



Republic of the Philippines
Supreme Court
Manila

EN BANC

REPUBLIC OF THE PHILIPPINES, G.R. No. 170867
represented by RAPHAEL P.M.
LOTILLA, Secretary, Department of
Energy (DOE), MARGARITO B.
TEVES, Secretary, Department of
Finance (DOF), and ROMULO L.
NERI, Secretary, Department of
Budget and Management (DBM),
Petitioners,

-versus-

PROVINCIAL GOVERNMENT OF
PALAWAN, represented by
Governor ABRAHAM KAHLIL B.
MITRA,
Respondent.

X-----X
BISHOP PEDRO DULAY ARIGO,
CESAR N. SARINO, DR. JOSE
ANTONIO N. SOCRATES, and
PROF. H. HARRY L. ROQUE, JR.,
Petitioners,

-versus-

HON. EXECUTIVE SECRETARY
EDUARDO R. ERMITA, HON.
ENERGY SECRETARY ANGELO
T. REYES, HON. FINANCE
SECRETARY MARGARITO B.

X-----X
G.R. No. 185941

Present:

PERALTA, *Chief Justice*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
REYES, A., JR.*
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,

**TEVES, HON. BUDGET AND
MANAGEMENT SECRETARY
ROLANDO D. ANDAYA, JR., HON.
PALAWAN GOVERNOR JOEL T.
REYES, HON. REPRESENTATIVE
ANTONIO C. ALVAREZ (1st
District), HON. REPRESENTATIVE
ABRAHAM MITRA (2nd District),
and RAFAEL E. DEL PILAR,
PRESIDENT AND CEO, PNOC
EXPLORATION CORPORATION,**

**ZALAMEDA,
LOPEZ,
DE LOS SANTOS, and
GAERLAN, JJ.**

Promulgated:

January 21, 2020

Respondents.

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RESOLUTION

LEONEN, J.:

For this Court's resolution are the Motion for Reconsideration¹ and Supplemental Motion for Reconsideration² filed by respondents in G.R. No. 170867, as well as the Motion for Reconsideration³ of petitioners in G.R. No. 185941. The parties ask this Court to reconsider its December 4, 2018 Decision⁴ in which it declared, among others, that the Province of Palawan was not entitled to an equitable share in the proceeds of the Camago-Malampaya Natural Gas Project (Natural Gas Project).

To recall, the Republic, through the Department of Energy, entered into Service Contract No. 38 dated December 11, 1990 with Shell Philippines Exploration B.V. and Occidental Philippines. The 20-year contract was made for the drilling of the natural gas reservoirs in the Camago-Malampaya area, about 80 kilometers from mainland Palawan.⁵

Service Contract No. 38 provided a 60-40 production sharing scheme for the sale of petroleum, where the national government would receive 60% of the net proceeds, while Shell Philippines Exploration B.V. and Occidental Philippines, as service contractors, would receive 40%. Later, the service contractors were replaced by a consortium of Shell B.V., Shell Philippines LLC, Chevron Malampaya LLC, and PNOC Exploration Corporation (Shell Consortium).⁶

* On official leave.

¹ *Rollo* (G.R. No. 170867), pp. 2253-2278.

² *Id.* at 2280-2305. Filed with a Motion for Leave of Court.

³ *Id.* at 2174-2211.

⁴ *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868>> [Per J. Tijam, En Banc].

⁵ *Rollo* (G.R. No. 170867), p. 89.

⁶ *Id.* at 392-J and 549-549-A.

On February 17, 1998, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 381,⁷ which provided that per the Local Government Code, part of the national government's 60% share would be given to the concerned local government units.⁸ It further provided that the Province of Palawan was "expected to receive about US\$2.1 billion from the total government share of US\$8.1 billion"⁹ throughout the contract's 20-year period.¹⁰

On June 10, 1998, then Energy Secretary Francisco L. Viray (Energy Secretary Viray) wrote to then Palawan Governor Salvador P. Socrates (Governor Socrates), requesting that the payment of half of Palawan's expected share be "spread over the initial seven years of operations"¹¹ in order to pay for the National Power Corporation's obligations in its Gas Sales and Purchase Agreements with the Shell Consortium.¹²

