality concerned, as the case may be, shall continue to collect such taxes and remit the share to the Regional Autonomous Government and the central government or national government through duly accredited depository bank within thirty (30) days from the end of each quarter of the current year;

Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under Sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:

(a) twenty percent (20%) shall accrue to the city or municipality where such taxes are collected; and
(b) eighty percent (80%) shall accrue to the Regional Government.

In all cases, the Regional Government shall remit to the local government units their respective shares within sixty (60) days from the end of each quarter of the current taxable year. The provinces, cities, municipalities, and barangay within the area of autonomy shall continue to receive their respective shares in the Internal Revenue Allotment (IRA), as provided for in Section 284 of Republic Act No. 7160, the Local Government Code of 1991. The five-year (5) period herein abovementioned may be extended upon mutual agreement of the central government or national government and the Regional Government.

[69] **Section 9.** *Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges*. - The collections of a province or city **from national internal revenue taxes**, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

(a) **Thirty-five percent (35%) to the province or city**;
(b) **Thirty-five percent (35%) to the regional government**; and
(c) Thirty percent (30%) to the central government or national government.

The share of the province shall be apportioned as follows: forty-five percent (45%) to the province, thirty-five percent (35%) to the municipality and twenty percent (20%) to the barangay.

The share of the city shall be distributed as follows: fifty percent (50%) to the city and fifty percent (50%) to the barangay concerned.

The province or city concerned shall automatically retain its share and remit the shares of the Regional Government and the central government or national government to their respective treasurers who shall, after deducting the share of the Regional Government as mentioned in paragraphs (b) and (c) of this Section, remit the balance to the national government within the first five (5) days of every month after the collections were made.

The remittance of the shares of the provinces, cities, municipalities, and barangay in the internal

revenue taxes, fees, and charges and the taxes, fees, and charges on the use, development, and operation of natural resources within the autonomous region shall be governed by law enacted by the Regional Assembly.

The remittances of the share of the central government or national government of the internal revenue taxes, fees, and charges and on the taxes, fees, and charges on the use, development, and operation of the natural resources within the autonomous region shall be governed by the rules and regulations promulgated by the Department of Finance of the central government or national government.

Officials who fail to remit the shares of the central government or national government, the Regional Government and the local government units concerned in the taxes, fees, and charges mentioned above may be suspended or removed from office by order of the Secretary of Finance in cases involving the share of the central government or national government or by the Regional Governor in cases involving the share of the Regional Government and by the proper local government executive in cases involving the share of local government. [Emphasis Supplied]

[70] Section 288 of the NIRC (formerly Section 8 of R.A. No. 8240) imposed an excise tax on tobacco products, a percentage of which is to be allocated and divided among the provinces producing Burley and native tobacco in accordance with the volume of tobacco production. Such share received would then be allocated by the recipient LGUs for the benefit of the farmers and workers, through any of the programs set by the law.

Section 289 of the NIRC gives the concerned LGUs a share in the excise taxes imposed on locally manufactured Virginia tobacco products. The LGUs consist of the provinces and their subdivisions producing Virginia tobacco. This share is considered by Congress as the National Government's financial support to the beneficiary LGUs producing Virginia tobacco.

The share of the COA from the NIRT is an aliquot part of the NIRTs, and serves the special purpose of defraying the cost of auditing services rendered to the LGUs.

[71] *Disomangcop v. Datumanong*, supra note 19, at 227.

[72] Id. at 230.

[73] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. Nos. 187485, 196113 and 197156, October 8, 2013, 707 SCRA 66, 77.

[74] Supra note 8.

[75] Id., citing *Yap v. Thenamaris Ship's Management*, G.R. No. 179532, May 30 2011, 649 SCRA 369, 381.

[76] Id., citing *League of Cities Philippines v. COMELEC*, G.R. No. 176951, August 24, 2010, 628 SCRA 819, 833.

[77] See *Province of Batangas v. Romulo*, supra note 45.

[78] *Commission on Human Rights Employees' Association (CHREA) v. Commission on Human Right*s, G.R. No. 155336, July 21, 2006, 496 SCRA 226, 315-316.

[79] Section 285. Allocation to Local Government Units. - The share of local government units in the internal revenue allotment shall be collected in the following manner:

(a) Provinces - Twenty-three percent (23%);
(b) Cities - Twenty-three percent (23%);
(c) Municipalities - Thirty-four percent (34%); and
(d) Barangays - Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population - Fifty percent (50%);
(b) Land Area - Twenty-five percent (25%); and
(c) Equal sharing - Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population - Forty percent (40%); and
(2) Equal sharing - Sixty percent (60%)

(b) On the second year:

(1) Population - Fifty percent (50%); and
(2) Equal sharing - Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population - Sixty percent (60%); and
(2) Equal sharing - Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

SEPARATE OPINION

VELASCO, JR., *J.*:

Nature of the Case

In these consolidated cases before the Court, petitioners question the manner by which budgetary appropriations are made in favor of local government units (LGUs). At the core, petitioners seek clarification on whether or not respondents had been gravely abusing their discretion in excluding certain tax collections in determining the base amount for computing the just share in the national taxes LGUs are entitled to.

The Facts

G.R. No. 199802 for Certiorari, Prohibition, and Mandamus, with Prayer for Preliminary Injunction and/or Temporary Restraining Order

Section 284 of Republic Act No. (RA) 7160, otherwise known as the Local Government Code (LGC), allocates 40% of national internal revenue tax collections to LGUs. The provision pertinently reads:

> **Section 284.** *Allotment of Internal Revenue Taxes*. - Local government units shall have a share in the **national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of this Code, thirty percent (30%);
> (b) On the second year, thirty-five percent (35%); and
> (c) On the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of **national internal revenue taxes** of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services. (emphasis added)

Petitioners, local elective government officials from the province of Batangas, allege that the mandated base under Section 284 is not being observed as some tax collections are allegedly being unlawfully withheld by the national government and excluded from distribution to the LGUs.

In particular, petitioners pray that respondents include the (a) Value Added Tax (VAT), (b) Excise Tax, and (c) Documentary Stamp Tax (DST) collections of the Bureau of Customs (BOC) in computing the base amount. Through letters addressed to petitioner Hermilando I. Mandanas

(Mandanas), then congressman of the second district of Batangas, and dated September 12, 2011[1] and November 18, 2011,[2] BOC Commissioners Angelito A. Alvarez and Rozanno Rufino B. Biazon, respectively, attested to the amount of VAT, Excise Tax, and DST collections of the BOC from 1989-2009:

	Collections in Millions		Collections
Year	VAT	Excise Tax	DST
1989	10,069	174	2,176,550.03
1990	12,854	254	2,002,011.93
1991	11,675	147	2,007,871.48
1992	13,982	296	1,992,401.92
1993	21,413	299	46,880,825.83
1994	21,293	186	179,411,238.68
1995	28,901	579	210,359,504.10
1996	35,008	1,171	41,328,214.50
1997	42,484	1,896	77,856,280.28
1998	31,980	1,193	47,281,003.31
1999	36,632	1,397	81,496,945.00
2000	42,257	2,277	51,469,598.00
2001	47,247	5,691	45,393,853.25
2002	49,383	9,970	43,413,415.00
2003	52,663	11,753	89,191,480.00
2004	58,883	16,997	45,154,928.00
2005	68,813	14,599	47,440,326.00
2006	111,869	10,759	48,747,783.00
2007	129,023	13,385	48,945,260.00
2008	156,330	15,509	65,646,588.00
2009	133,907	17,917	56,068,698.00

Petitioners proffer that these monies were collected by the BOC as an agent of the Bureau of Internal Revenue (BIR), pursuant to Section 12 of RA 8424, otherwise known as the National Internal Revenue Code (NIRC).[3] As such, these formed part of the national internal revenue tax collections that ought to have been shared in by all LGUs. Per petitioners' calculation, the LGUs were deprived of their just share in the collections in the amount of P498,854,388,154.93.

Petitioner Mandanas then began writing to various government agencies, including the Department of Finance (DOF), Department of Budget and Management (DBM), and the BIR, to seek support for his position that the enumerated BOC collections be included in the distribution to LGUs. He likewise implored then president Benigno Simeon Aquino III to include the amount he arrived at as part of the 2012 budget.

Unfortunately, all of petitioner Mandanas' efforts were in vain and RA 10155 or the 2012 General Appropriations Act was signed into law. The amounts he considered as arrears of the national government to the LGUs were not recognized as valid obligations. Hence, Mandanas and his co-

petitioners lodged the instant recourse praying for the following relief:

PRAYER

WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of the Honorable Court that:

1. Upon filing of this petition, a temporary restraining order be issued enjoining the Respondents from unlawfully releasing, disbursing and/or using the amount of SIXTY BILLION AND SEVEN HUNDRED FIFTY MILLION (P60.75) that is included in the capital outlays of the departments or agencies of the national government as that sum belongs to the LGUs as a part of their internal revenue shares based on the NIRT collections of the BOC in 2009 but, to emphasize, has been excluded from the IRAs for the LGUs appropriated in the 2012 GAA.

2. After notice & hearing, a preliminary injunction be issued.

3. And by way of judgment-

a) To set aside as unconstitutional and illegal the misappropriation, misallocation and misuse of P60.75 billion belonging to the LGUs but which is embodied in the new appropriations of the 2012 GAA for the use of national government departments and/or agencies;

b) Make the preliminary injunction permanent;

c) Compel the Respondents to cause the automatic release in of the LGUs' IRAs as provided in the 2012 GAA, including the SIXTY BILLION SEVEN HUNDRED FIFTY MILLION (P60,750,000,000.00) PESOS from the 2009 NIRT collections of the BOC; and

d) Compel Respondents to recognize and release the unpaid IRAs due to the LGUs from BOC collections of NIRT from 1992 to 2011, which is placed at FOUR HUNDRED THIRTY EIGHT BILLION, ONE HUNDRED THREE MILLION, NINE HUNDRED SIXTY THOUSAND, SIX HUNDRED SEVENTY FIVE PESOS AND SEVENTY-THREE CENTAVOS (P438,103,960,675.73) which, when added to the SIXTY BILLION SEVEN HUNDRED FIFTY MILLION coming from 2009 collections of the BOC referred to in letter (c) above, would total FOUR HUNDRED NINETY EIGHT BILLION EIGHT HUNDRED FIFTY FOUR MILLION, THREE HUDNRED EIGHTY-EIGHT THOUSAND, ONE HUNDRED FIFTY FOUR PESOS AND NINETY-THREE CENTAVOS (P498,854,388,154.93). This latter amount, to repeat, is the total unreleased IRA due to the LGUs from [1989]-2012.

Other reliefs just and equitable under the premises are likewise prayed for.

The case was filed against erstwhile Executive Secretary Paquito N. Ochoa, Secretary of Finance

Cesar Purisima, Budget Secretary Florencio H. Abad, Commissioner of Internal Revenue Kim Jacinto-Henares, and National Treasurer Roberto Tan.

G.R. No. 208488 for Mandamus

Enrique T. Garcia (Garcia), then congressional representative for the second district of Bataan, likewise filed a petition for certiorari against the same respondents in G.R. No. 199802, except that Customs Commissioner Rozanno Rufino B. Biazon was impleaded as party respondent instead of National Treasurer Roberto Tan. In his petition, Garcia assails what he perceives as the continuing failure of the national government to allocate to the LGUs what is due them under the Constitution.

Specifically, Garcia asserts that Section 284 of RA 7160 is constitutionally infirm since it limits the basis for the computation of the LGU allocations only to national internal revenue taxes, contrary to the mandate of Article X, Section 6 of the Constitution, viz:

> SECTION 6. Local government units shall have a just share, as determined by law, in the **national taxes** which shall be automatically released to them. (emphasis added)

The insertion of the phrase "internal revenue" in Section 284 of RA 7160, according to Garcia, is patently unconstitutional. As a consequence of this infirmity, the LGUs had been receiving far less than what the Constitution mandates. Garcia thus seeks intervention from the Court to nullify the phrase "internal revenue" in the provision. He argues that LGUs should share in all forms of "national taxes," not just in those enumerated under Section 21 of the NIRC.

Moreover, Garcia contends that even assuming *arguendo* that the phrase "internal revenue" under Section 284 of RA 7160 passes the test of constitutionality, the various deductions and the exclusions therefrom find no legal basis. On this point, Garcia directs the Court's attention to the formula utilized in determining the total internal revenue allocation for the LGUs from 2009-2011. He noted that the reduced tax base, from "national taxes" to "national internal revenue taxes," was further subjected to several deductions, namely:

1. Sections 9 and 15, Article IX of RA 9054 regarding the allocation of internal revenue taxes collected by cities and provinces in the Autonomous Region in Muslim Mindanao (ARMM);

2. Section 287 of the NIRC in relation to Section 290[4] of RA 7160 regarding the share of LGUs in the excise tax collections on mineral products;

3. Section 6 of RA 6631 and Section 8 of RA 6632 on the franchise taxes from the operation of the Manila Jockey Club and Philippine Racing Club race tracks;

4. Remittances of VAT collections under RA 7643;

5. Sections 8 and 12 of RA 7227, as amended by RA 9400, regarding the share of affected LGUs on the sale and conversion of former military bases;

6. RA 7171 and Section 289 of the NIRC on the share of LGUs to the Excise Tax collections from the manufacture of Virginia tobacco products

7. Section 8 of RA 8240, as now provided in Section 288 of the NIRC, on the allocation of incremental revenues from excise taxes;

8. The share of the Commission on Audit (COA) on the NIRT as provided for in Section 24(3) of Presidential Decree No. 1445 in relation to Section 284 of the NIRC

He additionally insists that all tax collections of the BOC were unlawfully excluded in determining the tax base. Since Section 21 of the NIRC expressly includes VAT and excise taxes in the enumeration of national internal revenue taxes, all collections for these accounts, regardless of whether it was collected by the BOC or directly by the BIR, should have been included in the computation.

Garcia therefore prays that respondents be directed to perform the following:

a) Compute the IRA of the LGUs on the basis of the national tax collections, including all the tax collections of the BIR and the BOC;

b) Desist from deduction from the national tax collections any tax, item, or amount that is not authorized by law to be deducted for the purpose of computing the IRA;

c) Submit a details computation of the IRA from 1995-2014 and determine therefrom the IRA shortfall; and

d) Distribute the IRA shortfall to the LGUs.

Respondents' Comments

Speaking through the Office of the Solicitor General (OSG), respondents reasoned out that Congress has the full and broad discretion to determine the base and the rate the LGUs are entitled to in the national taxes. This is based on the language of Article X, Section 6 of the Constitution itself, which states that the just share of the LGUs in the national taxes shall be determined by law. And in the exercise of its prerogative, Congress limited the base for the allocation to LGUs to "national internal revenue taxes," to the exclusion of customs duties and taxes from foreign sources.

According to respondents, the determination of what constitutes "just share" for the LGUs is a decision reached by the legislative in the collective wisdom of its members. The Court should then observe judicial deference and employ an attitude of non-interference in this case involving policy directions in the exercise of the power of the purse. Otherwise, the Court would be engaging in judicial legislation, forbidden under the principle of separation of powers.

Garcia's enumeration of so-called deductions from the national internal revenue taxes is justified, so respondents claim. They cite the basic tenet in statutory construction that when statutes are *in pari materia*, or cover the same specific or particular subject matter, or have the same purpose or object, they should be construed together. Here, the executive branch merely interpreted the special laws in consonance with the NIRC and the LGC.

Under Section 283 of the NIRC, which is a later law than the LGC and a special law specifically on

the disposition of national internal revenue taxes, collections that are already earmarked or otherwise specially disposed of by law will *not* accrue to the National Treasury. The provision reads:

> **SEC. 283. Disposition of National Internal Revenue.** - National internal revenue collected and not applied as herein above provided or otherwise specially disposed of by law shall accrue to the National Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

Respondents posit that the amounts pertaining to the enumeration that Garcia coined as unlawful deductions are examples of those accounts that do not accrue to the National Treasury from where the shares of the LGUs will be carved out. The balance of the National Treasury, after deducting the shares of the LGUs, shall be available for the general purposes of the government.

Respondents also add that correlative to the BOC's duty to assess and collect taxes on imported items is its duty to turn over its collections of the National Treasury. For instance, out of every P265.00 collected by the BOC as DST, only P15.00 is reported as BIR collection, while the remaining P250.00 is credited to the collections of the BOC. Thus, when the BIR determines the allocations to the LGUs on the basis of certified data on its own collections, pursuant to Article 378 of the Implementing Rules and Regulations of RA 7160,[5] only P15.00 of every P265.00 DST collection of the BOC would be subject to distribution to the LGUs. There is then a distinction between the VAT, DST, and Excise Tax collections of the BOC and the BIR, and that not all BOC collections are reflected on the data of the BIR.

