EN BANC

G.R. No. 199802 – CONGRESSMAN HERMILANDO I. MANDANAS, MAYOR EFREN B. DIONA, MAYOR ANTONINO A. AURELIO, KAGAWAD MARIO ILAGAN, BARANGAY CHAIR PERLITO MANALO, BARANGAY CHAIR MEDEL MEDRANO, BARANGAY KAGAWAD CRIS RAMOS, BARANGAY KAGAWAD ELISA D. BALBAGO, AND ATTY. JOSE MALVAR VILLEGAS, *petitioners* v. EXECUTIVE SECRETARY PAQUITO N. OCHOA, SEC. CESAR PURISIMA, DEPARTMENT OF FINANCE, SEC. FLORENCIO H. ABAD, DEPARTMENT OF BUDGET AND MANAGEMENT, COMMISSIONER KIM JACINTO-HENARES, BUREAU OF INTERNAL REVENUE, AND NATIONAL TREASURER ROBERTO TAN, BUREAU OF THE TREASURY, *respondents.*

G.R. No. 208488 – HON. ENRIQUE T. GARCIA, JR., in his personal and official capacity as Representative of the 2nd District of the Province of Bataan, *petitioner* v. HON. FRANCISCO N. OCHOA, Executive Secretary; HON. CESAR V. PURISIMA, Secretary, Department of Finance; HON. FLORENCIO H. ABAD, Secretary, Department of Budget and Management; HON. KIM S. JACINTO-HENARES, Commissioner, Bureau of Internal Revenue; and HON. ROZZANO RUFINO B. BIAZON, Commissioner, Bureau of Customs, *respondents.*

Promulgated:
July 3, 2018

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

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

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

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

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

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

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

We should stay our hand.

I

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

G.R. No. 199802 (Mandanas' Petition) is a petition for certiorari, prohibition, and mandamus to set aside the allocation or appropriation of some ₱60,750,000,000.00 under Republic Act No. 10155 or the General Appropriations Act of 2012, which supposedly should form part of the 40% internal revenue allotment of the local government units. Petitioners contend that the General Appropriations Act of 2012 is unconstitutional, in so far as it misallocates some ₱60,750,000,000.00 that represents a part of the local government units' internal revenue allotment coming from the national internal revenue taxes specifically the value-added taxes, excise taxes, and documentary stamp taxes collected by the Bureau of Customs.[2]

Thus, petitioners seek to enjoin respondents from releasing the ₱60,750,000,000.00 of the ₱1,816,000,000,000.00 appropriations provided under the General Appropriations Act of 2012. They submit that the

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

₱60,750,000,000.00 should be deducted from the capital outlay of each national department or agency to the extent of their respective pro-rated share.[3]

Petitioners further seek to compel respondents to cause the automatic release of the local government units' internal revenue allotments for 2012, including the amount of ₱60,750,000,000.00; and to pay the local government units their past unpaid internal revenue allotments from Bureau of Customs' collections of national internal revenue taxes from 1989 to 2009.[4]

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

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

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

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

Specifically, petitioner asks that respondents be commanded to:

(a) Compute the internal revenue allotment of the local government units on the basis of the national tax collections including tax collections of the Bureau of Customs, without any deductions;

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3 Id. at 24.
4 Id. at 24–25.
5 *Rollo* (G.R. No. 208488), p. 15.
6 Id. at 11.

(b) Submit a detailed computation of the local government units' internal revenue allotments from 1995 to 2014; and

(c) Distribute the internal revenue allotment shortfall to the local government units.[7]

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

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

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

There was no unlawful neglect on the part of public respondents, particularly the Commissioner of Internal Revenue, in the computation of the internal revenue allotment. Moreover, the act being requested of them is not their ministerial duty; hence, *mandamus* does not lie and the Petitions must be dismissed.

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

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7 Id. at 15–16.

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

9 Id.

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

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

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

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

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

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[11] *Rollo* (G.R. No. 199802), p. 198, Memorandum of Respondents.
[12] Id. at 217–218, Memorandum of Petitioner.
[13] *See Abakada Guro Party List v. Purisima,* 584 Phil. 246 (2008) [J. Corona, En Banc].

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

Mandamus will also not lie to enjoin respondents to withhold the ₱60,750,000,000.00 appropriations in the General Appropriations Act of 2012 for capital outlays of national agencies and release the same to the local government units as internal revenue allotment.

