Republic of the Philippines
Supreme Court
Manila

EN BANC

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, - versus – **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. x----------x	**G.R. No. 199802**
HONORABLE ENRIQUE T. GARCIA, JR., in his personal and official capacity as Representative of the 2nd District of the Province of Bataan, Petitioner,	**G.R. No. 208488** Present: CARPIO, *Acting C.J.,* VELASCO, JR., LEONARDO-DE CASTRO,

- versus -

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.

PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:

July 3, 2018

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DECISION

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:

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

> 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 ₱60,750,000,000.00 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 ₱438,103,906,675.73.

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

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.

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3 *Rollo* (G.R. No. 208488), p. 50.
4 Id. at 310.

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

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[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.

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.

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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.

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:

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[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.

> 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.**

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[13] 1 J. Dillon, *Municipal Corporations*, § 89 (3rd Ed. 1881). See Dean, K.D., *The 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.

> **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]
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> 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

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[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.

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

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[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. 11, 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]"

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

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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.

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;

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27 Id. at 730-732.
28 *See* Article X, Section 3.
29 Id., Section 5.
30 Id., Section 5 and Section 6.

> (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

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

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

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[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. Comprative 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.

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

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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.

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:

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[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.

> (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.

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

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

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

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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.

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:

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[54] Id.

(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*);

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[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]

(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]

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[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: (1) 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)

(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

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[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)

(*Bases Conversion and Development Act of 1992*);[62]

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[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 (1) 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

(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

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[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, corn, 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 farmers 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]

(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 289 of 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;

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[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.

(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

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[67] **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;

[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.

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

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[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]

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.

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[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.

> (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

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

72 Id. at 230.

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.

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[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.

> **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

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[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.

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:

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

> 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.*:

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[78] *Commission on Human Rights Employees' Association (CHREA) v. Commission on Human Rights*, 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.

> **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 (₱80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the 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 (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 40% 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.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Acting Chief Justice

I concur.
Please Separate Opinion.

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

I dissent. See separate opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

I dissent. See separate Opinion

FRANCIS H. JARDELEZA
Associate Justice no part prior action OSG

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

I dissent

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Acting Chief Justice