Lastly, it is argued that Mandamus does not lie to compel the exercise of the power of the purse. A judicial writ cannot order the appropriation of public funds since such power is an exclusive legislative prerogative that cannot be interfered with. Likewise, to award backpay for the allegedly withheld IRA from prior years, from 1989-2012, in the amount of P498,854,388,154.93 as prayed for by Mandanas, will effectively dislocate the budgets then intended for salaries, operational expenses, and development programs in the year of 2012.

The Issues

The issues in this case can be restated in the following wise:

I. Whether or not the VAT, DST, and Excise Tax collections of the BOC should form part of the base amount for computing the just share of the LGUs in the national taxes.

II. Whether or not the LGUs are entitled to a just share in the tariff and customs duties collected by the BOC.

III. Whether or not the respondents had illegally been withholding amounts from the LGUs through the special laws enumerated in the Garcia petition.

IV. Whether or not the LGUs may still collect from the national government the arrears from the alleged errors in computing the national tax allocations.

Discussion

I vote to partially grant the petitions.

The tax collections of the BOC should be included in determining the basis for allocation to the LGUs

a. The VAT, DST, and Excise Tax collections of the BOC are National Internal Revenue Taxes

To recall, Mandanas and his cohorts have no qualm over the constitutionality of Section 284 of RA 7160. They merely seek to include the VAT, DST, and Excise Tax collections of the BOC in determining the base for the LGUs' rightful share in the national taxes.

I find the contention tenable.

Pertinently, Section 21 of the NIRC reads:

> **Section 21.** *Sources of Revenue*. - The following taxes, fees and charges are **deemed to be national internal revenue taxes**:
>
> (a) Income tax;
> (b) Estate and donor's taxes;
> **(c) Value-added tax;**
> (d) Other percentage taxes;
> **(e) Excise taxes;**
> **(f) Documentary stamp taxes;** and
> (g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (emphasis added)

Clear as crystal is that VAT, DSTs, and Excise Taxes are within the enumeration of national internal revenue taxes under Section 21 of the NIRC. When Section 284 of the LGC then declared that all LGUs shall be entitled to 40% of the "national internal revenue taxes," collections for these forms of taxes are necessarily included in the computation.

VAT, DSTs, and Excise Taxes do not lose their character as national internal revenue taxes simply because they are not reported as collections of the BIR, and neither on the ground that they are collected by the BOC. This is so since Section 12(A) of the NIRC is categorical that the BOC merely acts as an agent of the BIR in collecting these taxes:

> **Section 12.** *Agents and Deputies for Collection of National Internal Revenue Taxes.* - The following are hereby constituted agents of the Commissioner:
>
> (a) The Commissioner of Customs and his subordinates with respect to the collection of national internal revenue taxes on imported goods;
>
> x x x x

The details of the agency relation between the BIR, as principal, and the BOC, as agent, are explicated in the succeeding sections of the NIRC. In concrete, Sections 107[6] and 129[7] are general provisions on the imposition of VAT and Excise Taxes on imported goods. On the other hand, Section 131 of the NIRC specifically directs the taxpayer to pay his excise tax liabilities on imported goods to the BOC, and Section 4.107-1(B) of Revenue Regulation 16-2005 provides that VAT on the imported goods should be settled before they can be removed from customs custody, *viz*:

> **Section 131.** *Payment of Excise Taxes on Importer Articles*. -
>
> (A) Persons Liable. -Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
>
> x x x x
>
> **Sec. 4.107-1. VAT on Importation of Goods**
>
> x x x x
>
> **(b) Applicability and payment** - The rates prescribed under Sec. 107 (A) of the [NIRC] shall be applicable to all importations withdrawn from customs custody.
>
> **The VAT on the importation shall be paid by the importer prior to the release of such goods from customs custody.** (emphasis and words on brackets added)

As far as the authority of the BOC to collect DSTs is concerned, this finds legal basis under Section 188 of the NIRC:

> **Section 188.** *Stamp Tax on Certificates*. - On each certificate of damages or otherwise, and on every certificate or document issued by any customs officer, marine surveyor, or other person acting as such, and on each certificate issued by a notary public, and on each certificate of any description required by law or by rules or regulations of a public office, or which is issued for the purpose of giving information, or establishing proof of a fact, and not otherwise specified herein, there shall be collected a documentary stamp tax of Fifteen pesos (P15.00).

All these provisions strengthen Mandanas' position that the VAT, DSTs, and Excise Taxes collected by the BOC partake the nature of national internal revenue taxes under Section 21 of the NIRC. Though collected by the BOC, these taxes are nevertheless impositions under the NIRC that should be included in the base amount of the revenue allocation to the LGUs. It matters not who collects the items of national income. Neither Article X, Section 6 of the Constitution nor Section 284 of RA 7160 requires that the national collections be credited to the BIR. For what is controlling is that they accrue to the account of the National Treasury.

b. Section 284 of RA 7160 is

unconstitutional insofar as it limits the allotment base to national internal revenue taxes; Tariff and Customs duties are national taxes

Anent G.R. No. 208488, I concur with the argument of petitioner Garcia that abidance with the constitutional mandate constrains the Court to declare the recurring phrase "internal revenue" in Section 284 of RA 7160 as unconstitutional.

A cardinal rule in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[8] This is what is known as the plain-meaning rule. It is expressed in the maxim, *index animi sermo*, or speech is the index of intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[9]

Here, Article X, Section 6 of the 1987 Constitution is clear and categorical that Local Government Units (LGUs) shall have a share in the country's *national taxes*. For Congress to grant them anything less would then trench on the provision. Unfortunately, this is what Section 284 of RA 7160, as currently worded, accomplishes.

The contested phrase is unduly restrictive, nay unconstitutional, for it limits the share of the LGUs to national *internal revenue* taxes. It effectively excludes other forms of national taxes than those specified in Section 21 of the NIRC. Conspicuously absent in the enumeration is the duties imposed on internationally sourced goods under Presidential Decree No. (PD) 1464, otherwise known as the Tariff and Customs Code of 1978, which consolidated and codified the tariff and customs law in the Philippines.[10] There is no cogent reason to segregate the tax collections of the BOC pursuant to the NIRC from those in implementation of other legal edicts. Customs duties form part of the country's national taxes and should, therefore, be included in the basis for determining the LGU's aliquot share in the pie.

The concept of customs duties has been explicated in the case of *Garcia v. Executive Secretary*,[11] viz:

> "***[C]ustoms duties***" **is "the name given to *taxes on the importation and exportation of commodities*, the tariff or tax assessed upon merchandise imported from, or exported to, a foreign country."** The levying of customs duties on imported goods may have in some measure the effect of protecting local industries — where such local industries actually exist and are producing comparable goods. Simultaneously, however, **the very same customs duties inevitably have the effect of producing governmental revenues**. Customs duties like internal revenue taxes are rarely, if ever, designed to achieve one policy objective only. Most commonly, **customs duties, which constitute taxes in the sense of exactions the proceeds of which become public funds** — have either or both the generation of revenue and the regulation of economic or social activity as their moving purposes and frequently, it is very difficult to say which, in a particular instance, is the dominant or principal objective. In the instant case, since the Philippines in fact produces ten (10) to fifteen percent (15%) of the crude oil consumed here, the imposition of increased tariff rates

> and a special duty on imported crude oil and imported oil products may be seen to have *some* "protective" impact upon indigenous oil production. For the effective, price of imported crude oil and oil products is increased. At the same time, it cannot be gainsaid that substantial revenues for the government are raised by the imposition of such increased tariff rates or special duty. (emphasis added)

"Tariff" refers to the system or principle of imposing duties on the importation of foreign merchandise.[12] Thus, embodied in the Tariff and Customs Code is the list or schedule of articles on which a duty is imposed upon their importation, with the rates at which they are taxed. Meanwhile, clear from the above excerpt is that these customs duties are *taxes* levied on imports. It is collected by the customs authorities of a country not only to protect domestic industries from more efficient or predatory competitors abroad, but also to raise state revenues.

All taxes are classifiable as either national or local. A tax imposition is considered local if it is levied by an LGU pursuant to its revenue-generating power under Article X, Section 5 of the Constitution and Section 18 of RA 7160.[13] On the other hand, national taxes, by definition, are imposed by the national government through congressional enactment. Among these tax measures signed into law is RA No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), which was signed into law on May 30, 2016, amending PD 1464.

Significantly, while local governments were granted by the Constitution the power to tax, such grant is circumscribed by "guidelines and limitations as the Congress may provide." Article X, Section 5 of the 1987 Constitution reads:

> SECTION 5. **Each local government unit shall have the power to create its own sources of revenues** and to levy taxes, fees, and charges subject **to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments

In line with this, the LGC expressly excludes from the ambit of local taxation the imposition of tariff and customs duties. Section 133 of the LGC pertinently provides:

> Sec. 133. **Common Limitations on the Taxing Powers of Local Government Units.** - Unless otherwise provided herein, **the exercise of the taxing powers of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:**
>
> x x x x
>
> (d) **Customs duties**, registration fees of vessels, wharfage on wharves, tonnage dues and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;
>
> (e) **Taxes, fees, charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local**

> **governments** in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes in any form whatever upon such goods or merchandise.

The limits on local taxation and thus the exclusion therefrom of customs duties and tariff was recognized by the Supreme Court when it ruled in *Petron Corp. v. Tiangco*[14] that:

> **Congress has the constitutional authority to impose limitations on the power to tax of local government units, and Section 133 of the LGC is one such limitation.** Indeed, the provision is the explicit statutory impediment to the enjoyment of absolute taxing power by local government units, not to mention the reality that such power is a delegated power.

In *Palma Development Corp. v. Municipality of Malangas*,[15] the Court more particularly said:

> Section 133(e) of RA No. 7160 prohibits the imposition, in the guise of wharfage, of fees — as well as all other taxes or charges in any form whatsoever — on goods or merchandise. It is therefore irrelevant if the fees imposed are actually for police surveillance on the goods, because any other form of imposition on goods passing through the territorial jurisdiction of the municipality is clearly prohibited by Section 133(e).

In sum, by the principle of exclusion provided by Section 133 of the LGC, no customs duties and/or tariffs can be considered local taxes; all customs duties and tariffs can only be imposed by the Congress and, as such, they can only be national taxes.

Ubi lex non distinguit nec nos distingui redebemus. When the law does not distinguish, neither must we distinguish.[16] To reiterate, Article X, Section 6 of the Constitution mandates that the LGUs shall share in the *national taxes*, without distinction. It can even be inferred from the deliberations of the framers that they intended Article X, Section 6 to be mandatory, *viz*:[17]

> MR. RODRIGO. I am not an expert on taxation, so I just want to know. Even a municipality levies taxes. Does the province have a share?
>
> MR. SUAREZ. May I state that I have the same question, so I would like to join Commissioner Rodrigo in that inquiry.
>
> MR. RODRIGO. I ask so because if a municipality levies taxes, it is impossible for the province to share in those taxes.
>
> MR. NOLLEDO. I am not aware of any rule that says so but I know that even the province has also the power to levy taxes.
>
> MR. RODRIGO. That is correct. But is it then the purpose of this amendment that taxes imposed by a municipality should be exclusively for that municipality and that the province may not share at all in the taxes? Is that the purpose of the amendment?
>
> MR. NOLLEDO. I think the question should be directed to the proponent.

> MR. DAVIDE. Even under the Committee's wording, it would clearly appear that if a municipality levies a particular tax, the province is not entitled to a share for the reason that the province itself, as a separate governmental unit, may collect and levy taxes for itself
>
> **MR. NOLLEDO. Besides, the national government shall share national taxes with the province.**
>
> MR. RODRIGO. But if we approve that amendment, the national government may not share in the taxes levied by the province?
>
> **MR. DAVIDE. The national government may impose its own national taxes. The concept here is that the national government must share these national taxes with the other local government units. That is the second paragraph of the original section 9, now section 12, beginning from lines 29-30.**
>
> **MR. RODRIGO. Do I get then that if the national government imposes taxes, local government units share in those taxes?**
>
> **MR. DAVIDE. Yes, the local government shares in the national taxes.**
>
> MR. RODRIGO. But if the local government imposes local taxes, the national government may not share?
>
> MR. DAVIDE. That is correct because that is precisely to emphasize the local autonomy of the unit.
>
> MR. NOLLEDO. That has been the practice.

For Congress to have excluded, as they continue to exclude, certain items of national tax, such as tariff and customs duties, from the amount to be distributed to the LGUs is then a glaring contravention of our fundamental law. The alleged basis for the exclusion, the phrase "internal revenue" under Section 284 of the LGC, should therefore be declared as unconstitutional.

The school of thought adopted by the respondents is that the phrase "as determined by law" appearing in Article X, Section 6 of the Constitution authorizes Congress to determine the inclusions and exclusions from the national taxes before determining the amount the LGUs would be entitled to. Thus, it is this authority that was exercised by the legislative when it limited the allocation of LGUs to national *internal revenue* taxes. Regrettably, I cannot join respondents in their construction of the statute.

Article X, Section 6 of the Constitution had already been interpreted in *ACORD v. Zamora (ACORD)* [18] in the following manner:

> Moreover, there is merit in the argument of the intervenor Province of Batangas that, if indeed the framers intended to allow the enactment of statutes making the release of IRA conditional instead of automatic, then Article X, Section 6 of the Constitution would have been worded differently. Instead of reading Local government units shall have a just share, *as determined by law*, in the national taxes which shall be automatically

released to them (italics supplied), it would have read as follows, so the Province of Batangas posits:

> Local government units shall have a just share, *as determined by law*, in the national taxes which shall be [automatically] released to them *as provided by law*, or,
>
> Local government units shall have a just share in the national taxes which shall be [automatically] released to them *as provided by law*, or
>
> Local government units shall have a just share, *as determined by law*, in the national taxes which shall be automatically released to them *subject to exceptions Congress may provide*.

Since, under Article X, Section 6 of the Constitution, **only the just share of local governments is qualified by the words as determined by law**, and not the release thereof, the plain implication is that Congress is not authorized by the Constitution to hinder or impede the automatic release of the IRA. (emphasis added)

As further held in *ACORD*, the provision, when parsed, mandates that (1) the LGUs shall have a just share in the national taxes; (2) the just share shall be determined by law; and (3) the just share shall be automatically released to the LGUs. And guilty of reiteration, "under Article X, Section 6 of the Constitution, **only the just share of local governments is qualified by the words as determined by law**."[19] This ruling resulted in the nullification of appropriation items XXXVII and LIV Special Provisions 1 and 4 of the General Appropriations Act of 2000 insofar as they set a *condition sine qua non* for the release of Internal Revenue Allotment to LGUs to the tune of P10 Billion.

Similarly, we too must be conscious here of the phraseology of Article X, Section 6 of the 1987 Constitution. As couched, the phrase "*as determined by law*" follows and, therefore, qualifies "*just share*"; it cannot be construed as qualifying the succeeding phrase "*in the national taxes*." Hence, the *ponencia* is correct in ruling that the determination of what constitutes "*just share*" is within the province of legislative powers. But what Congress is only allowed to determine is the aliquot share that the LGUs are entitled to. They are not authorized to modify the base amount of the budget to be distributed. To insist that the proper interpretation of the provision is that "*the just share of LGUs in the national taxes shall be determined by law*" is tantamount to a revision of the Constitution and a blatant disregard to the specific order and wording of the provision, as crafted by its framers.

Constitutional considerations on the allocation to LGUs

The Constitution cannot be supplanted through ordinary legislative fiat. Any limitation on the allocation of wealth to the LGUs guaranteed by the fundamental law must likewise be embodied in the Constitution itself. Thus, instead of looking to RA 7160 in determining the scope of the base amount for allotment, due attention must be given to Article X, Section 7 and Article VI, Section 29(3) of the Constitution:

> SECTION 7. Local governments shall be entitled to an equitable share in the proceeds

> of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.
>
> x x x x
>
> SECTION 29. x x x
>
> (3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

With the foregoing in mind, we are now poised to gauge whether or not the items identified by petitioner Garcia are in fact unlawful deductions or exclusions from the LGUs' share in the national taxes:

1. Sections 9 and 15, Article IX of RA 9054[20] regarding the allocation of internal revenue taxes collected by cities and provinces in the ARMM;

Section 9 of RA 9054 provides for the sharing of government taxes collected from LGUs in the ARMM in the following manner: 35% to the province or city, 35% to the regional government, and 30% to the national government. The provision likewise empowers the province and city concerned to automatically retain its share and remit the shares of the regional government and the national government to their respective treasurers. Meanwhile Section 15 of RA 9054 allocates 50% of the VAT collections from the ARMM exclusively to the region and its constituencies.

The above provisions do not violate Section 6, Article X of the Constitution. Instead, this is a clear application of the Constitutional provision that empowers Congress to determine the *just share* that LGUs are entitled to receive. For while the taxes mentioned in Sections 9 and 15 of the Constitution are in the nature of national taxes, the LGUs are already receiving their *just* share thereon. Receiving their *just* share does not mean receiving a share that is equal with everyone else's. This is evident from RA 7160 which expressly provides that the share of an LGU is dependent on its population and land area—considerations that prevent any two LGU from sharing equally from the pie.