Later, in a July 30, 2001 letter, then Finance Secretary Jose Isidro N. Camacho sought the legal opinion of then Justice Secretary Hernando B. Perez on whether the Province of Palawan had a share in the national wealth from the proceeds of the Natural Gas Project. The Department of Finance had taken the position that the province did not, as a local government unit's territorial jurisdiction was only within its land area and excludes marine waters more than 15 kilometers from its coastline.¹³

The Natural Gas Project in the Camago-Malampaya area was inaugurated on October 16, 2001.¹⁴

Negotiations were held between the Departments of Energy, Finance, and Budget and Management, and the Province of Palawan to determine the province's expected share in the net proceeds of the Natural Gas Project.¹⁵ However, since the national government would not grant the province's expected US\$2.1 billion share, the Sangguniang Panlalawigan of Palawan on February 11, 2003 called off further negotiations and instead authorized the Palawan Governor to file the appropriate judicial action.¹⁶

On May 7, 2003, the Province of Palawan filed before the Regional Trial Court a Petition for Declaratory Relief,¹⁷ docketed as Special Civil Action No. 3779, seeking a judicial determination of its rights under

⁷ Id. at 549-550-A.

⁸ Id. at 550.

⁹ Id. at 549-A.

¹⁰ Id.

¹¹ Id. at 552.

¹² Id. at 551-552.

¹³ Id. at 554. The *rollo* does not state whether the Department of Justice issued a legal opinion.

¹⁴ Id. at 19.

¹⁵ Id. at 127-129.

¹⁶ Id. at 129.

¹⁷ Id. at 130-159.

Administrative Order No. 381, Republic Act No. 7611, Section 290 of the Local Government Code, and Palawan Provincial Ordinance No. 474, series of 2000. In particular, the Province of Palawan sought a judicial declaration that it has territorial jurisdiction over the Camago-Malampaya natural gas reservoirs, entitling it to an equitable share in the proceeds from the Natural Gas Project.¹⁸

On February 9, 2005, while the declaratory relief case was still pending, then Energy Secretary Vincent S. Perez, Jr., then Budget and Management Secretary Mario L. Relampagos, and then Finance Secretary Juanita D. Amatong executed an Interim Agreement¹⁹ with then Palawan Governor Joel T. Reyes.

Under the agreement, half of the 40% revenue share being claimed by the Province of Palawan, to be called the “Palawan Share,” would be used in its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities to enhance the exclusive economic zone’s security.²⁰

The Interim Agreement likewise stated that the release of funds would be without prejudice to the outcome of Special Civil Action No. 3779. Once the case is decided with finality in favor of either party, the shares already received would be treated as financial assistance. The parties further agreed that the ₱600 million already released to the Province of Palawan would be deducted from the initial release of the province’s 50% share of 40% of the remitted funds.²¹

On December 16, 2005, the Regional Trial Court rendered a Decision²² in the Province of Palawan’s favor. It found that, under Article X, Section 7 of the Constitution and the Local Government Code, the province was entitled to a 40% share of the revenues generated from the Natural Gas Project since October 16, 2001.²³

On February 16, 2006, the Republic filed before this Court a Petition for Review,²⁴ docketed as G.R. No. 170867, assailing the trial court’s December 16, 2005 Decision and its January 16, 2006 Amended Order.²⁵

¹⁸ Id. at 85–86.

¹⁹ Id. at 555–561.

²⁰ Id. at 557–558.

²¹ Id.

²² Id. at 83–112. The Decision was penned by Judge Bienvenido C. Blancaflor of Branch 95, Regional Trial Court, Puerto Princesa City, Palawan.

²³ Id. at 112.

²⁴ Id. at 9–82.

²⁵ Id. at 113–116. The original Order was erroneously dated December 16, 2006 instead of January 16, 2006. The Order was amended to conform to the correct date.

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On July 25, 2007, while the Petition was pending, the national government executed a Provisional Implementation Agreement²⁶ with the Province of Palawan, in conformity with the representatives of its legislative districts. Per the agreement, half of the disputed 40% share was allowed to be used for development projects in Palawan.

