

Legal Implications of the Supreme Court Decision in *Mandanas et al. v. Ochoa, Jr. et al.* (G.R. Nos. 199802 & 208488, July 3, 2018)*

I. INTRODUCTION

Local government units (LGUs) enjoy local autonomy as enshrined under Article X of the 1987 Philippine Constitution. Local autonomy is defined as a more responsive and accountable local government structure instituted through a system of decentralization. This involves the devolution of national administration, not power, in which local officials remain accountable to the central government in the manner the law may provide.¹ Decentralization is the decision by the central government to empower its subordinates to exercise their authority within their designated jurisdictions. It transfers responsibilities, resources, or authority from the higher to the lower levels of the government.²

Decentralization is categorized into four: (1) political or devolution; (2) administrative or deconcentration; (3) fiscal; and (4) policy or decision-making.³ Political decentralization transfers the powers and responsibilities from the national government (NG) to the LGU, allowing the LGUs to lead their units, making them self-reliant.⁴ Administrative decentralization involves delegating authority and responsibility to the local and regional offices and creating boards and agencies covering their community's needs.⁵ Fiscal decentralization is the power granted to the LGUs to create their own sources of revenues and their share in the national taxes and the power to allocate such funds according to their jurisdiction's priority, thereby strengthening independence.⁶ Policy or decision-making decentralization gives the LGUs the exclusive authority to make decisions on policy issues.⁷

* Prepared by Maureen Nicole N. Locquiao, Senior Tax Specialist, Planning and Coordinating Unit, reviewed by Atty. Khersien Y. Bautista, Attorney IV, Legal Research and Communication Division. Reviewed and approved by Atty. Mark Lester L. Aure, Deputy Executive Director, Legal Group, NTRC.

¹ *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000.

² *Mandanas v. Ochoa, Jr.*, G.R. Nos. 199802 & 208488, July 3, 2018.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

Fiscal decentralization emanates from the Constitution. The constitutional authority for each LGU to create its sources of income and revenue and its entitlement to the just share in the national taxes has been formalized through the Local Government Code (LGC) of 1991, as amended.⁸ Still, Congress can impose certain limitations because local autonomy is not absolute, and the LGUs remain to be the tenants of the will of Congress subject to the guarantees that the Constitution itself imposes.⁹

On July 3, 2018, the Supreme Court issued its decision on the consolidated cases of *Mandanas et al. v. Executive Secretary Ochoa, Jr. et al.* and *Garcia v. Ochoa, Jr.* (*Mandanas case*), which adjusted the way the just shares of LGUs in the national taxes, known as the Internal Revenue Allotment (IRA), are to be computed and released. To implement this decision, President Duterte signed Executive Order (EO) No. 138.¹⁰

This paper aims to discuss the legal implications of the *Mandanas case*.

II. BACKGROUND INFORMATION

A. Facts of the Case

Mandanas et al., the petitioners in G.R. No. 199802, alleged that specific collections by the Bureau of Customs (BOC) – excise taxes, value-added tax (VAT), and documentary stamp tax (DST) – have not been included in the base amount for the computation of the IRA. They argue that these should be included since said taxes still constitute national internal revenue taxes (NIRTs). Consequently, an additional amount of ₱60,750,000,000.00 should have been released as LGUs' IRA for FY 2012, and for the same reason, unpaid IRA for FYs 1992 to 2011 totaling ₱438,103,906,675.73.

In the same manner, *Garcia*, the petitioner in G.R. No. 208488, insisted on a literal reading of Section 6, Article X of the Constitution and thus assailed the constitutionality of Section 284 of the LGC of 1991, as amended. Section 284 provides that LGUs shall share in the “NIRTs” instead of the wordings in Section 6, Article X of the Constitution, which provides that LGUs shall have a just share in the “national taxes,” which shall be automatically released to them.

The respondents, represented by the Office of the Solicitor General, insisted that Section 284 of the LGC of 1991, as amended is consistent with the Constitution, which mandates that LGUs shall have a “just share” in the national taxes, *i.e.*, the interpretation of “just share” should be determined by Congress as it is within its power granted by the Constitution to exclude certain taxes from the base amount in

⁸ Republic Act No. 7160, October 10, 1991.