To clarify, the determination of what constitutes an LGU's just share in the national taxes is not restricted to Section 284 of RA 7160. The 40% share under the provision merely sets the general rule. And as will later be discussed, exceptions abound in statutes such as RA 9054.

Moreover, there is justification for allocating the lion's share in the tax collections from the ARMM to LGUs within the region themselves, rather than allowing *all* LGUs to share thereon in equal footing.

The creation of autonomous regions is in compliance with the constitutional directive under Article X, Sections 18 and 19[21] to address the concerned regions' continuous struggle for self-rule and self-determination. The grant to the autonomous region of a larger share in the collections is simply an incident to this grant of autonomy. To give meaning to their autonomous status, their financial and political dependence on the national government is reduced. Allocating them a larger share of

the national taxes collected from their own territory allows not only for the expeditious delivery of-basic services, but for them to be more self-sufficient and self-reliant. In a way, it can also be considered as a special purpose fund.

Thus, there is no constitutional violation in allocating 50% of the VAT collections from the ARMM to the LGUs within the region, leaving only 50% to the central government and to the other LGUs. There is nothing illegal in the ARMM's retention of 70% of the national taxes collected therein, limiting the amount of national tax to be included in the base amount for distribution to the LGUs to 30%.

2. Section 287[22] of the NIRC in relation to Section 290[23] of RA 7160 regarding the share of LGUs in the excise tax collections on mineral products;

The questioned provisions grant a 40% share in the tax collections from the exploitation and development of national wealth to the LGUs under whose territorial jurisdiction such exploitation and development occur. Such preferential allocation, in addition to their national tax allotment, cannot be deemed violative of Article X, Section 6 of the Constitution for it IS m pursuance of Article X, Section 7 earlier quoted.

The exclusion of the other LGUs from sharing in the said 40% had been justified by the Constitutional Commission in the following wise:

> MR. OPLE. Madam President, the issue has to do with Section 8 on page 2 of Committee Report No. 21:
>
> > Local taxes shall belong exclusively to local governments and they shall likewise be entitled to share in the proceeds of the exploitation and development of the national wealth within their respective areas.
>
> Just to cite specific examples. In the case of timberland within the area of jurisdiction of the Province of Quirino or the Province of Aurora, we feel that the local governments ought to share in whatever revenues are generated from this particular natural resource which is also considered a national resource in a proportion to be determined by Congress. This may mean sharing not with the local government but with the local population. The geothermal plant in the Macban, Makiling-Banahaw area in Laguna, the Tiwi Geothermal Plant in Albay, there is a sense in which the people in these areas, hosting the physical facility based on the resources found under the ground in their area which are considered national wealth, should participate in terms of reasonable rebates on the cost of power that they pay. This is true of the Maria Cristina area in Central Mindanao, for example. May I point out that in the previous government, this has always been a very nettlesome subject of Cabinet debates. Are the people in the locality, where God chose to locate His bounty, not entitled to some reasonable modest sharing of this with the national government? Why should the national government claim all the revenues arising from them? And the usual reply of the technocrats at that time is that there must be uniform treatment of all citizens regardless of where God's gifts are located, whether below the ground or above the ground. This, of course, has led to popular disenchantment. In Albay, for example, the government then promised a

> 20-percent rebate in power because of the contributions of the Tiwi plant to the Luzon grid. Although this was ordered, I remember that the Ministry of Finance, together with the National Power Corporation, refused to implement it. There is a bigger economic principle behind this, the principle of equity. If God chose to locate the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, for example, or in the Cordillera, why should the national government impose fuel adjustment taxes in order to cancel out the comparative advantage given to the people in these localities through these resources? So, it is in that sense that under Section 8, the local populations, if not the local governments, should have a share of whatever national proceeds may be realized from this natural wealth of the nation located within their jurisdictions.[24]

As can be gleaned from the discussion, the additional allocation under Article X, Section 7 is granted by reason of equity. It is given to the host LGUs for bearing the brunt of the exploitation of their territory, and is also a form of incentivizing the introduction of developments in their locality. And from the language of Article X, Section 7 itself, it is not limited to tax collections from mineral products and mining operations, but extends to taxes, fees or charges from all forms of exploitation and development of national wealth. This includes the cited establishment and operation of geothermal and hydrothermal plants in Macban, Makiling-Banahaw area in Laguna, in Tiwi, Albay, and in Iligan City, as well as the extraction of petroleum and natural gasses.

Respondents did not then err in setting aside 40% of the gross collection of taxes on utilization and development of the national wealth to the host LGU. Meanwhile, all LGUs and the national government shall share in the remaining 60% of the tax collections, satisfying the constitutional mandate that all LGUs shall receive their just share in the national taxes, albeit at a lesser amount.

3. Section 6 of RA 6631[25] and Section 8 of RA 6632[26] on the franchise taxes from the operation of the Manila Jockey Club and Philippine Racing Club race tracks;

The cited provisions relate to the automatic allocation of a 5% share in the 25% franchise tax—collected from 8.5% and 8.25% of the wager funds from the operations of the Manila Jockey Club and Philippine Racing Club, Inc., respectively—to the city or municipality where the race track is located.

This is another example of an allocation by Congress to certain LGUs, on top of their share in the 40% of national taxes under Section 284 of RA 7160. Similar to the situation of the LGUs in the ARMM, the host cities and municipalities in RA 6631 and 6632 enjoy the 5% as part and parcel of their *just share* in the national taxes. To reiterate, the just share of LGUs, as determined by law, need not be uniform for all units. It is within the wisdom of Congress to determine the extent of the shares in the national taxes that the LGUs will be accorded

Anent the remaining 20% of the franchise taxes, Sections 6 and 8 of RA 6631 and 6632, respectively, reveals that this had already been earmarked for special purposes. Under the distribution, only 5% of the franchise tax shall accrue to the national government, which will then be subject to distribution to LGUs. The rest of the apportionments of the 25% franchise taxes collected under RA 6631 and RA 6632—five percent (5%) to the host municipality, seven percent (7%) to the Philippine Charity Sweepstakes Office, six percent (6%) to the Anti-Tuberculosis Society, and two percent (2%) to the White Cross—are special purpose funds, which shall not be distributed to all

LGUs.

It must be noted that RA 6631 and 6632 had been amended by RA 8407[27] and 7953,[28] respectively. The Court hereby takes judicial notice of its salient provisions including the imposition of Documentary Stamp Taxes at the rate of ten centavos (PhP 0.10) for every peso cost of each horse racing ticket,[29] and of the ten percent (10%) taxes on winnings and prizes.[30] These are national taxes included in the enumeration of Section 21 of the NIRC. Thus, the LGUs shall share on the collections thereon.

4. Sharing of VAT collections under RA 7643;

   RA 7643 amended Section 282 of the NIRC to read thusly:

   SEC. 282. *Disposition of national internal revenue*.- x x x

   x x x x

   In addition to the internal revenue allotment as provided for in the preceding paragraph, fifty percent (50%) of the national taxes collected under Sections 100, 102, 112, 113, and 114 of this Code in excess of the increase in collections for the immediately preceding year shall be distributed as follows: (a) Twenty percent (20%) shall accrue to the city or municipality where such taxes are collected and shall be allocated in accordance with Section 150 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991; and (b) Eighty percent (80%) shall accrue to the National Government.

Notably, the 20%-80% allocation in favor of the national government is lesser than the 40% allocation under Section 284 of the LGC. This does not contravene Article X, Section 6 of the Constitution, however, for it merely sets the just share that LGUs are entitled to in the particular account. There being a special percentage allocation for these incremental taxes, respondents can then properly exclude them in computing the base amount for the national tax allocations to the LGUs.

5. Sections 8[31] and 12[32] of RA 7227, as amended by RA 9400, regarding the share of affected LGUs on the sale and conversion of former military bases;

Section 8 of RA 7227 authorizes the President, through the Bases Conversion Development Authority, to sell former military bases. It likewise mandates that the LGUs of Makati, Taguig, and Pateros shall be entitled to a 2.5% share in the disposition of converted properties in Fort Bonifacio.

Meanwhile, Section 12 of RA 7227, as amended, imposes a 5% collection on gross income to be paid by all business enterprises within the Subic Special Economic Zone. Of the imposition, 3% shall be remitted to the National Government. The remaining 2% shall be remitted to the SBMA but will be distributed to the LGUs affected by the declaration of the economic zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan. The distribution shall be based on population (50%), land mass (25%), and equal sharing (25%).

Invoking Article X, Section 6 of the Constitution, petitioner Garcia questions the provisos granting special allocations and prays that the same be included in the pool of national taxes to be distributed to all LGUs.

The argument lacks merit.

To reiterate, Article X, Section 6 of the Constitution guarantees that LGUs shall have a just share, as determined by law, in the *national taxes*. The proceeds from the sale of converted bases and the percentage collection from income, though governmental revenue, are *not* in the form of tax collections. To be sure, businesses and enterprises in the economic zone are *tax exempt* and the fees being charged the enterprises are *in lieu of paying taxes*. Section 12(C) categorically states: "x x x no national and local taxes shall be imposed within the Subic Special Economic Zone." As non-tax items, these revenues do not fall within the concept of national tax within the ambit of Article X, Section 6 of the Constitution, and the LGUs cannot then reasonably claim entitlement to a share thereon.

6. RA 7171 and Section 289[33] of the NIRC on the share of LGUs in the Excise Tax collections from the manufacture of Virginia tobacco products;

Petitioner next calls for the inclusion of the 15% collections on the excise taxes from the manufacture of Virginia tobacco products in determining the allocation base. Under Section 289 of the NIRA, the 15% being requested currently accrues to the Virginia tobacco-producing provinces, pro-rated based on their level of production.

This is another exercise by Congress of its authority to determine the *just share* in the national taxes that LGUs are entitled to. In this case, the tobacco producing provinces are provided incentives for their economic contribution, and financial assistance for the tobacco farmers.

Additionally, Excise Tax collections from the manufacture of Virginia tobacco products form part of a special fund for special purposes, within the contemplation of Article VI, Section 29(3) of the Constitution. In the same way, the Court in *Osmeña v. Orbos*[34] held that the oil price stabilization fund was a special fund segregated from the general fund and placed as it were in a trust account. And in *Gaston v. Republic Planters Bank*,[35] We ruled that the stabilization fees collected from sugar millers, planters, and producers were for a special purpose: to finance the growth and development of the sugar industry.

The special purposes, in this case, are embodied in Sections 1 and 2 of RA 7171 in the following wise:

> SECTION 1. Declaration of Policy - It is hereby declared to be the policy of the government to extend special support to the farmers of the Virginia tobacco-producing provinces inasmuch as these farmers are the nucleus of the Virginia tobacco industry which generates a sizeable income, in terms of excise taxes from locally manufactured Virginia-type cigarettes and customs duties on imported blending tobacco, for the National Government. For the reason stated, it is hereby further declared that the **special support for these provinces shall be in terms of financial assistance for developmental projects to be implemented by the local governments of the**

provinces concerned.

SECTION 2. Objective - The special support to the Virginia tobacco-producing provinces shall be utilized to advance the self-reliance of the tobacco farmers through:

a. **Cooperative projects that will enhance better quality of products, increase productivity, guarantee the market and as a whole increase farmer's income;**
b. **Livelihood projects particularly the development of alternative farming systems to enhance farmers income;**
c. **Agro-industrial projects that will enable tobacco farmers in the Virginia tobacco producing provinces to be involved in the management and subsequent ownership of these projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization; and**
d. **Infrastructure projects such as farm-to-market roads.**(emphasis added)

The Excise Tax collections from the manufacture of Virginia tobacco earmarked for these programs were then validly placed in an account separate from the collections for other national tax items. The balance shall not be transferrable to the general funds of the government, from where the shares of the LGUs are sourced, unless the purposes for which the special fund was created have been fulfilled or abandoned. Absent any showing that said special purpose no longer exists, respondents committed no error in excluding 15% of Excise Tax collections on Virginia tobacco products from the distribution of national wealth to the LGUs.

To be sure, RA 10351[36] introduced an amendment to Section 288 of the NIRC on the allocation of excise taxes from tobacco products, to wit:

(C) Incremental Revenues from the Excise Tax on Alcohol and Tobacco Products. –

After deducting the allocations under Republic Act Nos. 7171 and 8240, eighty percent (80%) of the remaining balance of the incremental revenue derived from this Act shall be allocated for the universal health care under the National Health Insurance Program, the attainment of the millennium development goals and health awareness programs; **and twenty percent (20%) shall be allocated nationwide, based on political and district subdivisions, for medical assistance and health enhancement facilities program, the annual requirements of which shall be determined by the Department of Health (DOH).**

Thus, only 20% of the balance, after deducting the 15% of incremental excise tax allocation to the Virginia tobacco growers, shall form part of the base amount for determining the LGUs' share under Section 284 of the LGC, the 80% having been specially allocated for a special purpose.

7. Section 8 of RA 8240,[37] as now provided in Section 288 of the NIRC;

Section 288 of the NIRC, on the allocation of the incremental revenue from excise tax collections on tobacco products, deserves the same treatment as the earlier-discussed Excise Tax collections from

the manufacture of Virginia tobacco. The pertinent provision reads:

> **Section 288.** *Disposition of Incremental Revenues*. -
>
> x x x x
>
> (B) Incremental Revenues from Republic Act No. 8240. - Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under RA. No. 8240 shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. **The fund shall be exclusively utilized for programs in pursuit of the following objectives:**
>
> > **(1) Cooperative projects that will enhance better quality of agricultural products and increase income and productivity of farmers;**
> >
> > **(2) Livelihood projects, particularly the development of alternative farming system to enhance farmer's income; and**
> >
> > **(3) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects, such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.**

The directive that the funds be exclusively utilized for the enumerated programs places the provision on par with Section 289 of the NIRC, in relation to RA 7171, as discussed in the preceding section. Both partake of special purpose funds that cannot be disbursed for any obligation other than those for which they are intended. Respondents then likewise correctly excluded from the computation base this 15% incremental excise tax collections for a special purpose account. But just like the case of the Excise Taxes on Virginia tobacco products, 80% of the remainder will accrue to a special purpose fund, leaving only 20% of the remainder for distribution to the LGUs. This is in view of the amendment introduced by RA 10351.

8. The share of the Commission on Audit (COA) on the NIRT as provided for in Section 24(3) of Presidential Decree No. 1445 in relation to Section 284 of the NIRC;

Section 284 of the NIRC reads:

> **Section 284.** *Allotment for the Commission on Audit*. - One-half of one percent (1/2 of 1%) of the collections from the national internal revenue taxes not otherwise accruing to special accounts in the general fund of the national government **shall accrue to the Commission on Audit as a fee for auditing services rendered to local government units**, excluding maintenance, equipment, and other operating expenses as provided for in Section 21 of Presidential Decree No. 898. (emphasis added)

Evidently, the provision does not diminish the base amount of national taxes that LGUs are to share from. It merely apportions half of 1% of national tax collections to the COA as compensation for its auditing services. This is not an illegal exclusion, but a recognition of the COA's right to fiscal

autonomy under Article IX-A, Section 5 of the Constitution.[38] Thus, there is no clash nor conflict between the 40% allocation to LGUs under RA 7160 and the ½ of 1% allocation to COA under Section 285.

In sum, only (a) 50% of the VAT collections from the ARMM, (b) 30% of all other national tax collections from the ARMM, (c) 60% of the national tax collections from the exploitation and development of national wealth, (d) 5% of the 25% franchise taxes from the 8.5% and 8.25% of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc., and (e) 20% of the 85% of the incremental revenue from excise taxes on Virginia, burley and native tobacco products shall be included in the computation of the base amount of the 40% allotment. The remainders are allocated to beneficiary LGUs determined by law as part of their just share in the national taxes. Other special purpose funds shall likewise be excluded.

Further, incremental taxes shall be disposed of in consonance with Section 282 of the NIRC, as amended. The sales proceeds from the disposition of former military bases pursuant to RA 7227, on the other hand, are excluded since these are non-tax items to which LGUs are not constitutionally entitled to a share. There is also no impropriety in allocating ½ of 1% of tax collections to the COA as compensation for auditing fees.

The 40% share of the LGUs in the national taxes must be released upon proper appropriation; the allocation cannot be reduced without first amending Section 284 of the LGC

Pursuant to Article VI, Section 29 of the Constitution, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This highlights the requirement of an appropriation law, the annual General Appropriations Act (GAA), despite the "automatic release" clause under Article X, Section 6, and places LGUs on par with Constitutional Commissions and agencies that are granted fiscal autonomy.