On December 1, 2007, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) issued Executive Order No. 683, which authorized the release of funds pursuant to the Provisional Implementation Agreement. Notably, it provided that the funds' release would be without prejudice to this Court's final resolution in G.R. No. 170867.²⁷

Subsequently, Bishop Pedro Dulay Arigo, Cesar N. Sarino, Jose Antonio N. Socrates, and H. Harry L. Roque, Jr. (Arigo, et al.), as taxpayers, filed a Petition for Certiorari, Prohibition, and Mandamus²⁸ before the Court of Appeals against the Executive Secretary, the Department Secretaries of Energy, Finance, and Budget and Management, the Palawan Governor, the First District Representative of Palawan, and PNOC Exploration Corporation's President and Chief Executive Officer. In their Petition, Arigo, et al. assailed Executive Order No. 683 and the Provisional Implementation Agreement for violating the Constitution and the Local Government Code.²⁹ They also sought the release of the Province of Palawan's full 40% share in the proceeds of the Natural Gas Project.³⁰

In a May 29, 2008 Resolution,³¹ the Court of Appeals dismissed outright Arigo, et al.'s Petition for their failure to submit the documents necessary to substantiate their allegations.³² It likewise noted that the Petition was prematurely filed since the implementation of the Provisional Implementation Agreement was contingent on the final adjudication of G.R. No. 170867, the case pending before this Court.³³

Arigo, et al. filed a Motion for Reconsideration,³⁴ which was denied by the Court of Appeals in a December 16, 2008 Resolution.³⁵

Subsequently, Arigo, et al. filed before this Court a Petition for

²⁶ *Rollo* (G.R. No. 185941), pp. 498–503.

²⁷ *Id.* at 489–491.

²⁸ *Id.* at 62–98.

²⁹ *Id.* at 70–71.

³⁰ *Id.* at 89.

³¹ *Id.* at 218–224. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr. of the Eleventh Division of the Court of Appeals, Manila.

³² *Id.* at 220–221.

³³ *Id.* at 221–223.

³⁴ *Id.* at 225–243.

³⁵ *Id.* at 250–252. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr. of the Former Eleventh Division of the Court of Appeals, Manila.

Review on Certiorari,³⁶ docketed as G.R. No. 185941. They essentially reiterated their argument before the Court of Appeals that Executive Order No. 683 and the Provisional Implementation Agreement were invalid for being unconstitutional and for violating the Local Government Code.³⁷

On June 23, 2009, this Court consolidated G.R. No. 170867 and G.R. No. 185941.³⁸ Oral arguments were held on September 1, 2009³⁹ and November 24, 2009.⁴⁰

In a December 4, 2018 Decision,⁴¹ this Court granted the Petition in G.R. No. 170867 but denied the Petition in G.R. No. 185941. It held that since no law grants the Province of Palawan territorial jurisdiction over the area where the Natural Gas Project was located, the province was not entitled to an equitable share in the project's proceeds.⁴² It likewise held that a local government unit's territorial jurisdiction requires contiguity and is limited only to land area or land mass.⁴³ Since the Camago-Malampaya gas reservoirs were located in the continental shelf, this territory would be beyond the Province of Palawan's territorial jurisdiction.⁴⁴

This Court pointed out that the Constitution did not apportion the territories of the Philippines among the local government units.⁴⁵ It also ruled that the United Nations Convention on the Law of the Sea conferred no continental shelves on local government units.⁴⁶

This Court further ruled that the State could not be estopped by the acts of its officials, as in this case, when the executive branch issued pronouncements recognizing the Province of Palawan's equitable share.⁴⁷ It also found that the Province of Palawan's share could not be granted based on equity.⁴⁸

The dispositive portion of the Decision read:

WHEREFORE, the Petition in G.R. No. 170867 is GRANTED.

³⁶ Id. at 13–58.

³⁷ Id. at 24–25.

³⁸ *Rollo* (G.R. No. 170867), p. 1092. The cases were also elevated to the Court En Banc, having been initially filed before the First Division and Second Division.

³⁹ Id. at 1210–1214.

⁴⁰ Id. at 1262–1263. Dean Raul Pangalanan and Atty. Henry Bensurto, Jr. (Atty. Bensurto) were made *amici curiae* for the oral arguments. Only Atty. Bensurto submitted an amicus brief.

⁴¹ Id. at 2056–2149. See *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868>> [Per J. Tijam, En Banc].

⁴² Id. at 2118–2133.

⁴³ Id. at 2109–2118.

⁴⁴ Id. at 2133–2135.

⁴⁵ Id. at 2135–2137.

⁴⁶ Id. at 2137–2138.

⁴⁷ Id. at 2134–2135.