⁹ *Supra* note 2, p. 494 SCRA 869.

¹⁰ Entitled, “Full Devolution of Certain Functions of the Executive Branch to Local Governments, Creation of a Committee on Devolution, and for Other Purposes,” (June 1, 2021).

computing the IRA. It was well within Congress' powers to limit the basis of just sharing in the NIRTs. Furthermore, there is a distinction between the VAT, excise taxes, and DST collected by the BIR and those collected by the BOC, thereby warranting different treatments.

The substantial issues, in this case, are the constitutionality of Section 6, Article X of the Constitution, the base amount for the computation of just share of the LGUs in the national taxes, and whether the unpaid IRA for the past fiscal years should be released to the LGUs.

B. Supreme Court Ruling

Although Congress' power to make laws is plenary in nature, it is still subject to the limitations provided by the Constitution. Section 6, Article X of the Constitution provides:

Section 6. Local government units shall have a just share, as determined by law, *in the national taxes*, which shall be automatically released by them. (emphasis and italics supplied)

Section 284 of the LGC of 1991, as amended, on the other hand, provides:

Section 284. Allotment of Internal Revenue Taxes – Local Government Units shall have a share in the *national internal revenue taxes* xxx (emphasis and italics supplied)

The “national internal revenue taxes” under Section 284 of the LGC of 1991, as amended, restricts the term “national taxes,” written in the Constitution. Congress has departed from the letter of the Constitution and has curtailed the guarantee of fiscal autonomy in favor of the LGUs.

Taxes are classified into national and local. The NG levies national taxes, while the LGUs levy local taxes. Under Section 284 of the LGC of 1991, as amended, LGUs have a share in the NIRTs which are enumerated under Section 21 of the National Internal Revenue Code (NIRC) of 1997, as amended, to wit:

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. VAT;
- d. Other percentage taxes;
- e. Excise taxes;
- f. DST; and

- g. Such other taxes as are or hereafter may be imposed and collected by the BIR.

This enumeration deprived the LGUs of deriving their just share from other national taxes, like customs duties. Customs duties are taxes because these are exactions whose proceeds become public funds. The just share of LGUs from the national taxes is not limited to the NIRTs collected by the Bureau of Internal Revenue (BIR) but includes the BOC. Congress cannot disobey what is written in the Constitution despite having primary discretion in determining and fixing the just share of the LGUs in the national taxes. *Verba legis non est recedendum* means “from the words of a statute; there should be no departure.” Hence, Section 284 of the LGC of 1991, as amended, was declared unconstitutional.

Garcia insisted that Congress should have included the following NIRTs in the base for computing the IRA:

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 in relation to Section 9, Article IX of Republic Act (RA) No. 9054;¹¹
2. Shares in the excise taxes on mineral products of the different LGUs as provided in Section 287 of the NIRC of 1997, as amended about Section 290 of the LGC of 1991, as amended;
3. Shares of relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc. and the Philippine Racing Club Inc.;
4. Shares of various municipalities in VAT collections under RA 7643;¹²
5. Shares of relevant LGUs in the proceeds of the sale and conversion of former military bases in accordance with RA 7227;¹³
6. Shares of different LGUs in the excise taxes imposed on locally-manufactured Virginia tobacco products under Section 3 of RA 7171¹⁴ (now in Section 289 of the NIRC of 1997, as amended);

¹¹ Entitled, “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”, (March 31, 2001)

¹² Entitled, “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”, (December 28, 1992)

¹³ Entitled, “Bases Conversion and Development Act of 1992”, (March 13, 1992)

¹⁴ Entitled, “An Act to Promote the Development of the Farmers in the Virginia Tobacco Producing Provinces”, (January 09, 1992)

7. Shares of different LGUs in the incremental revenues from Burley and native tobacco products under Section 8 of RA 8240¹⁵ (now in Section 288 of the NIRC of 1997, as amended); and
8. Share of the Commission on Audit in the NIRTs as provided in Section 24 (3) of Presidential Decree (PD) No. 1445¹⁶ in relation to Section 284 of the NIRC of 1997, as amended.