Guilty of reiteration, Article X, Section 6 of the Constitution declared that the LGUs are entitled to their just share in the national taxes, without distinction as to the type of national tax being collected. Thus, while Congress has the exclusive power of the purse, it cannot validly exclude from its appropriation to the LGUs the national tax collections of the BOC that are remitted to the national coffers. Otherwise stated, the base for national tax allotments is not limited to national internal revenue taxes under Section 21 of the NIRC, as amended, collected by the BIR, but also includes the Tariff and Customs Duties collected by the BOC, including the VAT, Excise Taxes and DST collected thereon.

The national government could have misconstrued the application of Section 6, Article X of the Constitution in not giving to the LGUs what is due the latter. True, Congress may enact statutes to set what constitutes the just share of the LGUs, so long as the LGUs remain to share in all national taxes. But lest it be forgotten, the percentage allocation to the LGUs need not be uniform across all forms of national taxes. Thus, while Section 284 of RA 7160 establishes a 40% share of the LGUs in the national taxes, this is only the general rule that is subject to exceptions, as explicated in the preceding discussion.

Absent any law amending Section 284 of the LGC, the 40% general allotment to the LGUs can only be reduced under the following circumstance:

> x x x That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) x x x

The yearly enactment of a general appropriations law cannot be deemed as the amendatory statutes that would permit Congress to lower, disregard, and circumvent the 40% threshold. For though an appropriation act is a piece of legislature, it cannot modify Section 284 of the LGC, which is a substantive law, by simply appropriating to the LGUs an amount lower than 40%. The appropriation of a lower amount should not be understood as the creation of an exception to Section 284 of the LGC, but should be considered as an inappropriate provision.

Article VI, Section 25(2) of the Constitution[39] deems a provision inappropriate if it does not relate specifically to some particular item of appropriation. The concept, however, was expanded in *PHILCONSA v. Enriquez*,[40] wherein the Court taught that "*included in the category of 'inappropriate provisions' are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind of laws have no place in an appropriations bill.* " Thus Congress cannot introduce arbitrary figures as the budgetary allocation to the LGUs in the guise of amending the 40% threshold in Section 284 of the LGC.

To hold otherwise would bestow Congress unbridled license to enact in the GAA any manner of allocation to the LGUs that it wants, rendering illusory the 40% statutory percentage under Section 284. It would allow for no fixed expectation on the part of the LGUs as to the share they will receive, for it could range from .01-100%, depending on either the whim or wisdom of Congress. Under this setup, Congress might dangle the modification of the percentage share as a stick or carrot before the LGUs for the latter to toe the line. In turn, this would provide basis to fear that LGUs would be beholden to Congress by increasing or decreasing allocations as a form of discipline.

This would run contrary to the constitutional provision on local autonomy, and the spirit of the LGC. Perhaps the reason there is clamor for federalism is precisely because the allocations to LGUs had not been sufficient to finance basic services to local communities, which predicament might be addressed by broadening the allocation base up to what the Constitution provides. Therefore, the Court should uphold the lofty idea behind the LGC—that of empowering the LGUs and making them self-reliant by ensuring that they receive what is due them, amounting to 40% of national tax collections.

The computation of the 40% allocation base shall be based on the collections from the third fiscal year preceding the current fiscal year, as certified by the BIR and the BOC to the DBM as remittances to the National Treasury. The DBM shall then use said amount certified by the BIR and the BOC in determining the base amount which shall be incorporated in the budget proposal for submission to Congress. Upon enactment of the appropriations act, the national tax allotment the

LGUs are entitled to shall be automatically released to them by the DBM within 5 days after the end of each quarter, in accordance with Section 286 of RA 7160.[41]

The Operative Fact Doctrine prevents the LGUs from collecting the arrears sought after; the Court's ruling herein can only be prospectively applied

Notwithstanding the postulation that the phrase "*internal revenue*" in Section 284 of the LGC and, consequently, its embodiment in the appropriation laws are unconstitutional, it is respectfully submitted that the prayer for the award of arrears should nevertheless be denied.

Article 7 of the Civil Code states that "*When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern*." The provision sets the general rule that an unconstitutional law is void and therefore produces no rights, imposes no duties and affords no protection.[42]

However, the doctrine of operative fact is a recognized exception. Under the doctrine, the law is declared as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play.[43] The Court acknowledges that an unconstitutional law may have consequences which cannot always be ignored and that the past cannot always be erased by a new judicial declaration.[44] The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[45]

In this case, the proposed nullification of the phrase "*internal revenue*" in Section 284 of RA 7160 would have served as the basis for the recovery of the LGUs' just share in the tariff and customs duties collected by the BOC that were illegally withheld from 1991-2012. However, this entitlement to a share in the tariff collections would have been further compounded by the LGU's alleged P500-billion share, more or less, in the VAT, Excise Tax, and DST collections of the BOC. These arrears would be too cumbersome for the government to shoulder, which only had a budget of P1.8 Trillion in 2012.[46] Thus, while petitioners request that the LGU's can still recover the arrears of the national, it is submitted that this is no longer feasible. This would prove too much for the government's strained budget to meet, unless paid out on installment or in a staggered basis.

The operative fact doctrine allows for the prospective application of the outcome of this case and justifies the denial of petitioners' claim for arrears. As held in *Commissioner of Internal Revenue v. San Roque Power Corporation*[47] that:

> x x x for the operative fact doctrine to apply, there must be a "legislative or executive measure," meaning a law or executive issuance, that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, **the effects of the law or executive issuance, <u>when relied upon by the public in good faith</u>, may have to be recognized as valid**. (emphasis added)

This was echoed in *Araullo v. Aquino (Araullo)*[48] wherein the Court held that the operative fact doctrine can be applied to government programs, activities, and projects that can no longer be undone, and whose beneficiaries relied in good faith on the validity of the disbursement acceleration program (DAP). In that case, the Court also agreed to extend to the proponents and implementors of the DAP the benefit of the doctrine of operative fact because they had nothing to do at all with the adoption of the invalid acts and practices. To quote:

> As a general rule, the nullification of an unconstitutional law or act carries with it the illegality of its effects. However, in cases where nullification of the effects will result in inequity and injustice, the operative fact doctrine may apply. In so ruling, the Court has essentially recognized the impact on the beneficiaries and the country as a whole if its ruling would pave the way for the nullification of the P144.378 Billions worth of infrastructure projects, social and economic services funded through the DAP. Bearing in mind the disastrous impact of nullifying these projects by virtue alone of the invalidation of certain acts and practices under the DAP, the Court has upheld the efficacy of such DAP-funded projects by applying the operative fact doctrine. For this reason, we cannot sustain the Motion for Partial Reconsideration of the petitioners in G.R. No. 209442.

Taking our cue from *Araullo*, it is then beyond quibbling that no amount of bad faith can be attributed to the respondents herein. They merely followed established practice in government, which in turn was based on the plain reading of how Section 284 of the LGC. As couched, the provision seemingly allowed limiting the share of the LGUs to the national internal revenue taxes under Section 21 of the NIRC.

Moreover, it is imprecise to state that respondents illegally withheld monies from the LGUs. For the monies that should have been shared with the LGUs were nevertheless disbursed via the pertinent appropriation laws. Applying the presumption of regularity accorded to government officials, it may be presumed that the amount of P498,854,388,154.93 being claimed was utilized to finance government projects just the same, and ended up redounding not to the benefit of a particular LGU, but to the public-at-large. No badge of bad faith therefore obtained in the actuations of respondents. Consequently, the operative fact doctrine can properly be applied.

Increased national tax allotments may cure economic imbalance

As a final word, it cannot be gainsaid that this ruling of the Court granting a bigger piece of the national taxes to the LGUs will undoubtedly be an effective strategy and positive approach in addressing the sad plight of poor or underdeveloped LGUs that yearn to loosen the ostensible grip of imperial Manila over its supposed co-equals, *imperium in imperio*.

This ruling is timely since we are now in the midst of amending or revising the 1987 Constitution, with the avowed goal to "address the economic imbalance" through "transfer or sharing of the powers and resources of the government."[49] Encapsulated in the proposed Constitution is the "bayanihan federalism" anchored on the principles of "working together" and "cooperative competition or coopetition."[50] Our own brand of federalism may just work given its presidential-

federal form of government that is "uniquely Filipino" that is tailor-fit to the Filipino nation. The well-crafted proposal will undergo exhaustive scrutiny and intense debate both in and out of the halls of Congress. Whatever may be the outcome of the debates and the decision of Congress and the Filipino people will hopefully be for the betterment of the country.

In the meantime, we must continue to explore readily available means to address the imbalance suffered by the LGUs. Indeed, there is sufficient room in our Constitution to expand the authority of the LGUs, there being no constitutional proscription against further devolving powers and decentralizing governance in their favor. On the contrary, this is what our laws prescribe. Article X, Section 3 of the Constitution state:

> **Section 3. The Congress shall enact a local government code** which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources**, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, **and all other matters relating to the organization and operation of the local units**.

By constitutional fiat, Congress has within its arsenal ample mandate to enact laws to grant and allocate among the different LGUs more powers, responsibilities and resources through the amendment of RA 7160 or the Local Government Code of 1991. And increasing the wealth and resources of the component LGUs is but one of the veritable measures to concretize the concept of local autonomy under Article X of the 1987 Constitution possibly without resorting to radical changes in our political frameworks.

If it is the sincere goal of the national government to provide ample financial resources to the LGUs, then it can consider amending Section 284 of RA 7160 and even increase the national tax allotment (formerly IRA) to more than 40% of national taxes. Scrutiny should be made, however, of the percentage by which the national tax allotment is being distributed to among the different LGUs. For instance, Congress may consider balancing Section 285 of RA 7160 by adjusting the 23% share of the 145 cities vis-a-vis the percentage allocation of 1,478 municipalities now pegged at 34%. There are currently too few cities taking up too much share. This notwithstanding that cities, unlike many of the underperforming municipalities, are more progressive and financially viable because of the higher taxes they collect from people and business activities in their respective territories.

Congress may also decentralize and devolve more powers and duties to the LGUs or deregulate some activities or processes to entitle said LGUs more elbow room to successfully attain their programs and projects in harmony with national development programs. It has the supremacy in the enactment of laws that will define any aspect of organization and operation of the LGUs to make it more efficient and financially stable with special focus on the amplification of the taxing powers of said government units. Ergo, if Congress is so minded to reinforce the powers of the LGUs, it can, within the confines of the present Constitution, transfer or share any power of the national government to said local governments.

Moreover, Article VII, Section 17 of the Constitution makes the President the Chief of the Executive

branch of Government, thus:

> **Section 17.** The President shall have control of all the executive departments, bureaus and offices. He shall ensure that laws be faithfully executed.

In the same token, Section 1, Chapter III of the Administrative Code of 1987 provides that the executive power shall be vested in the President of the Philippines. The President is the head of the executive branch of government having full control of all executive departments, bureaus and offices.[51] Part and parcel of the President's ordinance power is the issuance of executive or administrative that tend to decentralize or devolve certain powers and functions belonging to the executive departments, bureaus, and offices to the LGUs, unless otherwise provided by law.

The President may also order the DBM to review and evaluate the current formula for computation of the national tax allotment. At present, DBM relies mainly on two (2) factors in determining the allotments of provinces, municipalities and cities—50% percent based on population, 25% for land area and 25o/o for equal sharing. For barangays, it is 60% based on population and 40% for equal sharing. A view has been advanced that the shares of a province, city or municipality should be based on the classification of LGUs under Executive Order No. 249 dated July 25, 1987 determined from the average annual income of the LGU and not mainly on population and land area which are not accurate factors. It was put forward that the shares of LGUs in the NTA shall be in **inverse proportion** to their classification. A bigger share shall be granted to the 6th class municipality and a lower share to a 1st class municipality. At present, Senate Bill No. 2664 is pending which intends to rationalize the income classification of LGUs. We leave it to Congress or the President to resolve this issue, hopefully for a fairer sharing scheme that fully benefit the poor and disadvantaged provinces and municipalities.

Lastly, the President has the power of general supervision over local governments under Article X, Section 4 of the Constitution, *viz*:

> **Section 4.** The President of the **Philippines shall exercise general supervision over local governments**. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. (emphasis added)

He can, therefore, support, guide, or even hand-hold the LGUs that are financially distressed or politically ineffective via the regional and provincial officials of the executive departments or bureaus. In short, the President can transfer or share executive powers through decentralization or devolution without need of a fresh mandate under a new constitution.

From the foregoing, the perceived ills brought about by a unitary system of government may after all be readily remediable through congressional and executive interventions through the concepts of decentralization and devolution of powers to the LGUs. In the meantime that the leaders of the public and private sectors are busy dissecting and analyzing the proposed Bayanihan Federalism or, more importantly, resolving the issue of whether a charter amendment is indeed necessary, it may be prudent to consider whether the government can make do of its present powers and mandate to attain the goal of bringing progress to our poor and depressed local government units.

After all, the present constitution may be ample enough to straighten out the "economic imbalance" and does not require fixing.

I, therefore, vote to **PARTIALLY GRANT** the instant petitions. In particular, I concur with the following dispositions:

1. The phrase "internal revenue" appearing in Section 284 of RA 7160 is declared **UNCONSTITUTIONAL** and is hereby **DELETED**.

    a. The Section 284, as modified, shall read as follows:

    Section 284. *Allotment of ~~Internal Revenue~~ Taxes*. - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:

    (a) On the first year of the effectivity of this Code, thirty percent (30%);

    (b) On the second year, thirty-five percent (35%); and

    (c) On the third year and thereafter, forty percent (40%).

    Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the ~~internal revenue~~ allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national ~~internal revenue~~ taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) ~~internal revenue~~ allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

    b. The phrase "internal revenue" shall likewise be **DELETED** from the related sections of RA 7160, particularly Sections 285, 287, and 290, which shall now read:

    Section 285. *Allocation to Local Government Units.* - The share of local government units in the ~~internal revenue~~ allotment shall be collected in the following manner:

    (a) Provinces- Twenty-three percent (23%);
    (b) Cities- Twenty-three percent (23%);
    (c) Municipalities- Thirty-four percent (34%); and
    (d) Barangays- Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population- Fifty percent (50%);
(b) Land Area- Twenty-five percent (25%); and
(c) Equal sharing- Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (P80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:

(1) Population- Forty percent (40%); and
(2) Equal sharing- Sixty percent (60%)

(b) On the second year:

(1) Population- Fifty percent (50%); and
(2) Equal sharing- Fifty percent (50%)

(c) On the third year and thereafter:

(1) Population- Sixty percent (60%); and
(2) Equal sharing- Forty percent (40%).

Provided, finally, That the financial requirements of barangays created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

x x x x

Section 287. *Local Development Projects*. - Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual internal revenue allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government.

x x x x

Section 290. *Amount of Share of Local Government Units*. - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

c. Articles 378, 379, 380, 382, 409, 461, and other related provisions in the Implementing Rules and Regulations of RA 7160 are hereby likewise **MODIFIED** to reflect deletion of the phrase "internal revenue."

d. Henceforth, any mention of "IRA" in RA 7160 and its Implementing Rules and Regulations shall hereinafter be understood as pertaining to the national tax allotment of a local government unit;

2. Respondents are hereby **DIRECTED** to include all forms of national tax collections, other than those accruing to special purpose funds and special allotments for the utilization and development of national wealth, in the subsequent computations for the base amount of just share the Local Government Units are entitled to. The base for national tax allotments shall include, but shall not be limited to:

a. National Internal Revenue Taxes under Section 21 of the National Internal Revenue Code, as amended, collected by the Bureau of Internal Revenue and its deputized agents, including Value-Added Taxes, Excise Taxes, and Documentary Stamp Taxes collected by the Bureau of Customs;

b. Tariff and Customs Duties collected by the Bureau of Customs;

c. Fifty percent (50%) of the Value-Added Tax collections from the Autonomous Region in Muslim Mindanao (ARMM), and thirty percent (30%) of all other national tax collections from the ARMM.

The remaining fifty percent (50%) of the Value-Added Taxes and seventy (70%) of the other national taxes collected in the ARMM shall be the exclusive share of the region pursuant to Sections 9 and 15 of RA 9054;

d. Sixty percent (60%) of the national tax collections from the exploitation and development of national wealth.

The remaining forty (40%) will validly exclusively accrue to the host Local Government Unit pursuant to Section 290 of RA 7160;

e. Five percent (5%) of the twenty-five percent (25%) franchise taxes collected from eight and a half percent (8.5%) and eight and one fourth percent (8.25%) of the total wager funds of the Manila Jockey Club and Philippine Racing Club, Inc. pursuant to Sections 6 and 8 of RA 6631 and 6632, respectively.

The remaining twenty percent (20%) shall be divided as follows (5%) to the host municipality, seven percent (7%) to the Philippine Charity Sweepstakes Office, six percent (6%) to the Anti-Tuberculosis Society, and two percent (2%) to the White Cross;

f. Twenty percent (20%) of the eighty-five (85%) of the Excise Tax

collections from Virginia, burley, and native tobacco products.