⁴⁸ Id. at 2143–2147.

The Decision dated December 16, 2005 of the Regional Trial Court of the Province of Palawan, Branch 95 in Civil Case No. 3779 is **REVERSED** and **SET ASIDE**. The Court declares that under existing law, the Province of Palawan is not entitled to share in the proceeds of the Camago-Malampaya natural gas project. The Petition in G.R. No. 185941 is **DENIED**.

SO ORDERED.⁴⁹ (Emphasis in the original)

In its Motion for Reconsideration,⁵⁰ the Province of Palawan insists that the Camago-Malampaya gas reservoirs are within its territorial jurisdiction. This is because, it argues, the area is located within the continental shelf of the Municipality of Kalayaan, over which the province exercises territorial jurisdiction under Presidential Decree No. 1596.⁵¹ The Province of Palawan also maintains that the State can be estopped when it promulgated issuances recognizing Camago-Malampaya as part of the Province of Palawan and granting it its 40% share in the proceeds of the Natural Gas Project.⁵²

In its Supplemental Motion for Reconsideration,⁵³ the Province of Palawan adds that since the Municipality of Kalayaan has territorial jurisdiction over its continental shelf, which goes up to 200 nautical miles, its territorial jurisdiction necessarily extends to the Camago-Malampaya area, which is barely 51 nautical miles from the municipality.⁵⁴

The Province of Palawan likewise adds that it is entitled to its 40% share on the basis of equity, since it is the nearest local government unit that “is capable of rendering the necessary and immediate assistance and services regarding any issue or concern within the area[.]”⁵⁵

For their part, Arigo, et al. argue in their Motion for Reconsideration⁵⁶ that the doctrine on the continental shelf has been “constitutionalized,” and its “constitutionalization” means “recognizing that the natural prolongation of the landmass of the Province of Palawan leading to a Continental Shelf, as defined under the [United Nations Convention on the Law of the Sea], is an area that is appurtenant to it and fall[s] within its jurisdiction but is nevertheless part and parcel of the unitary state that is the Republic of the Philippines.”⁵⁷

Since the oil and gas wells in Camago-Malampaya are “within the

⁴⁹ Id. at 2147–2148.

⁵⁰ Id. at 2253–2278.

⁵¹ Id. at 2257–2259.

⁵² Id. at 2269–2274.

⁵³ Id. at 2285–2305.

⁵⁴ Id. at 2289–2293.

⁵⁵ Id. at 2298.

⁵⁶ *Rollo* (G.R. No. 185941), pp. 926–963.

⁵⁷ Id. at 932.

natural prolongation” of the Province of Palawan’s land mass, Arigo, et al. argue that the province is entitled to the Natural Gas Project’s proceeds.⁵⁸ They also point out that both Republic Act No. 7611 and Administrative Order No. 381 recognize Malampaya as part of Palawan’s continental shelf.⁵⁹

Moreover, Arigo, et al. argue that since the Republic has used the island of Palawan as the reference point to mark its maritime entitlements in the South China Sea dispute, it has already recognized the province’s unique geological features as comprised of islands.⁶⁰ They contend that this Court made “a fundamental and irreconcilable contradiction”⁶¹ in declaring that international law was inapplicable while still referring to the United Nations Convention on the Law of the Sea to conclude that the Province of Palawan had no territorial jurisdiction over Camago-Malampaya.⁶²

Arigo, et al. further point out that by declaring that the Province of Palawan cannot generate its own continental shelf, this Court “stands to erase all that remains of the legal gains the Philippines achieved”⁶³ in the arbitral case on the South China Sea dispute. If not reversed, its ruling “may become binding as a sovereign admission . . . under the principle of estoppel under international law.”⁶⁴

The Republic, represented by the Office of the Solicitor General, counters in its Consolidated Comment⁶⁵ that while the Municipality of Kalayaan is indeed within the Province of Palawan’s territory, there is nonetheless no law granting the province territorial jurisdiction over the continental shelf between these areas, where Camago-Malampaya is located. As such, it argues, the Province of Palawan is not entitled to an equitable share in the proceeds of the Natural Gas Project.⁶⁶

The Republic also maintains that Camago-Malampaya is beyond the boundaries designated by Presidential Decree No. 1596 and Act No. 422, as shown in the maps plotted by the National Mapping and Resource Information Authority.⁶⁷ It insists that any continental margin or shelf outside the metes and bounds described in Presidential Decree No. 1596 does not form part of the Municipality of Kalayaan and, thus, is beyond the Province of Palawan’s territorial jurisdiction.⁶⁸

⁵⁸ Id. at 935.