However, the Supreme Court ruled that except for item (4) shares of various municipalities in VAT collections under RA 7643, all are validly and justifiably excluded. The exclusion of item (5) shares of relevant LGUs in the proceeds of the sale and conversion of former military bases in accordance with RA 7227 is warranted because the proceeds from the sale and conversion of the former military bases do not come from a tax, fee, or exaction imposed on the sale and conversion.

For items (3) shares of relevant LGUs in the franchise taxes paid by Manila Jockey Club, Inc. and the Philippine Racing Club Inc., (6) shares of different LGUs in the excise taxes imposed on locally-manufactured Virginia tobacco products under Section 3 of RA 7171 (now in Section 289 of the NIRC of 1997, as amended), (7) shares of different LGUs in the incremental revenues from Burley and native tobacco products under Section 8 of RA 8240 (now in Section 288 of the NIRC of 1997, as amended), and (8) share of the Commission on Audit in the NIRTs as provided in Section 24(3) of PD 1445 in relation to Section 284 of the NIRC of 1997, as amended, such exclusions were likewise justified. Although such shares involved national taxes, Congress has the authority to exclude them as taxes imposed for special purposes. Congress may validly exclude taxes in the base for the computation of the IRA if a Constitutional provision allows such exclusion. Section 29(3), Article VI of the Constitution provides that “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.” The same is true for franchise taxes, as certain percentages go to different beneficiaries.

The exclusion of item (2) shares in the excise taxes on mineral products of the different LGUs as provided in Section 287 of the NIRC of 1997, as amended about Section 290 of the LGC of 1991, as amended is because Section 7, Article X, 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.” Lastly, item (1) 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 in relation to Section 9, Article IX of RA 9054 was excluded correctly because this is intended to enable a sustainable and feasible autonomous region guaranteed by the Constitution.

¹⁵ Entitled, “An Act Amending Sections 138, 140 and 142 of the National Internal Revenue Code as Amended and for Other Purposes”, (January 1, 1997)

¹⁶ Entitled, “Government Auditing Code of the Philippines”, (June 11, 1978)

Thus, the national taxes to be included in the base for computing the just share of LGUs shall consist of, but not limited to the following:

1. The NIRTs enumerated in Section 21 of the NIRC of 1997, 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. Fifty percent of the VATs collected in the ARMM, and 30% of all other national taxes collected in the ARMM; the remaining 50% of the VAT 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 RA 9054;
4. Sixty percent 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 of 1991, as amended;
5. Eighty-five percent of the excise taxes collected from locally-manufactured Virginia and other tobacco products; the remaining 15% shall accrue to the special purpose funds pursuant to RAs 7171 and 7227;
6. The entire 50% of the national taxes collected under Sections 106, 108, and 116, of the NIRC of 1997, as amended in excess of the increase in collections for the immediately preceding year; and
7. Five percent of the franchise taxes in favor of the NG paid by franchise holders in accordance with Section 6 of RA 6631 and Section 8 of RA 6632.

The LGUs' just share in the national taxes shall be automatically released to them in accordance with Section 6, Article X of the Constitution. This means that it can be operationalized without the need for appropriation. This is further supported by Section 286 of the LGC of 1991, as amended, which states that the share of each LGU shall be released, without the need for any further action, directly to the provincial, city, municipal, or barangay treasurer as the case may be every quarter within five days after the end of each quarter, and which shall not be subject to any lien or holdback that the NG may impose for whatever purpose. Hence, the just share of the LGUs in the national taxes shall be released to them without the need for yearly appropriation.

As for the payment of the arrears, the Supreme Court denied this prayer applying the doctrine of operative fact, which acknowledges the existence of a law or executive act prior to the determination of its unconstitutionality as an operative fact that produces consequences that cannot permanently be erased, ignored, or disregarded. It nullifies the void law or executive act but sustains its effects. This is an exception to the general rule that a void or unconstitutional law produces no effect. Thus, the Supreme Court declared that the impact of this decision is prospective.