The fist fifteen percent (15%) shall accrue to the tobacco producing units pursuant to RA No. 7171 and 8240. Eighty percent (80%) of the remainder shall be segregated as special purpose funds under RA 10351;

3. In addition, the Court further **DECLARES** that:

   a. The apportionment of incremental taxes - twenty percent (20%) to the city or municipality where the tax is collected and eighty percent (80%) to the national government of fifty percent (50%) of incremental tax collections - under Section 282 of the National Internal Revenue Code, as amended by Republic Act No. 7643, is **VALID** and shall be observed;

   b. Sections 8 and 12 of RA 7227 are hereby declared **VALID**. The proceeds from the sale of military bases converted to alienable lands thereunder are **EXCLUDED** from the computation of the national tax allocations of the Local Government Units since these are sales proceeds, not tax collections;

   c. The one-half of one percent (1/2%) of national tax collections as the auditing fee of the Commission on Audit under Section 24(3) of Presidential Decree No. 1445 shall not be deducted prior to the computation of the forty percent (40%) share of the Local Government Units in the national taxes; and

   d. Other special purpose funds are likewise **EXCLUDED** from the computation of the national tax allotment base.

4. The Bureau of Internal Revenue and Bureau of Customs are hereby **ORDERED** to certify to the Department of Budget and Management all their collections and remittances of National Taxes;

5. The Court's formula in this case for determining the base amount for computing the share of the Local Government Units shall have **PROSPECTIVE APPLICATION** from finality of this decision in view of the operative fact doctrine. Thus, petitioners' claims of arrears from the national government for the unlawful exclusions from the base amount are hereby **DENIED**.

6. Finally, once the General Appropriations Act for the succeeding year is enacted, the national tax allotments of the Local Government Units shall **AUTOMATICALLY** and **DIRECTLY** be released, without need of any further action, to the provincial, city, municipal, or *barangay* treasurer, as the case may be, on a quarterly basis but not beyond five (5) days after the end of each quarter. The Department of Budget and Management is hereby **ORDERED** to strictly comply with Article X, Section 6 of the Constitution and Section 286 of the Local Government Code, operationalized by Article 383 of the Implementing Rules and Regulations of RA 7160.

[1] *Rollo*, p. 46.

[2] Id. at 48.

[3] Now amended by Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.

[4] **Section 290.** *Amount of Share of Local Government Units.* - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

[5] Article 378. Allotment of Internal Revenue Taxes. The total annual internal revenue allotments (IRAs) due the LGUs shall be determined on the basis of collections from national internal revenue taxes actually realized as certified by the BIR during the third fiscal year preceding the current fiscal year: x x x

[6] **Section 107.** *Value-Added Tax on Importation of Goods*. -

(A) *In General*. - There shall be levied, assessed and collected on every importation of goods a value-added tax equivalent to ten percent (10%) based on the total value used by the Bureau of Customs in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any.

x x x x

[7] **Section 129.** *Goods subject to Excise Taxes.* - Excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.

x x x x

[8] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010.

[9] Id.

[10] *See also* RA 8752 or the Anti-Dumping Act of 1999, which provides the rules for "AntiDumping Duties"; RA 8800, or the "Safeguard Measures Act," which provides the rules on Safeguard Duties; RA 8751 on Countervailing Duty.

[11] G.R. No. 101273 July 3, 1992.

[12] < https://thelawdictionary.org/tariff/ > last accessed May 16, 2018.

[13] Sec. 18. *Power to Generate and Apply Resources*. Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of further action;

[14] 574 Phil. 620, 639 (2008); See also *Palma Development Corp. v. Municipality of Malangas*, 459 Phil. 1042 (2003); *Batangas City v. Pilipinas Shell Petroleum Corp*., G.R No. 187631, July 8, 2015; *First Philippine Industrial Corp. v. Court of Appeals*, 360 Phil. 852 (1998); *City of Davao v. Regional Trial Court*, 504 Phil. 543 (2005); *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181 (2006); *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*, 653 Phil. 328 (2010).

[15] 459 Phil. 1042 (2003).

[16] *Amores v. HRET*, G.R. No. 189600, June 29, 2010.

[17] Record of the Constitutional Commission, Vol. III, pp. 478-479.

[18] G.R. No. 144256, June 8, 2005.

[19] Id.

[20] **Section 9.** Sharing of Internal Revenue, Natural Resources Taxes, Fees and Charges. - The collections of a province or city from national internal revenue taxes, fees and charges, and taxes imposed on natural resources, shall be distributed as follows:

> (a)Thirty-five percent (35%) to the province or city;
> (b)Thirty-five percent (35%) to the regional government; and
> (c)Thirty percent (30%) to the central government or national government.
> x x x x
>
> **SECTION 15.** *Collection and Sharing of Internal Revenue Taxes.*
> x x x x
>
> Fifty percent (50%) of the share of the central government or national government of the yearly incremental revenue from tax collections under sections 106 (value-added tax on sales of goods or properties), 108 (value-added tax on sale of services and use or lease of properties) and 116 (tax on persons exempt from value-added tax) of the National Internal Revenue Code (NIRC) shall be shared by the Regional Government and the local government units within the area of autonomy as follows:
>
> x x x x

[21] Section 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for special courts with personal, family, and property law jurisdiction consistent with the provisions of this Constitution and national laws.

The creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region.

Section 19. The first Congress elected under this Constitution shall, within eighteen months from the time of organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras.

[22] **SEC. 287. Shares of Local Government Units in the Proceeds from the Development and Utilization of the National Wealth.** - Local Government units shall have an equitable share in the proceeds derived from the utilization and development of the national wealth, within their respective areas, including sharing the same with the inhabitants by way of direct benefits.

(A) Amount of Share of Local Government Units. - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

(B) Share of the Local Governments from Any Government Agency or Government-owned or -Controlled Corporation.- Local Government Units shall have a share, based on the preceding fiscal year, from the proceeds derived by any government agency or government-owned or controlled corporation engaged in the utilization and development of the national wealth based on the following formula, whichever will produce a higher share for the local government unit:

> (1) One percent (1%) of the gross sales or receipts of the preceding calendar year, or
> (2) Forty percent (40%) of the excise taxes on mineral products, royalties, and such other taxes, fees or charges, including related surcharges, interests or fines the government agency or government owned or -controlled corporations would have paid if it were not otherwise exempt.

[23] **Section 290.** *Amount of Share of Local Government Units*. - Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

[24] Record of the Constitutional Committee, Vol. 3, p. 178.

[25] **SECTION 6.** In consideration of the franchise and rights herein granted to the Manila Jockey Club, Inc., the grantee shall pay into the national Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one-half per centum (8 ½%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section four hereof, allotted as follows: a) National Government, five per centum (5%); b) the city or municipality where the race track is located, five per centum (5%); c) Philippine Charity Sweepstakes Office, seven per centum (7%); d) Philippine AntiTuberculosis Society, six per centum (6%); and e) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, now or in the future, on its properties, whether real or personal, and profits, from which taxes the grantee is hereby expressly excepted.

[26] **SECTION 8.** In consideration of the franchise and rights herein granted to the Philippine Racing Club, Inc., the grantee shall pay into the National Treasury a franchise tax equal to twenty-five per centum (25%) of its gross earnings from the horse races authorized to be held under this franchise which is equivalent to the eight and one fourth per centum (8 ¼%) of the total wager funds or gross receipts on the sale of betting tickets during the racing day as mentioned in Section six hereof, allotted as follows: a) National Government, five per centum (5%); the Municipality of Makati, five per centum (5%); b) Philippine Charity Sweepstakes Office, seven per centum (7%); c) Philippine Anti-Tuberculosis Society, six per centum (6%); and d) White Cross, two per centum (2%). The said tax shall be paid monthly and shall be in lieu of any and all taxes, except the income tax, of any kind, nature and description levied, established or collected by any authority whether barrio, municipality, city, provincial or national, on its properties, whether real or personal, from which taxes the grantee is hereby expressly exempted.

[27] AN ACT AMENDING REPUBLIC ACT NUMBERED SIXTY-SIX HUNDRED THIRTYONE ENTITLED "AN ACT GRANTING MANILA JOCKEY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITIDN THE PROVINCES OF BULACAN, CAVITE OR RIZAL" AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS (25) FROM THE EXPIRATION OF THE TERM THEREOF.

[28] AN ACT AMENDING REPUBLIC ACT NUMBERED SIXTY-SIX HUNDRED THIRTYTWO ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC., A FRANCHISE TO OPERATE AND MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL', AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS FROM THE EXPIRATION OF THE TERM THEREOF.

[29] Section 8 of RA 7953, and Section 11 of RA 8407.

[30] Section 10 of RA 7953, and Section 13 of RA 8407.

[31] **Section 8.** Funding Scheme:

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable pursuant to the provisions of existing laws and regulations governing sales of government properties x x x The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be used for the following purposes with their corresponding percent shares of proceeds:

> (1) Thirty-two and five-tenths percent (32.5%) To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP'S medical facilities;
> (2) Fifty percent (50%) To finance the conversion and the commercial uses of the Clark and Subic military reservations and their extensions;
> (3) Five Percent (5%) To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein; and
> (4) The balance shall accrue and be remitted to the National Treasury to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people.

Provided That in the case of Fort Bonifacio, two and five tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig, and Pateros: Provided further That in no case shall farmers affected be denied due compensation.

x x x x

[32] **Section 12.** Subic Special Economic Zone. x x x

x x x x

"(c) The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%), land mass (25%), and equal sharing (25%).

[33] **Section 289.** *Special Financial Support to Beneficiary Provinces Producing Virginia Tobacco*.- The financial support given by the National Government for the beneficiary provinces shall be constituted and collected from the proceeds of fifteen percent (15%) of the excise taxes on locally manufactured Virginia-type of cigarettes.

The funds allotted shall be divided among the beneficiary provinces pro-rata according to the volume of Virginia tobacco production.

x x x x

The Secretary of Budget and Management is hereby directed to retain annually the said funds equivalent to fifteen percent (15%) of excise taxes on locally manufactured Virginia type cigarettes to be remitted to the beneficiary provinces qualified under R.A. No. 7171.

The provision of existing laws to the contrary notwithstanding, the fifteen percent (15%) share from government revenues mentioned in R.A. No. 7171 and due to the Virginia tobacco-producing provinces shall be directly remitted to the provinces concerned. xxxx

[34] G.R. No. 99886, March 31, 1993.

[35] G.R. No. L-77194, March 15, 1988.

[36] AN ACT RESTRUCTURING THE EXCISE TAX ON ALCOHOL AND TOBACCO PRODUCTS BY AMENDING SECTIONS 141, 142, 143, 144, 145, 8, 131 AND 288 OF REPUBLIC ACT NO. 8424. OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED BY REPUBLIC ACT NO. 9334, AND FOR OTHER PURPOSES.

[37] SEC. 8. Fifteen percent (15%) of the incremental revenue collected from the excise tax on tobacco products under this Act shall be allocated and divided among the provinces producing burley and native tobacco in accordance with the volume of tobacco leaf production. The fund shall be exclusively utilized for programs in pursuit of the following objectives:

> (a) Cooperative projects that will enhance better quality of agricultural products and increase income and productivity of farmers;
> (b) Livelihood projects particularly the development of alternative farming system to enhance farmer's income;
> (c) Agro-industrial projects that will enable tobacco farmers to be involved in the management and subsequent ownership of projects such as post-harvest and secondary processing like cigarette manufacturing and by-product utilization.

The Department of Budget and Management in consultation with the Oversight Committee created hereunder shall issue the corresponding rules and regulations governing the allocation and disbursement of this fund.

[38] **SECTION 5.** The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

[39] Section 25.

x x x x

(2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

[40] G.R. No. 113105, August 19, 1994.

[41] **Section 286.** *Automatic Release of Shares*.-

(a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.
(b) Nothing in this Chapter shall be understood to diminish the share of local government units under existing laws.

[42] G.R. No. 79732, November 8, 1993.

[43] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, August 24, 2010.

[44] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, 14 March 2008.

[45] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, August 24, 2010.

[46] See Republic Act No. 10155.

[47] G.R. No. 187485, October 8, 2013.

[48] G.R. No. 209287, February 3, 2015.

[49] Ding Generoso, April 19, 2018, PTV news – AB.

[50] Id.

[51] Section 17 of Article VII of the 1987 Constitution and section 1, Chapter 1, Title 1, Book III of the Administrative Code.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

The Constitution only requires that the local government units should have a "just share" in the national taxes. "Just share, as determined by law"[1] does not refer only to a percentage, but likewise a determination by Congress and the President as to which national taxes, as well as the percentage of such classes of national taxes, will be shared with local governments. The phrase

"national taxes" is broad to give Congress a lot of leeway in determining what portion or what sources within the national taxes should be "just share."

We should be aware that Congress consists of both the Senate and the House of Representatives. The House of Representatives meantime also includes district representatives. We should assume that in the passage of the Local Government Code and the General Appropriations Act, both Senate and the House are fully aware of the needs of the local government units and the limitations of the budget.

On the other hand, the President, who is sensitive to the political needs of local governments, likewise, would seek the balance between expenditures and revenues.

What petitioners seek is to short-circuit the process. They will to empower us, unelected magistrates, to substitute our political judgment disguised as a decision of this Court.

The provisions of the Constitution may be reasonably read to defer to the actions of the political branches. Their interpretation is neither absurd nor odious.

We should stay our hand.

I

Mandamus will not lie to achieve the reliefs sought by the parties.

G.R. No. 199802 (Mandanas' Petition) is a petition for certiorari, prohibition, and mandamus to set aside the allocation or appropriation of some P60,750,000,000.00 under Republic Act No. 10155 or the General Appropriations Act of 2012, which supposedly should form part of the 40% internal revenue allotment of the local government units. Petitioners contend that the General Appropriations Act of 2012 is unconstitutional, in so far as it misallocates some P60,750,000,000.00 that represents a part of the local government units' internal revenue allotment coming from the national internal revenue taxes specifically the value-added taxes, excise taxes, and documentary stamp taxes collected by the Bureau of Customs.[2]

Thus, petitioners seek to enjoin respondents from releasing the P60,750,000,000.00 of the P1,816,000,000,000.00 appropriations provided under the General Appropriations Act of 2012. They submit that the P60,750,000,000.00 should be deducted from the capital outlay of each national department or agency to the extent of their respective pro-rated share.[3]

Petitioners further seek to compel respondents to cause the automatic release of the local government units' internal revenue allotments for 2012, including the amount of P60,750,000,000.00; and to pay the local government units their past unpaid internal revenue allotments from Bureau of Customs' collections of national internal revenue taxes from 1989 to 2009.[4]

On the other hand, G.R. No. 208488 (Garcia's Petition) seeks to declare as unconstitutional Section 284 of Republic Act No. 7160 or the Local Government Code of 1991, in limiting the basis for the computation of the local government units' internal revenue allotment to *national internal revenue taxes* instead of *national taxes* as ordained in the Constitution.[5]

This Petition also seeks a writ of mandamus to command respondents to fully and faithfully perform their duties to give the local government units their just share in the national taxes. Petitioner contends that the exclusion of the following special taxes and special accounts from the basis of the internal revenue allotment is unlawful:

a. Autonomous Region of Muslim Mindanao, RA No. 9054;
b. Share of LGUs in mining taxes, RA No. 7160;
c. Share of LGUs in franchise taxes, RA No. 6631, RA No. 6632;
d. VAT of various municipalities, RA No. 7643;
e. ECOZONE, RA No. 7227;
f. Excise tax on Locally Manufactured Virginia Tobacco, RA No. 7171;
g. Incremental Revenue from Burley and Native Tobacco, RA No. 8240;
h. COA share, PD 1445.[6]

Similar to Mandanas' Petition, Garcia argues that the value-added tax and excise taxes collected by the Bureau of Customs should be included in the scope of national internal revenue taxes.

Specifically, petitioner asks that respondents be commanded to:

> (a) Compute the internal revenue allotment of the local government units on the basis of the national tax collections including tax collections of the Bureau of Customs, without any deductions;
>
> (b) Submit a detailed computation of the local government units' internal revenue allotments from 1995 to 2014; and
>
> (c) Distribute the internal revenue allotment shortfall to the local government units.[7]

In sum, both Petitions ultimately seek a writ of mandamus from this Court to compel the Executive Department to disburse amounts, which allegedly were illegally excluded from the local government units' Internal Revenue Allotments for 2012 and previous years, specifically from 1992 to 2011.

Under Rule 65, Section 3 of the Rules of Civil Procedure, a petition for *mandamus* may be filed "[w]hen any tribunal, corporation, board, officer or person *unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office*, trust, or station." It may also be filed "[w]hen any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

"Through a writ of *mandamus*, the courts '*compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent*' by operation of his or her office, trust, or station."[8] It is necessary for petitioner to show both the legal basis for the duty, and the defendant's or respondent's failure to perform the duty.[9] "It is equally necessary that the respondent have the power to perform the act concerning which the application for mandamus is made."[10]

There was no unlawful neglect on the part of public respondents, particularly the Commissioner of

Internal Revenue, in the computation of the internal revenue allotment. Moreover, the act being requested of them is not their ministerial duty; hence, *mandamus* does not lie and the Petitions must be dismissed.