⁵⁹ Id. at 936–937.

⁶⁰ Id. at 938–944.

⁶¹ Id. at 948.

⁶² Id. at 944–948.

⁶³ Id. at 949.

⁶⁴ Id.

⁶⁵ *Rollo* (G.R. No. 170867), pp. 2358–2401.

⁶⁶ Id. at 2359–2364.

⁶⁷ Id. at 2366 and 2368.

⁶⁸ Id. at 2369–2372.

As for the United Nations Convention on the Law of the Sea, the Republic asserts that the treaty's provisions apply to the sovereign state, not a local government unit. Thus, the rights over the state's continental shelf pertain to the sovereign state, not to any of its local government units.⁶⁹

The Republic also maintains that Article X, Section 1 of the Constitution does "not require that every portion of the Philippine territory be made part of the territory of a local government unit."⁷⁰ It asserts that a local government unit's territory only pertains to its land area and not to its waters.⁷¹ It maintains that it cannot be estopped since the Province of Palawan was neither misled nor injured by the State's prior declarations.⁷²

Moreover, the Republic maintains that the principle of equity does not apply here. This is because any possible damage that the Natural Gas Project may cause the environment has already been addressed by the Environmental Compliance Certificate issued to the Shell Consortium, which was required to provide an Environmental Guarantee Fund for any possible damages.⁷³

The principal issue raised by all the parties in their pleadings before this Court is whether or not the Province of Palawan is entitled, under Article X, Section 1 of the Constitution and Section 290 of the Local Government Code, to a 40% equitable share in the proceeds from the Camago-Malampaya Natural Gas Project.

I

Article X, Section 7 of the Constitution mandates that local government units shall be entitled to an equitable share in the utilization and development of the natural wealth within their area. It states:

ARTICLE X
Local Government
General Provisions

....

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.

⁶⁹ Id. at 2372–2378.

⁷⁰ Id. at 2379.

⁷¹ Id. at 2381–2385.

⁷² Id. at 2385–2389.

⁷³ Id. at 2389–2393.

While “territorial jurisdiction” does not appear in the Constitution, it is inscribed in the Local Government Code, the law meant to implement the constitutional mandate under Article X, Section 7. The Local Government Code provides that local government units shall be entitled to a 40% share in the gross collection the State derives from the utilization and development of these natural resources “within their territorial jurisdiction.”

Section 290 of the Local Government Code provides:

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

Until this Court’s December 4, 2018 Decision, “territorial jurisdiction” has not been defined. Thus, drawing from the provisions of the Local Government Code and jurisprudence, this Court concluded that territorial jurisdiction referred to “the [local government unit’s] territorial boundaries,”⁷⁴ or that jurisdiction “pertaining to a physical location or area as identified by its boundaries”.⁷⁵

The Local Government Code does not define the term “territorial jurisdiction.” Provisions therein, however, indicate that territorial jurisdiction refers to the LGU’s territorial boundaries.

Under the Local Government Code, a “province” is composed of a cluster of municipalities, or municipalities and component cities. A “municipality,” in turn, is described as a group of barangays, while a “city” is referred to as consisting of more urbanized and developed barangays.

In the creation of municipalities, cities and barangays, the Local Government Code uniformly requires that the territorial jurisdiction of these government units be “properly identified by metes and bounds,” thus:

Section 386. *Requisites for Creation.* -

x x x x

(b) The territorial jurisdiction of the new barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be

⁷⁴ *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868>> [Per J. Tijam, En Banc].

⁷⁵ *Id.*

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contiguous if it comprises two (2) or more islands.

X X X X

Section 442. *Requisites for Creation.* -

X X X X

(b) The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

X X X X

Section 450. *Requisites for Creation.*

X X X X

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

X X X X


The intention, therefore, is to consider an LGU's territorial jurisdiction as pertaining to a physical location or area as identified by its boundaries. This is also clear from other provisions of the Local Government Code, particularly Sections 292 and 294, on the allocation of LGUs' shares from the utilization of national wealth, which speak of the location of the natural resources:

Section 292. *Allocation of Shares.* - The share in the preceding Section shall be distributed in the following manner:

(a) Where the natural resources are located in the province:

- (1) Province - Twenty percent (20%);
- (2) Component City/Municipality - Forty-five percent (45%); and
- (3) 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%)
- 

(b) Where the natural resources are located in a highly urbanized or independent component city:

- (1) City - Sixty-five percent (65%); and
- (2) Barangay - Thirty-five percent (35%)

Provided, however, That where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (a) of this Section.