III. LEGAL IMPLICATIONS

Judicial decisions form part of the legal system of the Philippines.¹⁷ Hence, the base from which the IRA of LGUs is to be computed will significantly increase to include the adjustments as declared by the Supreme Court in its decision. Likewise, the IRA shall be automatically released to the LGUs without the need for yearly appropriation.

In applying the ruling of this case, the LGUs shall expect a significant increase in their share from the national taxes starting FY 2022, which shall automatically be released to them. This is implemented through EO 138, s. of 2021. However, a decrease in the said budget is possible in the next few years following the revenue losses suffered by the country during the peak of the COVID-19 pandemic.

EO 138, s. 2021

EO 138, s. of 2021 was promulgated to mitigate the fiscal impact of the Mandanas Ruling as well as to provide the guiding principles and devolution transition plans as a guide for the LGUs, NG, and other departments, agencies, and instrumentalities of the Executive Branch to ensure full transition and devolution of these functions currently performed by the National Government Agencies to LGUs under Section 17 of the LGC of 1991, as amended.¹⁸

This is in accordance with the NG being fully committed to the policy of decentralization enshrined in the Constitution and other laws aimed at developing the capabilities of the LGUs in delivering basic social services and critical facilities to their constituents to increase productivity and employment, promoting local economic growth, and ensure accountability, competency, professionalism, and transparency of local leaders.

Some of the basic services and facilities devolved to the LGUs include Agricultural Extension and onsite research, Community Based Forestry Projects, Field Health and Hospital Services, School Building Programs, Social Welfare Services, Tourism Facilities, Promotion, and Development, Housing Projects for Provinces and Cities, Telecommunication Services, and Investment Support, Industrial Research and Development.¹⁹

The LGUs shall be primarily and ultimately responsible and accountable for providing all the basic services and facilities fully devolved to them according to the

¹⁷ *Albino Co v. Court of Appeals*, G.R. No. 100776, October 28, 1993.

¹⁸ EO 138 s. of 2021, Section 1, June 1, 2021

¹⁹ Atienza, Maria Ela. "Local Governments and Devolution in the Philippines". In *Philippine Politics and Governance*, edited by Noel Morada and Teresa Encarnacion Tadem, 427-428. Quezon City: Department of Political Science, University of the Philippines Diliman, 2006. Philippines. *The Local Government Code*. Republic Act No. 7160. 1991. Retrieved from: <https://halalan.up.edu.ph/powers-and-devolved-services-of-local-government-units-lgus/>.

standards for service delivery prescribed by the NG and consistent with Section 17 of the LGC of 1991, as amended and its implementing rules and regulations. It will be the responsibility of the local chief executives to ensure that the fund or resources available for their use shall be first allocated for the provision of these services in accordance with relevant laws, rules, and regulations.²⁰

IV. CONCLUSION

The ruling of the Supreme Court strengthens decentralization as it empowers the LGUs in providing their constituents with the basic services and facilities to effectively discharge their devolved duties and functions through an increase in revenue. This is in line with the purpose of granting fiscal autonomy to LGUs, given that fiscal autonomy also includes the power to allocate resources as aligned with their priorities.²¹

On the other hand, this may also mean a decreased budget to finance projects and services administered by the NG.²² Certainly, the NG ensures that revenue collections will still be sufficient to finance both the LGUs and the NG. Vertical and horizontal linkages of planning, investment programming, and budgeting shall be strengthened to align national, regional, and local priorities (DBM, 2021).²³ The additional funding given to the LGUs should not hinder the continuous implementation of national projects and services. This is recognized in EO 138, s. of 2021, which expressly states that government service shall not be interrupted.

²⁰ EO 138, s. of 2021, Section 4, June 1, 2021.

²¹ Province of Pampanga v. Romulo, G.R. No. 195987, January 12, 2021.

²² Frequently Asked Questions: Mandanas-Garcia SC Ruling as of November 9, 2021. Retrieved from: <https://www.dbm.gov.ph/wp-content/uploads/Mandanas-Garcia-Case/IEC-Materials/FAQs-Mandanas-Garcia-Ruling.pdf>.

²³ *supra* note 21