Respondents' computation of the internal revenue allotment was not without legal justification.

Republic Act No. 7160, Section 284 provides that the local government units shall have a forty percent (40%) share in the national internal revenue taxes based on the collections of the third fiscal year preceding the current fiscal year. Article 378 of Administrative Order No. 270 or the Rules and Regulations Implementing the Local Government Code of 1991 (Local Government Code Implementing Rules) mandates that "[t]he total annual internal revenue allotments ... due the [local government units] shall be determined on the basis of collections from national internal revenue taxes *actually realized as certified by the [Bureau of Internal Revenue]*." Consistent with this Rule, it was reiterated in Development Budget Coordination Committee Resolution No. 2003-02 dated September 4, 2003 that the national internal revenue collections as defined in Republic Act No. 7160 shall refer to "*cash collections based on the [Bureau of Internal Revenue] data as reconciled with the [Bureau of Treasury]*."

Pursuant to the foregoing Article 378 of the Local Government Code Implementing Rules and Development Budget Coordination Committee Resolution, the Bureau of Internal Revenue computed the internal revenue allotment on the bases of its actual collections of national internal revenue taxes. The value-added tax, excise taxes, and a portion of the documentary stamp taxes collected by the Bureau of Customs on imported goods were not included in the computation because "these collections of the [Bureau of Customs] are remitted directly to the [Bureau of Treasury]"[11] and, as explained by then Commissioner Jacinto-Henares, "are recognized by the Bureau of Treasury as the collection performance of the Bureau of Customs."[12]

Furthermore, the exclusions of certain special taxes from the revenue base for the internal revenue allotment were made pursuant to special laws—Presidential Decree No. 1445 and Republic Act Nos. 6631, 6632, 7160, 7171, 7227, 7643, and 8240—all of which enjoy the presumption of constitutionality and validity.

It is basic that laws and implementing rules are presumed to be valid unless and until the courts declare the contrary in clear and unequivocal terms.[13] Thus, respondents must be deemed to have conducted themselves in good faith and with regularity when they acted pursuant to the Local Government Code and its Implementing Rules, the Development Budget Coordination Committee Resolution, and special laws.

At any rate, the issue on the alleged "unlawful neglect" of respondents was settled when Congress adopted and approved their internal revenue allotment computation in the General Appropriations Act of 2012.

Mandamus will also not lie to enjoin respondents to withhold the P60,750,000,000.00 appropriations in the General Appropriations Act of 2012 for capital outlays of national agencies and release the same to the local government units as internal revenue allotment.

Congress alone, as the "appropriating and funding department of the Government,"[14] can

authorize the expenditure of public funds through its power to appropriate. Article VI, Section 29(1) of the Constitution is clear that the expenditure of public funds must be pursuant to an appropriation made by law. Inherent in Congress' power of appropriation is the power to specify not just the amount that may be spent but also the purpose for which it may be spent.[15]

While the disbursement of public funds lies within the mandate of the Executive, it is subject to the limitations on the amount and purpose determined by Congress. Book VI, Chapter 5, Section 32 of Executive Order No. 292 directs that "[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated." It is the ministerial duty of the Department of Budget and Management to desist from disbursing public funds without the corresponding appropriation from Congress. Thus, the Department of Budget and Management has no power to set aside fund for purposes outside of those mentioned in the appropriations law. The proper remedy of the petitioners is to apply to Congress for the enactment of a special appropriation law; but it is still discretionary on the part of Congress to appropriate or not.

Thus, on procedural standpoint alone, the Petitions must be dismissed.

II

On the substantive issue, I hold the view that:

1) Section 284[16] of the Local Government Code, limiting the base for the computation of internal revenue allotment to national internal revenue taxes is a proper exercise of the legislative discretion accorded by the Constitution[17] to determine the "just share" of the local government units;

2) The exclusion of certain revenues—value-added tax, excise tax, and documentary stamp taxes collected by the Bureau of Customs—from the base for the computation for the internal revenue allotment, which was approved in the General Appropriations Act of 2012, is not unconstitutional; and

3) The deductions to the Bureau of Internal Revenue's collections made pursuant to special laws were proper.

III

We assess the validity of the internal revenue allotment of the local government units in light of Article X, Section 6 of the 1987 Constitution, which provides:

> Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

"Just share" does not refer only to a percentage, but it can also refer to a determination as to which national taxes, as well as the percentage of such classes of national taxes, will be shared with local governments. There are no constitutional restrictions on how the share of the local governments

should be determined other than the requirement that it be "just." The "just share" is to be determined "by law," a term which covers both the Constitution and statutes. Thus, the Congress and the President are expressly authorized to determine the "just share" of the local government units.

According to the *ponencia*, mandamus will not lie because "the determination of what constitutes the just share of the local government units in the national taxes under the 1987 Constitution is an entirely discretionary power"[18] and the discretion of Congress is not subject to external direction. Yet the disposition on the substantive issues, in essence, supplants legislative discretion and relegates it to one that is merely ministerial.

The percentages 30% in the first year, 35% in the second year, and 40% in the third year, and onwards were fixed in Section 284 of the Local Government Code on the basis of what Congress determined as the revenue base, i.e., national internal revenue taxes. Thus, we cannot simply declare the phrase "internal revenue" as unconstitutional and strike it from Section 284 of the Local Government Code, because this would effectively change Congress' determination of the just share of the local government units. By broadening the base for the computation of the 40% share to national taxes instead of to national internal revenue taxes, we would, in effect, increase the local government units' share to an amount more than what Congress has determined and intended.

The limitation provided in Article X, Section 6 of the 1987 Constitution should be reasonably construed so as not to unduly hamper the full exercise by the Legislative Department of its powers. Under the Constitution, it is Congress' exclusive power and duty to authorize the budget for the coming fiscal year. "Implicit in the power to authorize a budget for government is the necessary function of evaluating the past year's spending performance as well as the determination of future goals for the economy."[19] For sure, this Court has, in the past, acknowledged the awesome power of Congress to control appropriations.

In *Guingona, Jr. v. Carague*,[20] petitioners therein urged that Congress could not give debt service the highest priority in the General Appropriations Act of 1990 because under Article XIV, Section 5(5) of the Constitution, it should be education that is entitled to the highest funding. Rejecting therein petitioners' argument, this Court held:

> **While it is true that under Section 5(5), Article XIV of the Constitution Congress is mandated to "assign the highest budgetary priority to education"** in order to "insure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment," **it does not thereby follow that the hands of Congress are so hamstrung as to deprive it the power to respond to the imperatives of the national interest and for the attainment of other state policies or objectives**.
>
> As aptly observed by respondents, since 1985, the budget for education has tripled to upgrade and improve the facility of the public school system. The compensation of teachers has been doubled. The amount of P29,740,611,000.00 set aside for the Department of Education, Culture and Sports under the General Appropriations Act (R.A. No. 6831), is the highest budgetary allocation among all department budgets.

> This is a clear compliance with the aforesaid constitutional mandate according highest priority to education.
>
> **Having faithfully complied therewith, Congress is certainly not without any power, guided only by its good judgment, to provide an appropriation, that can reasonably service our enormous debt, the greater portion of which was inherited from the previous administration.** It is not only a matter of honor and to protect the credit standing of the country. More especially, the very survival of our economy is at stake. **Thus, if in the process Congress appropriated an amount for debt service bigger than the share allocated to education, the Court finds and so holds that said appropriation cannot be thereby assailed as unconstitutional.**[21] (Emphasis supplied)

Appropriation is not a judicial function. We do not have the power of the purse and rightly so. The power to appropriate public funds for the maintenance of the government and other public needs distinctively belongs to Congress. Behind the Constitutional mandate that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law"[22] lies the principle that the people's money may be spent only with their consent. That consent is to be expressed either in the Constitution itself or in valid acts of the legislature as the direct representative of the people.

Every appropriation is a political act. Allocation of funds for programs, projects, and activities are very closely related to political decisions. The budget translates the programs of the government into monetary terms. It is intended as a guide for Congress to follow not only in fixing the amounts of appropriation but also in determining the specific governmental activities for which public funds should be spent.

The Constitution requires that all appropriation bills should originate from the House of Representatives.[23] Since the House of Representatives, through the district Representatives, is closer to the people and has more interaction with the local government that is within their districts than the Senate, it is expected to be more sensitive to and aware of the local needs and problems, [24] and thus, have the privilege of taking the initiative in the disposal of the people's money. The Senate, on the other hand, may propose amendments to the House bill.[25]

The appropriation bill passed by Congress is submitted to the President for his or her approval.[26] The Constitution grants the President the power to veto any particular item or items in the appropriation bill, without affecting the other items to which he or she does not object.[27] This function enables the President to remove any item of appropriation, which in his or her opinion, is wasteful[28] or unnecessary.

Considering the entire process, from budget preparation to legislation, we can presume that the Executive and Congress have prudently determined the level of expenditures that would be covered by the anticipated revenues for the government on the basis of historical performance and projections of economic conditions for the incoming year. The determination of just share contemplated under Article X, Section 6 of the 1987 Constitution is part of this process. Their interpretation or determination is not absurd and well within the text of the Constitution. We should

exercise deference to the interpretation of Congress and of the President of what constitutes the "just share" of the local government units.

IV

The general appropriations law, like any other law, is a product of deliberations in the legislative body. Congress' role in the budgetary process[29] and the procedure for the enactment of the appropriations law has been described in detail as follows:

> The **Budget Legislation Phase** covers the period commencing from the time Congress receives the President's Budget, which is inclusive of the [National Expenditure Program] and the [Budget of Expenditures and Sources of Financing], up to the President's approval of the GAA. This phase is also known as the Budget Authorization Phase, and involves the significant participation of the Legislative through its deliberations.
>
> Initially, the President's Budget is assigned to the House of Representatives' Appropriations Committee on First Reading. The Appropriations Committee and its various Sub-Committees schedule and conduct budget hearings to examine the PAPs of the departments and agencies. Thereafter, the House of Representatives drafts the General Appropriations Bill (GAB).
>
> The GAB is sponsored, presented and defended by the House of Representatives' Appropriations Committee and Sub-Committees in plenary session. As with other laws, the GAB is approved on Third Reading before the House of Representatives' version is transmitted to the Senate.
>
> After transmission, the Senate conducts its own committee hearings on the GAB. To expedite proceedings, the Senate may conduct its committee hearings simultaneously with the House of Representatives' deliberations. The Senate's Finance Committee and its Sub-Committees may submit the proposed amendments to the GAB to the plenary of the Senate only after the House of Representatives has formally transmitted its version to the Senate. The Senate version of the GAB is likewise approved on Third Reading.
>
> The House of Representatives and the Senate then constitute a panel each to sit in the Bicameral Conference Committee for the purpose of discussing and harmonizing the conflicting provisions of their versions of the GAB. The "harmonized" version of the GAB is next presented to the President for approval. The President reviews the GAB, and prepares the Veto Message where budget items are subjected to direct veto, or are identified for conditional implementation.
>
> If, by the end of any fiscal year, the Congress shall have failed to pass the GAB for the ensuing fiscal year, the GAA for the preceding fiscal year shall be deemed re-enacted and shall remain in force and effect until the GAB is passed by the Congress.[30] (Emphasis in the original, citations omitted)

The general appropriations law is a special law pertaining specifically to appropriations of money from the public treasury. The "just share" of the local government units is incorporated as the internal revenue allotment in the general appropriations law. By the very essence of how the general appropriations law is enacted, particularly for this case the General Appropriations Act of 2012, it can be presumed that Congress has *purposefully, deliberately, and precisely* approved the revenue base, including the exclusions, for the internal revenue allotment.

A basic rule in statutory construction is that as between a specific and general law, the former must prevail since it reveals the legislative intent more clearly than a general law does.[31] The specific law should be deemed an exception to the general law.[32]

The appropriations law is a special law, which specifically outlines the share in the national fund of all branches of the government, including the local government units. On the other hand, the National Internal Revenue Code is a general law on taxation, generally applicable to all persons. Being a specific law on appropriations, the General Appropriations Act should be considered an exception to the National Internal Revenue Code definition of national internal revenue taxes insofar as the internal revenue allotments of the local government units are concerned. The General Appropriations Act of 2012 is the clear and specific expression of the legislative will—that the local government units' internal revenue allotment is 40% of national internal revenue taxes excluding tax collections of the Bureau of Customs—and must be given effect. That this was the obvious intent can also be gleaned from Congress' adoption and approval of internal revenue allotments using the same revenue base in the General Appropriations Act from 1992 to 2011.

The ruling in *Province of Batangas v. Romulo*[33] that a General Appropriations Act cannot amend substantive law must be read in its context.

In that case, the General Appropriations Acts of 1999, 2000, and 2001 contained provisos earmarking for each corresponding year the amount of P5,000,000,000.00 of the local government units' internal revenue allotment for the Local Government Service Equalization Fund and imposing the condition that "such amount shall be released to the local government units subject to the implementing rules and regulations, including such mechanisms and guidelines for the equitable allocations and distribution of said fund among the local government units subject to the guidelines that may be prescribed by the Oversight Committee on Devolution." This Court struck down the provisos in the General Appropriations Acts of 1999, 2000, and 2001 as unconstitutional, and the Oversight Committee on Devolution resolutions promulgated pursuant to these provisos. This Court held that to subject the distribution and release of the Local Government Service Equalization Fund, a portion of the internal revenue allotment, to the rules and guidelines prescribed by the Oversight Committee on Devolution makes the release *not* automatic, a flagrant violation of the constitutional and statutory mandate that the "just share" of the local government units "shall be automatically released to them."

This Court further found that the allocation of the shares of the different local government units in the internal revenue allotment as provided in Section 285[34] of the Local Government Code was not followed, as the resolutions of the Oversight Committee on Devolution prescribed different sharing schemes of the Local Government Service Equalization Fund. This Court held that the percentage sharing of the local government units fixed in the Local Government Code are matters

of substantive law, which could not be modified through appropriations laws or General Appropriations Acts. This Court explained that Congress cannot include in a general appropriation bill matters that should be more properly enacted in a separate legislation.

Province of Batangas cited in turn this Court's ruling in *Philippine Constitution Association (PHILCONSA) v. Enriquez*,[35] which defined what were considered inappropriate provisions in appropriation laws:

> As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind[s] of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments.
>
> The doctrine of "inappropriate provision" was well elucidated in *Henry v. Edwards*, ... , thus:
>
> > Just as the President may not use his item-veto to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation. The Governor's constitutional power to veto bills of general legislation . . . cannot be abridged by the careful placement of such measures in a general appropriation bill, thereby forcing the Governor to choose between approving unacceptable substantive legislation or vetoing 'items' of expenditures essential to the operation of government. *The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power over substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation*. ... We are no more willing to allow the legislature to use its appropriation power to infringe on the Governor's constitutional right to veto matters of substantive legislation than we are to allow the Governor to encroach on the constitutional powers of the legislature. In order to avoid this result, we hold that, *when the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as 'items' for purposes of the Governor's item veto power over general appropriation bills*.[36] (Emphasis in the original)

In *PHILCONSA*, this Court upheld the President's veto of the proviso in the Special Provision of the item on debt service requiring that "*any payment in excess of the amount herein appropriated* shall

be subject to the approval of the President of the Philippines with the concurrence of the Congress of the Philippines."[37] This Court held that the proviso was an *inappropriate provision* because it referred to funds other than the P86,323,438,000.00 appropriated for debt service in the General Appropriations Act of 1991.

Province of Batangas referred to a provision m the General Appropriations Act, which was clearly shown to contravene the Constitution, while *PHILCONSA* referred to an inappropriate provision, i.e., a provision that was clearly extraneous to any definite item of appropriation in the General Appropriations Act, which incidentally constituted an implied amendment of another law.

What is involved here is the internal revenue allotment of the local government units in the Government Appropriations Act of 2012, the determination of which was, under the Constitution, left to the sole prerogative of the legislature. Congress has full discretion to determine the "just share" of the local government units, in which authority necessarily includes the power to fix the revenue base, or to define what are included in this base, and the rate for the computation of the internal revenue allotment. Absent any clear and unequivocal breach of the Constitution, this Court should proceed with restraint when a legislative act is challenged in deference to a co-equal branch of the Government.[38] "If a particular statute is within the constitutional powers of the Legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment."[39]

V

The *ponencia* further elaborates "automatic release" in Section 286 of the Local Government Code as "without need for a yearly appropriation." This is contrary to the Constitution. A statute cannot amend the Constitutional requirement.