Congress alone, as the "appropriating and funding department of the Government,"[14] can authorize the expenditure of public funds through its power to appropriate. Article VI, Section 29(1) of the Constitution is clear that the expenditure of public funds must be pursuant to an appropriation made by law. Inherent in Congress' power of appropriation is the power to specify not just the amount that may be spent but also the purpose for which it may be spent.[15]

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

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

II

On the substantive issue, I hold the view that:

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

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

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

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

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

III

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

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

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

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

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

(a) on the first year of the effectivity of this Code, thirty percent (30%);
(b) on the second year, thirty-five percent (35%); and
(c) on the third year and thereafter, forty percent (40%).

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

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

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

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

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

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

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

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

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18 *Ponencia*, p. 6.

19 Separate Concurring Opinion of J. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 686 (2013) [Per J. Perlas-Bernabe, En Banc].

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

> **While it is true that under Section 5(5), Article XIV of the Constitution Congress is mandated to "assign the highest budgetary priority to education"** in order to "insure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment," **it does not thereby follow that the hands of Congress are so hamstrung as to deprive it the power to respond to the imperatives of the national interest and for the attainment of other state policies or objectives.**
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> As aptly observed by respondents, since 1985, the budget for education has tripled to upgrade and improve the facility of the public school system. The compensation of teachers has been doubled. The amount of P29,740,611,000.00 set aside for the Department of Education, Culture and Sports under the General Appropriations Act (R.A. No. 6831), is the highest budgetary allocation among all department budgets. This is a clear compliance with the aforesaid constitutional mandate according highest priority to education.
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> **Having faithfully complied therewith, Congress is certainly not without any power, guided only by its good judgment, to provide an appropriation, that can reasonably service our enormous debt, the greater portion of which was inherited from the previous administration.** It is not only a matter of honor and to protect the credit standing of the country. More especially, the very survival of our economy is at stake. **Thus, if in the process Congress appropriated an amount for debt service bigger than the share allocated to education, the Court finds and so holds that said appropriation cannot be thereby assailed as unconstitutional.**[21] (Emphasis supplied)

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

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

The Constitution requires that all appropriation bills should originate from the House of Representatives.[23] Since the House of Representatives,

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21 Id. at 451.
22 CONST., art. VI, sec. 29(1).
23 CONST., art. VI, sec. 24.

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

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

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

IV

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

> The **Budget Legislation Phase** covers the period commencing from the time Congress receives the President's Budget, which is inclusive of the [National Expenditure Program] and the [Budget of Expenditures and Sources of Financing], up to the President's approval of the GAA. This phase is also known as the Budget Authorization Phase, and involves the significant participation of the Legislative through its deliberations.

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

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

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

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

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

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

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

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

A basic rule in statutory construction is that as between a specific and general law, the former must prevail since it reveals the legislative intent

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

more clearly than a general law does.[31] The specific law should be deemed an exception to the general law.[32]

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

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

In that case, the General Appropriations Acts of 1999, 2000, and 2001 contained provisos earmarking for each corresponding year the amount of ₱5,000,000,000.00 of the local government units' internal revenue allotment for the Local Government Service Equalization Fund and imposing the condition that "such amount shall be released to the local government units subject to the implementing rules and regulations, including such mechanisms and guidelines for the equitable allocations and distribution of said fund among the local government units subject to the guidelines that may be prescribed by the Oversight Committee on Devolution." This Court struck down the provisos in the General Appropriations Acts of 1999, 2000, and 2001 as unconstitutional, and the Oversight Committee on Devolution resolutions promulgated pursuant to these provisos. This Court held that to subject the distribution and release of the Local Government Service Equalization Fund, a portion of the internal revenue allotment, to the rules and guidelines prescribed by the Oversight Committee on Devolution makes the release *not* automatic, a flagrant violation of the constitutional and statutory mandate that the "just share" of the local government units "shall be automatically released to them."

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

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

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

This Court further found that the allocation of the shares of the different local government units in the internal revenue allotment as provided in Section 285[34] of the Local Government Code was not followed, as the resolutions of the Oversight Committee on Devolution prescribed different sharing schemes of the Local Government Service Equalization Fund. This Court held that the percentage sharing of the local government units fixed in the Local Government Code are matters of substantive law, which could not be modified through appropriations laws or General Appropriations Acts. This Court explained that Congress cannot include in a general appropriation bill matters that should be more properly enacted in a separate legislation.