Section 286 of the Local Government Code states:

> Section 286. *Automatic Release of Shares*. — (a) The share of each local government unit shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

Appropriation and *release* refer to two (2) different actions. "An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose."[40] It is the Congressional authorization required by the Constitution for spending.[41] Release, on the other hand, has to do with the actual disbursement or spending of funds. "Appropriations have been considered 'released' if there has already been an allotment or authorization to incur obligations and disbursement authority."[42] This is a function pertaining to the Executive Department, particularly the Department of Budget and Management, in the execution phase of the budgetary process.[43]

Article VI, Section 29(1) of the Constitution is explicit that:

> Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

In other words, before money can be taken out of the Government Treasury for any purpose, there must first be an appropriation made by law for that specific purpose. Neither of the fiscal officers or any other official of the Government is authorized to order the expenditure of unappropriated funds. Any other course would give to these officials a dangerous discretion.

This Court has pronounced that to be valid, an appropriation must be specific, both in amount and purpose.[44] In *Nazareth v. Villar*,[45] this Court held that even if there is a law authorizing the grant of Magna Carta benefits for science and technology personnel, the funding for these benefits must be "purposefully, deliberately, and precisely" appropriated for by Congress in a general appropriation law:

> Article VI Section 29 (1) of the 1987 Constitution firmly declares that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This constitutional edict requires that the GAA be purposeful, deliberate, and precise in its provisions and stipulations. As such, the requirement under Section 20 of R.A. No. 8439 that the amounts needed to fund the *Magna Carta* benefits were to be appropriated by the GAA only meant that such funding must be purposefully, deliberately, and precisely included in the GAA. The funding for the *Magna Carta* benefits would not materialize as a matter of course simply by fiat of R.A. No. 8439, but must initially be proposed by the officials of the DOST as the concerned agency for submission to and consideration by Congress. That process is what complies with the constitutional edict. R.A. No. 8439 alone could not fund the payment of the benefits because the GAA did not mirror every provision of law that referred to it as the source of funding. It is worthy to note that the DOST itself acknowledged the absolute need for the appropriation in the GAA. Otherwise, Secretary Uriarte, Jr. would not have needed to request the OP for the express authority to use the savings to pay the *Magna Carta* benefits.[46] (Citation omitted)

All government expenditures must be integrated in the general appropriations law. This is revealed by a closer look into the entire government budgetary and appropriation process.

The first phase in the process is the budget preparation. The Executive prepares a National Budget that is reflective of national objectives, strategies, and plans for the following fiscal year. Under Executive Order No. 292 of the Administrative Code of 1987, the national budget is to be "formulated within the context of a regionalized government structure and of the totality of revenues and other receipts, expenditures and borrowings of all levels of government and of government-owned or controlled corporations."[47]

The budget may include the following:

> (1) A budget message setting forth in brief the government's budgetary thrusts for the budget year, including their impact on development goals, monetary and fiscal objectives, and generally on the implications of the revenue, expenditure and debt proposals; and
>
> (2) Summary financial statements setting forth:

(a) Estimated expenditures and proposed appropriations necessary for the support of the Government for the ensuing fiscal year, including those financed from operating revenues and from domestic and foreign borrowings;

(b) Estimated receipts during the ensuing fiscal year under laws existing at the time the budget is transmitted and under the revenue proposals, if any, forming part of the year's financing program;

(c) Actual appropriations, expenditures, and receipts during the last completed fiscal year;

(d) Estimated expenditures and receipts and actual or proposed appropriations during the fiscal year in progress;

(e) Statements of the condition of the National Treasury at the end of the last completed fiscal year, the estimated condition of the Treasury at the end of the fiscal year in progress and the estimated condition of the Treasury at the end of the ensuing fiscal year, taking into account the adoption of financial proposals contained in the budget and showing, at the same time, the unencumbered and unobligated cash resources

(f) Essential facts regarding the bonded and other long-term obligations and indebtedness of the Government, both domestic and foreign, including identification of recipients of loan proceeds; and

(g) Such other financial statements and data as are deemed necessary or desirable in order to make known in reasonable detail the financial condition of the government.[48]

The President, in accordance with Article VII, Section 22 of the Constitution, submits the budget of expenditures and sources of financing, which is also called the National Expenditure Plan, to Congress as the basis of the general appropriation bill,[49] which will be discussed, debated on, and voted upon by Congress. Also included in the budget submission are the proposed expenditure levels of the Legislative and Judicial Branches, and of Constitutional bodies.[50]

All appropriation proposals must be included in the budget preparation process.[51] Congress then "deliberates or acts on the budget proposals . . . in the exercise of its own judgment and wisdom [and] formulates an appropriation act."[52] The Constitution states that "Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget."[53] Furthermore, "all expenditures for (1) personnel retirement premiums, government service insurance, and other similar fixed expenditures, (2) principal and interest on public debt, (3) national government guarantees of obligations which are drawn upon, are automatically appropriated."[54]

Parenthetically, the General Appropriations Act of 2012 includes the budgets for entities enjoying fiscal autonomy,[55] and for debt service that is automatically appropriated, under the following titles:

1. Title XXIX, the Judiciary;
2. Title XXX, Civil Service Commission;
3. Title XXXI, Commission on Audit;
4. Title XXXII, Commission on Elections;
5. Title XXXIII, Office of the Ombudsman;
6. Annex A, Automatic Appropriations, which include the interest payments for debt service and the internal revenue allotment of the local government units; and
7. Annex B, Debt Service — Principal Amortizations.[56]

"Automatic appropriation" is not the same as "automatic release" of appropriations. As stated earlier, the power to appropriate belongs to Congress, while the responsibility of releasing appropriations belongs to the Department of Budget and Management.[57]

Items of expenditure that are automatically appropriated, like debt service, are approved at its annual levels or on a lump sum by Congress upon due deliberations, without necessarily going into the details for implementation by the Executive.[58] However, just because an expenditure is automatically appropriated does not mean that it is no longer included in the general appropriations law.

On the other hand, the "automatic release" of approved annual appropriations requires the full release[59] of appropriations without any condition.[60] Thus, "no report, no release" policies cannot be enforced against institutions with fiscal autonomy. Neither can a "shortfall in revenues" be considered as valid justification to withhold the release of approved appropriations.[61]

With regard to the local government units, the automatic release of internal revenue allotments under Article X, Section 6 of the Constitution binds both the Legislative and Executive departments.[62] In *ACORD, Inc. v. Zamora*,[63] the [General Appropriations Act 2000] of placed P10,000,000,000.00 of the [internal revenue allotment] under "unprogrammed funds." This Court, citing *Province of Batangas* and *Pimentel v. Aguirre*,[64] ruled that such withholding of the internal revenue allotment contingent upon whether revenue collections could meet the revenue targets originally submitted by the President contravened the constitutional mandate on automatic release.

The *automatic* release of the local government units' shares is a basic feature of local fiscal autonomy. Nonetheless, as clarified in *Pimentel*:

> Under the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units are expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated and coordinated towards a

> common national goal. Thus, policy-setting for the entire country still lies in the President and Congress. As we stated in *Magtajas v. Pryce Properties Corp., Inc.*, municipal governments are still agents of the national government.[65] (Citation omitted)

The release of the local government units' share without an appropriation, as what the *ponencia* proposes, substantially amends the Constitution. It also gives local governments a level of fiscal autonomy not enjoyed even by constitutional bodies like the Supreme Court, the Constitutional Commissions, and the Ombudsman. It bypasses Congress as mandated by the Constitution.

"Without appropriation" also substantially alters the relationship of the President to local governments, effectively diminishing, if not removing, supervision as mandated by the Constitution.

ACCORDINGLY, I vote to **DISMISS** the Petitions.

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[1] CONST., art. X, sec. 6

[2] *Rollo* (G.R. No. 199802), pp. 4-5.

[3] Id. at 24.

[4] Id. at 24-25.

[5] *Rollo* (G.R. No. 208488), p. 15.

[6] Id. at 11.

[7] Id. at 15-16.

[8] *Bagumbayan-VNP Movement, Inc. v. Commission on Elections*, G.R. No. 222731 (Resolution), March 8, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/222731.pdf > 10 [Per J. Leonen, En Banc].

[9] Id.

[10] *Alzate v. Aldana*, 118 Phil. 220, 225 (1963) [Per J. Barrera, En Banc].

[11] *Rollo* (G.R. No. 199802), p. 198, Memorandum of Respondents.

[12] Id. at 217-218, Memorandum of Petitioner.

[13] *See Abakada Guro Party List v. Purisima*, 584 Phil. 246 (2008) [J. Corona, En Banc].

[14] Dissenting Opinion of J. Padilla in *Gonzales v. Macaraig, Jr.*, 269 Phil. 472, 516 (1990) [Per J. Melencio-Herrera, En Banc].

[15] *See Verceles, Jr. v. Commission on Audit*, G.R. No. 211553, September 13, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudenee/2016/september2016/211553.pdf > [Per J. Brion, En Banc]; *Atitiw v. Zamora*, 508 Phil. 321 (2005) [Per J. Tinga, En Banc].

[16] LOCAL GOVT. CODE, sec. 284 provides:

> Section 284. *Allotment of Internal Revenue Taxes*.- Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) on the first year of the effectivity of this Code, thirty percent (30%);
> (b) on the second year, thirty-five percent (35%); and
> (c) on the third year and thereafter, forty percent (40%).
>
> Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of Secretary of Finance, Secretary of Interior and Local Government, and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the "liga", to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year: Provided, further, That in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%) internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services.

[17] CONST., art. X, sec. 6 states:

Section 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

[18] *Ponencia*, p. 6.

[19] Separate Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 41 6, 686 (2013) [Per J. Perlas-Bernabe, En Banc].

[20] 273 Phil. 443 (1991) [Per J. Gancayco, En Banc].

[21] Id. at 451.

[22] CONST., art. VI, sec. 29(1).

[23] CONST., art. VI, sec. 24.

[24] See *Tolentino v. Secretary of Finance,* 305 Phil. 686 (1994) [Per J. Mendoza, En Banc].

[25] CONST., art. VI, sec. 24.

[26] CONST., art. VI, sec. 27(1).

[27] CONST., art. VI, sec. 27(2).

[28] Concurring Opinion of J. Carpio, *Belgica v. Ochoa*, 721 Phi1. 416, 613-654 (2013) [Per J. Perlas Bernabe, En Banc].

[29] The budgetary process was described as consisting of four phases: (1) Budget Preparation; (2) Budget Legislation; (3) Budget Execution; and (4) Accountability. Congress enters the picture in the second phase.

[30] *Araullo v. Aquino III*, 737 Phil. 457, 547-549 (2014) [Per J. Bersamin, En Banc].

[31] *See Vinzons-Chato v. Fortune Tobacco Corp.*, 552 Phil. 101 (2007) [Per J. Ynares Santiago, Third Division]; *De Jesus v. People*, 205 Phil. 663 (1983) [Per J. Escolin, En Banc].

[32] *See Lopez, Jr. v. Civil Service Commission*, 273 Phil. 147 (1991) [Per J. Sarmiento, En Banc].

[33] 473 Phil. 806 (2004) [Per J. Callejo, Sr., En Banc].

[34] LOCAL GOVT. CODE, sec. 285 states:

> Section 285. *Allocation to Local Government Units*. — The share of local government units in the internal revenue allotment shall be allocated in the following manner:
> (a) Provinces - Twenty-three percent (23%);
> (b) Cities - Twenty-three percent (23%);
> (c) Municipalities - Thirty-four percent (34%); and
> (d) Barangays - Twenty percent (20%).

[35] 305 Phil. 546 (1994) [Per J. Quiason, En Banc].

[36] Id. at 577-578.

[37] Id. at 573.

[38] *See Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*, 686 Phil. 357 (2012) [Per J. Mendoza, En Banc]; *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[39] *Tajanlañgit, et al. v. Peñaranda, et al.*, 37 Phil. 155, 160 (1917) (Per J. Johnson, First Division].

[40] *Bengzon v. Secretary of Justice*, 62 Phil. 912, 916 (1936) [Per J. Malcolm, En Banc].

[41] *Araullo v. Aquino III*, 737 Phil. 457, 571 (2014) (Per J. Bersamin, En Banc] *citing Gonzales v. Raquiza*, 259 Phil. 736 (1989) [Per C.J. Fernan, Third Division].

[42] Id.

[43] Id.

[44] *Dela Cruz v. Ochoa, Jr.*, G.R. No. 219683, January 23, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/219683.pdf > [Per J. Bersamin, En Banc] *citing Goh v. Bayron*, 748 Phil. 282 (2014) [Per J. Carpio, En Banc].

[45] 702 Phil. 319 (2013) [Per J. Bersamin, En Banc].

[46] Id. at 338-339.

[47] ADM. CODE, Book VI, chap. 2, sec. 3.

[48] ADM. CODE, Book VI, chap. 3, sec. 12.

[49] CONST., art. VII, sec. 22.

[50] ADM. CODE, Book VI, chap. 3, sec. 12.

[51] ADM. CODE, Book VI, chap. 4, sec. 27.

[52] *Lawyers Against Monopoly and Poverty v. Secretary of Budget and Management*, 686 Phil. 357, 375 (2012) [Per J. Mendoza, En Banc].

[53] CONST., art. VI, sec. 25(1).

[54] ADM. CODE, Book VI, chap. 4, sec. 26.

[55] *See Commission on Human Rights Employees' Association v. Commission on Human Rights*, 528 Phil. 658, 678 (2006) [Per J. Chico-Nazario, Special Second Division]. "Fiscal Autonomy shall mean independence or freedom regarding financial matters from outside control and is characterized by self direction or self determination.... [it] means more than just the automatic and regular release of approved appropriation, and also encompasses, among other things: (1) budget preparation and implementation; (2) flexibility in fund utilization of approved appropriations; and (3) use of savings and disposition of receipts."

[56] For 2012 GAA, please look at SUM2012 (Summary of FY 2012 New Appropriations) folder. The Annexes to the 2012 New Appropriations consist of (1) Automatic Appropriations, which included the interest payments for debt service; and (2) Debt Service Principal Amortization. Please refer to the AA and DSPA folders for the details of the automatic appropriations and debt service appropriations, respectively. The yearly GAAs can be accessed from the Department of Budget and Management website under DBM Publications.

[57] *See Civil Service Commission v. Department of Budget and Management* 517 Phil. 440 (2006) [Per J. Carpio Morales, En Banc].

[58] *See Guingona, Jr. v. Carague*, 273 Phil. 443 (1991) [Per J. Gancayco, En Banc].

[59] *Civil Service Commission v. Department of Budget and Management*, 517 Phil. 440 (2006) [Per J. Carpio Morales, En Banc].

[60] *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372 (2005) [Per J. Carpio Morales, En Banc].

[61] Id.

[62] *ACORD Inc. v. Zamora*, 498 Phil. 615 (2005) [Per J. Carpio Morales, En Banc].

[63] 498 Phil. 615 (2005) [Per J. Carpio Morales, En Banc].

[64] 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

[65] Id. at 102.

SEPARATE OPINION

CAGUIOA, *J.*:

Every statute has in its favor the presumption of constitutionality. This presumption rests on the doctrine of separation of powers, which enjoins the three branches of government to encroach upon the duties and powers of another.[1] It is based on the respect that the judicial branch accords to the legislature, which is presumed to have passed every law with careful scrutiny to ensure that it is in accord with the Constitution.[2] Thus, before a law is declared unconstitutional, there must be a clear and unequivocal showing that what the Constitution prohibits, the statute permits.[3] In other words, laws shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt.[4] To doubt is to sustain the constitutionality of the assailed statute.[5]

In the present case, doubt exists as to whether Section 284 of the Local Government Code (LGC) directly contravenes Section 6, Article X of the 1987 Constitution because the latter is susceptible of two interpretations.

Section 6, Article X of the 1987 Constitution states:

> SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

In *Province of Batangas v. Romulo*,[6] the Court explained that the foregoing provision mandates that (1) the local government units (LGUs) shall have a "just share" in the national taxes; (2) the "just share" shall be determined by law; and (3) the "just share" shall be automatically released to

the LGUs.

The issue now before this Court is what constitutes a "just share".

The *ponencia* offers a restrictive interpretation of the term "just share" as referring only to a percentage or fractional value of the entire pie of national taxes. This necessarily results in finding Section 284 of the LGC too restrictive as it limits the pie to internal revenue taxes only. Thus, the *ponencia* finds the words "internal revenue" in Section 284 of the LGC constitutionally infirm and deems the same as not written.

Justice Leonen, on the other hand, provides a liberal interpretation. According to him the term "just share" may refer to the classes of national taxes as well as to the percentages of such classes, since other than the term "just", no other restrictions on how the share of the LGUs should be determined are provided by the Constitution. He posits that the Constitution left the sole discretion to Congress in determining the "just share" of the LGUs, which authority necessarily includes the power to fix the revenue base (*i.e.*, only a portion of "national taxes") and the rate for the computation of the allotment to the LGUs.

It is a settled rule in the construction of laws, that "[i]f there is doubt or uncertainty as to the meaning of the legislature, if the words or provisions of the statute are obscure, or if the enactment is fairly susceptible of two or more constructions, that interpretation will be adopted which will avoid the effect of unconstitutionality, even though it may be necessary, for this purpose, to disregard the more usual or apparent import of the language employed."[7]

I find the foregoing rule applicable even to the construction of the Constitution. Thus, as between the *ponencia*'s restrictive approach and Justice Leonen's liberal approach, I submit that the latter should be upheld. The Court's ruling in *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*,[8] lends credence:

> Indeed, "all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; **that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases**; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; **and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted**."[9]

Moreover, I join the position of Justice Leonen that the Constitution gave Congress the absolute authority and discretion to determine the LGUs' "just share" — which include both the classes of national taxes and the percentages thereof. The exercise of this plenary power vested upon Congress, through the latter's enactment of laws, including the LGC, the National Internal Revenue Code and the general appropriations act, is beyond the Court's judicial review as this pertains to policy and wisdom of the legislature.

I echo Justice Leonen's statement that appropriation is not a judicial function. Congress, which holds the power of the purse, is in the best position to determine the "just share" of the LGUs based

on their needs and circumstances. Courts cannot provide a new formula for the Internal Revenue Allotments (IRA) or substitute its own determination of what "just share" should be, absent a clear showing that the assailed act of Congress (*i.e.*, Section 284 of the LGC) is prohibited by the fundamental law. To do so would be to tread the dangerous grounds of judicial legislation and violate the deeply rooted doctrine of separation of powers.

Finally, even assuming that Section 284 of the LGC is constitutionally infirm, I agree with the *ponencia's* position that the operative fact doctrine should apply to this case. The doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law.[10] In *Araullo v. Aquino III*,[11] the doctrine was held to apply to recognize the positive results of the implementation of the unconstitutional law or executive issuance to the economic welfare of the country. Not to apply the doctrine of operative fact would result in most undesirable wastefulness and would be enormously burdensome for the Government.[12]

In the same vein, petitioners cannot claim deficiency IRA from previous fiscal years as these funds may have already been used for government projects, the undoing of which would not only be physically impossible but also impractical and burdensome for the Government.

Verily, considering that the decisions of this Court can only be applied prospectively, I find the Court's computation of "just share" of no practical value to petitioners and other LGUs; because while LGUs, in accordance with the Court's ruling, are now entitled to share directly from national taxes, Congress, as they may see fit, can simply enact a law lowering the percentage shares of LGUs equivalent to the amount initially granted to them. In fine, and in all practicality, this case is much ado over nothing.

For the foregoing reasons, I vote to **DISMISS** the Petitions.

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[1] See *Cawaling, Jr. v. Commission on Elections*, 420 Phil. 524, 530 (2001).

[2] See id.; see also *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001).

[3] *Garcia v. Commission on Elections*, 297 Phil. 1034, 1047 (1993).

[4] *Rama v. Moises*, G.R. No. 197146, August 8, 2017.

[5] See *Garcia v. Commission on Elections*, supra note 3, at 1047.

[6] 473 Phil. 806, 830 (2004).

[7] *In re Guariña*, 24 Phil. 37, 47 (1913).

[8] 726 Phil. 104 (2014).

[9] Id. at 126. Emphasis supplied.

[10] *Film Development Council of the Phils. v. Colon Heritage Realty Corp.*, 760 Phil. 519, 552-553 (2015), citing *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 627 (2011).

[11] 737 Phil. 457 (2014).

[12] Id. at 624-625.

DISSENTING OPINION

REYES, JR., *J.*:

At the root of the controversy is the basis for computing the share of Local Government Units (LGUs) in the national taxes. The petitioners in these cases argue that certain national taxes were excluded from the amount upon which the Internal Revenue Allotment (IRA) was based, in violation of the constitutional mandate under Section 6, Article X of the 1987 Constitution.[1]

The *ponencia* agreed with the petitioners and declared the term "*internal revenue*" in Sections 284 and 285 of the Local Government Code (LGC)[2] of 1991 as constitutionally infirm. I respectfully dissent from the majority Decision for unduly encroaching on the plenary power of Congress to determine the just share of LGUs in the national taxes.

As exhaustively discussed in the majority Decision, the 1987 Constitution emphasized the thrust towards local autonomy and decentralization of administration.[3] The Constitution also devised ways of expanding the financial resources of LGUs, in order to enhance their ability to operate and function.[4] LGUs were granted broad taxing powers,[5] an equitable share in the proceeds of the utilization and development of national wealth,[6] and a just share in the national taxes.[7]

Yet, despite the recognition to decentralize the administration for a more efficient delivery of services, the powers and authorities granted to LGUs remain constitutionally restrained through one branch of the government—Congress. This is apparent from the following provisions of the 1987 Constitution:

> Article X
> Local Government
>
> General Provisions
>
> x x x x
>
> SECTION 3. **The Congress shall enact a local government code** which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and

> referendum, **allocate among the different local government units their powers, responsibilities, and resources**, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.
>
> x x x x
>
> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges **subject to such guidelines and limitations as the Congress may provide**, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.
>
> SECTION 6. Local government units shall have a just share, **as determined by law**, in the national taxes which shall be automatically released to them.
>
> SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, **in the manner provided by law**, including sharing the same with the inhabitants by way of direct benefits. (Emphasis and underscoring Ours)

In line with the mandate to enact a local government code, Congress passed Republic Act (R.A.) No. 7160, otherwise known as the LGC of 1991, to serve as the general framework for LGUs. The LGC of 1991 laid down the general powers and attributes of LGUs, the qualifications and election of local officials, the power of LGUs to legislate and create their own sources of revenue, the scope of their taxing powers, and the allocated share of LGUs in the national taxes, among other things.

Under Section 6 of the LGC of 1991, Congress also retained the power to create, divide, merge or abolish a province, city, municipality, or any other political subdivision.[8] Thus, LGUs have no inherent powers, and they only derive their existence and authorities from an enabling law from Congress. The power of Congress, in turn, is checked by the relevant provisions of the Constitution. The Court, in *Lina, Jr. v. Paño*,[9] discussed this principle as follows:

> Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.
>
> > The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be

> withdrawn by mere statute. **By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.**[10] (Emphasis Ours)

While the discussion in *Lina* relates specifically to the legislative power of LGUs, the Court has applied the same principle with respect to the other powers conferred by Congress.[11] **In other words, despite the shift towards local autonomy, the National Government, through Congress, retains control over LGUs—albeit, in a lesser degree.**

With respect to the share of LGUs in the national taxes, Section 6, Article X of the 1987 Constitution limits the power of Congress in three (3) ways: (a) the share of LGUs must be just; (b) the just share in the national taxes must be *determined by law*; and (c) the share must be *automatically released* to the LGU.[12] The Constitution, however, does not prescribe the exact percentage share of LGUs in the national taxes. It left Congress with the authority to determine how much of the national taxes are the LGUs' rightly entitled to receive.

Concomitant with this authority is the mandate granted to Congress to allocate these resources among the LGUs, in a local government code.[13] Accordingly, in Section 284 of the LGC of 1991, Congress established the IRA providing LGUs with a 40% share in "*the national* ***internal revenue*** *taxes based on the collection of the third fiscal year preceding the current fiscal year*."[14] This percentage share may not be changed, unless the National Government incurs an unmanageable public-sector deficit. The National Government may not also lower the IRA to less than 30% of the national internal revenue taxes collected on the third fiscal year preceding the current fiscal year.[15] The LGC of 1991 further requires the quarterly release of the IRA, within five (5) days after the end of each quarter, without any lien or holdback imposed by the national government for whatever purpose. [16]

In this case, the petitioners notably do not assail the percentage share (*i.e.*, 40%) of LGUs in the national taxes. They instead challenge the base amount of the IRA from which the 40% is taken, arguing that all "*national taxes*" and not only "*national internal revenue taxes*" should be included in the computation of the IRA. The majority Decision agreed with this argument.

Again, I respectfully disagree.

The plain text of Section 6, Article X of the 1987 Constitution requires Congress to provide LGUs with a just share in the national taxes, which should be automatically released to them. **Nowhere in this provision does the Constitution specify the taxes that should be included in the just share of LGUs. Neither does the Constitution mandate the inclusion of *all* national taxes in the computation of the IRA or in any other share granted to LGUs.**

The IRA is only one of several other block grants of funds from the national government to the local government. It was established in the LGC of 1991 not only because of Section 6, Article X of the 1987 Constitution but also pursuant to Section 3 of the same article mandating Congress to "allocate among the different local government units their x x x resources x x x." Clearly, Section 6, Article X of the 1987 Constitution is not solely implemented through the IRA of LGUs. Congress, in several other statutes other than the LGC of 1991, grant certain LGUs an additional share in some

—not all—national taxes, *viz.*:

> (a) **R.A. No. 7171**,[17] which grants 15% of the excise taxes on locally manufactured Virginia type cigarettes to provinces producing Virginia tobacco;
>
> (b) **R.A. No. 8240**,[18] which grants 15% of the incremental revenue collected from the excise tax on tobacco products to provinces producing burley and native tobacco;
>
> (c) **R.A. Nos. 7922**,[19] and **7227**,[20] as amended by R.A. No. 9400, which grants a portion of the gross income tax paid by business enterprises within the Economic Zones to specified LGUs;
>
> (d) **R.A. No. 7643**,[21] which grants certain LGUs an additional 20% share in 50% of the national taxes collected under Sections 100, 102, 112, 113, and 114 of the National Internal Revenue Code, in excess of the increase in collections for the immediately preceding year; and
>
> (e) **R.A. Nos. 7953**[22] and **8407**,[23] granting LGUs where the racetrack is located a 5% share in the value-added tax[24] paid by the Manila Jockey Club, Inc. and the Philippine Racing Club, Inc.

Under the foregoing laws, Congress did not include the entirety of the national taxes in the computation of the LGUs' share. **Thus, inasmuch as Congress has the authority to determine the exact percentage share of the LGUs, Congress may likewise determine the basis of this share and include some or all of the national taxes for a given period of time.** This is consistent with the plenary power vested by the Constitution to the legislature, to determine by law, the just share of LGUs in the national taxes. This plenary power is subject only to the limitations found in the Constitution,[25] which, as previously discussed, includes providing for a *just* share that is automatically released to the LGUs.

Furthermore, aside from the express grant of discretion under Sections 3 and 6, Article X of the 1987 Constitution, **Congress possesses the power of the purse**. Pursuant to this power, Congress must make an appropriation measure every time money is paid out of the National Treasury.[26] In these appropriation bills, Congress may not include a provision that does not specifically relate to an appropriation.[27]

Since the IRA involves an intergovernmental transfer of public funds from the National Treasury to the LGUs, Congress necessarily makes an appropriation for these funds in favor of the LGUs.[28] However, Congress cannot introduce amendments or changes to the LGUs' share in the appropriation bill, especially with respect to the 40% share fixed in Section 284 of the LGC of 1991. Congress may only increase or decrease this percentage in a separate law for this purpose.[29]

Verily, there are several parameters in determining whether Congress acted within its authority in granting the just share of LGUs in the national taxes. *First*, the General Appropriations Act (GAA) should not modify the percentage share in the national internal revenue taxes prescribed in Section

284 of the LGC of 1991.[30] *Second*, there must be no direct or indirect lien on the release of the IRA, which must be automatically released to the LGUs.[31] And, *third*, the LGU share must be *just*.[32] Outside of these parameters, the Court cannot examine the constitutionality of Sections 284 and 285 of the LGC of 1991, and the IRA appropriation in the GAA.

It bears noting at this point that the IRA forms part of the national government's major current operating expenditure.[33] By increasing the base of the IRA, the national budget for other government expenditures such as debt servicing, economic and public services, and national defense, is necessarily reduced. This is effectively an adjustment of the national budget—a function solely vested in Congress and outside the authority of this Court.

Ultimately, the determination of Congress as to the base amount for the computation of the IRA is a policy question of policy best left to its wisdom.[34] This is an issue that must be examined through the legislative process where inquiries may be made beyond the information available to Congress, and studies on its overall impact may be thoroughly conducted. Again, the Court must not intrude into "areas committed to other branches of government."[35] Matters of appropriation and budget are areas firmly devoted to Congress by no less than the Constitution itself, and accordingly, **the Court may neither bind the hands of Congress nor supplant its wisdom**.

For these reasons, the Court should have limited its review on whether Congress exceeded the boundaries of its authority under the Constitution. In declaring the term "*internal revenue*" in Section 284 of the LGC of 1991 as unconstitutional, the Court in effect dictated the manner by which Congress should exercise their discretion beyond the limitations prescribed in the Constitution. The majority Decision's determination as to what should be included in the LGUs' just share in the national taxes is an encroachment on the legislative power of Congress.

In light of the foregoing, I vote to dismiss the petitions.

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[1] Decision, pp. 2-5.

[2] Republic Act No. 7160. Approved on October 10, 1991.

[3] 1987 CONSTITUTION, Article X, Section 2.

[4] *Sen. Alvarez v. Hon. Guingona, Jr.*, 322 Phil. 774, 783 (1996); See also R.A. No. 7160, Section 3(d).

[5] 1987 CONSTITUTION, Article X, Section 5.

[6] Id. at Article X, Section 7.

[7] Id. at Article X, Section 6.

[8] *See* 1987 CONSTITUTION, Article X, Sections 10-12; *See* also *R.A. No. 7160*, Section 9.

[9] 416 Phil. 438 (2001).

[10] Id. at 448, citing *Mayor Magtajas v. Pryce Properties Corp., Inc.*, 304 Phil. 428, 446 (1994).

[11] *See Basco, et al. v. Philippine Amusement and Gaming Corp.*, 274 Phil. 323, 340-341 (1991); *See* also *Batangas CATV, Inc. v. CA*, 482 Phil. 544, 599-560 (2004).

[12] *See Gov. Mandanas v. Hon. Romulo*, 473 Phil. 806, 830 (2004).

[13] 1987 CONSTITUTION, Article X, Section 3.

[14] *R.A. No. 7160*, Section 284; *See also* Administrative Order No. 270 (Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991), Rule XXXII, Part I, Article 378.

[15] Id.

[16] *R.A. No. 7160*, Section 286(a).

[17] AN ACT TO PROMOTE THE DEVELOPMENT OF THE FARMER IN THE VIRGINIA TOBACCO PRODUCING PROVINCES. Approved on January 9, 1992.

[18] AN ACT AMENDING SECTIONS 138, 140, & 142 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES. Approved on January 1, 1997.

[19] AN ACT ESTABLISHING A SPECIAL ECONOMIC ZONE AND FREE PORT MUNICIPALITY OF SANTA ANA AND THE NEIGHBORING ISLANDS IN THE MUNICIPALITY OF APARRI, PROVINCE OF CAGAYAN, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on February 14, 1995.

[20] AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THIS PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved on March 13, 1992.

[21] AN ACT TO EMPOWER THE COMMISSIONER OF INTERNAL REVENUE TO REQUIRE THE PAYMENT OF THE VALUE-ADDED TAX EVERY MONTH AND TO ALLOW LOCAL GOVERNMENT UNITS TO SHARE IN VAT REVENUE, AMENDING FOR THIS PURPOSE CERTAIN SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE. Approved on December 28, 1992.

[22] AN ACT AMENDING REPUBLIC ACT NUMBERED 6632, ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC., A FRANCHISE TO OPERATE AND MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL,' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE YEARS FROM THE EXPIRATION OF THE TERM THEREOF. Approved on March 30, I995.

[23] AN ACT AMENDING REPUBLIC ACT NUMBERED 6631, ENTITLED 'AN ACT GRANTING MANILA JOCKEY CLUB, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITHIN THE PROVINCES OF BULACAN, CAVITE OR RIZAL' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE (25) YEARS FROM THE EXPIRATION OF THE TERM THEREOF. Approved on November 23, 1997.

[24] R.A. No. 7716, as amended by R.A. No. 8241.

[25] *Vera v. Avelino*, 77 Phil. 192, 212 (1946).

[26] 1987 CONSTITUTION, Article VI, Section 29(1).

[27] Id. at Article VI, Section 25(2).

[28] Id. at Article VI, Section 29(1).

[29] *Gov. Mandanas v. Hon. Romulo*, supra note 12, at 839.

[30] Id. at 832.

[31] *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000.

[32] *Gov. Mandanas v. Hon. Romulo*, supra note 12.

[33] Department of Budget and Management, Expenditure Categories and their Economic Importance, < https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B4.pdf > accessed last July 2, 2018.

[34] *See Mayor Magtajas v. Pryce Properties Corp., Inc.*, supra note 10, at 447, in which the Court held that:

> "This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. **The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall.** True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it." (Emphasis Ours)

[35] *Francisco, Jr., et al. v. Toll Regulatory Board, et al.*, 648 Phil. 54, 84-85 (2010).