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

> As the Constitution is explicit that the provision which Congress can include in an appropriations bill must "relate specifically to some particular appropriation therein" and "be limited in its operation to the appropriation to which it relates," it follows that any provision which does not relate to any particular item, or which extends in its operation beyond an item of appropriation, is considered "an inappropriate provision" which can be vetoed separately from an item. Also to be included in the category of "inappropriate provisions" are unconstitutional provisions and provisions which are intended to amend other laws, because clearly these kind[s] of laws have no place in an appropriations bill. These are matters of general legislation more appropriately dealt with in separate enactments.
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> The doctrine of "inappropriate provision" was well elucidated in *Henry v. Edwards,* . . ., thus:
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> > Just as the President may not use his item-veto to usurp constitutional powers conferred on the legislature, neither can the legislature deprive the Governor of the constitutional powers conferred on him as chief executive officer of the state by including in a general appropriation bill matters more properly enacted in separate legislation. The Governor's constitutional power to veto bills of general legislation . . . cannot be abridged by the careful placement of such measures in a general appropriation bill, thereby forcing the Governor to choose between approving unacceptable substantive legislation or vetoing 'items' of expenditures essential to the operation of government. *The*

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

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

> *legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power over substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation. . . .* We are no more willing to allow the legislature to use its appropriation power to infringe on the Governor's constitutional right to veto matters of substantive legislation than we are to allow the Governor to encroach on the constitutional powers of the legislature. In order to avoid this result, we hold that, *when the legislature inserts inappropriate provisions in a general appropriation bill, such provisions must be treated as 'items' for purposes of the Governor's item veto power over general appropriation bills.*[36] (Emphasis in the original)

In *PHILCONSA*, this Court upheld the President's veto of the proviso in the Special Provision of the item on debt service requiring that "*any payment in excess of the amount herein appropriated* shall be subject to the approval of the President of the Philippines with the concurrence of the Congress of the Philippines."[37] This Court held that the proviso was an *inappropriate provision* because it referred to funds other than the ₱86,323,438,000.00 appropriated for debt service in the General Appropriations Act of 1991.

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

What is involved here is the internal revenue allotment of the local government units in the Government Appropriations Act of 2012, the determination of which was, under the Constitution, left to the sole prerogative of the legislature. Congress has full discretion to determine the "just share" of the local government units, in which authority necessarily includes the power to fix the revenue base, or to define what are included in this base, and the rate for the computation of the internal revenue allotment. Absent any clear and unequivocal breach of the Constitution, this Court should proceed with restraint when a legislative act is challenged in deference to a co-equal branch of the Government.[38] "If a particular statute

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[36] Id. at 577–578.

[37] Id. at 573.

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

is within the constitutional powers of the Legislature to enact, it should be sustained whether the courts agree or not in the wisdom of its enactment."[39]

V

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

Section 286 of the Local Government Code states:

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

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

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

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

In other words, before money can be taken out of the Government Treasury for any purpose, there must first be an appropriation made by law for that specific purpose. Neither of the fiscal officers or any other official of the Government is authorized to order the expenditure of unappropriated

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

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

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

42 Id.

43 Id.

funds. Any other course would give to these officials a dangerous discretion.

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

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

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

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

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

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

[46] Id. at 338–339.

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

The budget may include the following:

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

(2) Summary financial statements setting forth:

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

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

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

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

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

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

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

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

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48 ADM. CODE, Book VI, chap. 3, sec. 12.
49 CONST., art. VII, sec. 22.
50 ADM. CODE, Book VI, chap. 3, sec. 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

With regard to the local government units, the automatic release of internal revenue allotments under Article X, Section 6 of the Constitution binds both the Legislative and Executive departments.[62] In *ACORD, Inc. v. Zamora*,[63] the [General Appropriations Act 2000] of placed ₱10,000,000,000.00 of the [internal revenue allotment] under "unprogrammed funds." This Court, citing *Province of Batangas* and *Pimentel v. Aguirre*,[64] ruled that such withholding of the internal revenue allotment contingent upon whether revenue collections could meet the revenue targets originally submitted by the President contravened the constitutional mandate on automatic release.

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

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

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

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

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

61 Id.

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

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

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

> *Magtajas v. Pryce Properties Corp., Inc.*, municipal governments are still agents of the national government.[65] (Citation omitted)

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

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

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

MARVIC M.V.F. LEONEN
Associate Justice

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[65] Id. at 102.