Section 294. *Development and Livelihood Projects.*

- The proceeds from the share of local government units pursuant to this chapter shall be appropriated by their respective sanggunian to finance local government and livelihood projects: Provided, however, That at least eighty percent (80%) of the proceeds derived from the development and utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit where such a source of energy is located. . . .

That "territorial jurisdiction" refers to the LGU's territorial boundaries is a construction reflective of the discussion of the framers of the 1987 Constitution who referred to the local government as the "locality" that is "hosting" the national resources and a "place where God chose to locate His bounty." It is also consistent with the language ultimately used by the Constitutional Commission when they referred to the national wealth as those found within (the LGU's) respective areas. By definition, "area" refers to a particular extent of space or surface or a geographic region.

Such construction is in conformity with the pronouncement in *Sen. Alvarez v. Hon. Guingona, Jr.* where the Court, in explaining the need for adequate resources for LGUs to undertake the responsibilities ensuing from decentralization, made the following disquisition in which "territorial jurisdiction" was equated with territorial boundaries:

The practical side to development through a decentralized local government system certainly concerns the matter of financial resources. With its broadened powers and increased responsibilities, a local government unit must now operate on a much wider scale. More extensive operations, in turn, entail more expenses. Understandably, the vesting of duty, responsibility and accountability in every local government unit is accompanied with a provision for reasonably adequate resources to discharge its powers and effectively carry out its functions. Availment of such resources is effectuated through the vesting in every local government unit of (1) the right to create and broaden its own source of revenue; (2) the right to be allocated a just share in national taxes, such share being in the form of internal revenue allotments (IRAs); and (3) the right to be given its equitable share in the proceeds of the utilization and development of the national wealth, if any, within its territorial boundaries. . . .



An LGU has been defined as a political subdivision of the State which is constituted by law and possessed of substantial control over its own affairs. LGUs, therefore, are creations of law. In this regard, Sections 6 and 7 of the Local Government Code provide:

Section 6. Authority to Create Local Government Units. -

A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 7. Creation and Conversion. - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) *Income.* - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) *Population.* - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) *Land Area.* - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR). . . .

In enacting charters of LGUs, Congress is called upon to properly identify their territorial jurisdiction by metes and bounds. *Mariano, Jr. v. COMELEC* stressed the need to demarcate the territorial boundaries of LGUs with certitude because they define the limits of the local governments' territorial jurisdiction. Reiterating this dictum, the Court, in *Municipality of Pateros v. Court of Appeals, et al.*, held:

[W]e reiterate what we already said about the importance and sanctity of the territorial jurisdiction of an LGU:

The importance of drawing with precise strokes the

territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Unit in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions.⁷⁶

In view of this definition, this Court then went on to state that a local government unit's territorial jurisdiction refers only to its land area. Thus, its 40% share only pertains to the proceeds from the use and development of natural resources found only in its land area:

To recapitulate, an LGU's territorial jurisdiction refers to its territorial boundaries or to its territory. The territory of LGUs, in turn, refers to their land area, unless expanded by law to include the maritime area. Accordingly, only the utilization of natural resources found within the land area as delimited by law is subject to the LGU's equitable share under Sections 290 and 291 of the Local Government Code.⁷⁷

At this juncture, this Court takes the opportunity to clarify its prior interpretation of the scope of a local government unit's territorial jurisdiction.

II

The Constitution does not define a local government unit's territorial jurisdiction in relation to its entitlement to an equitable share in the utilization and development of the natural wealth. It does, however, mandate that the shares shall be *within their respective areas and in the manner provided by law*:

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.⁷⁸

⁷⁶ Id. citing LOCAL GOVERNMENT CODE, secs. 459, 440, and 448; Record of the 1986 Constitution Commission, Volume III, pp. 178 and 194; Merriam Webster, Definition of Area, <<http://www.merriam-webster.com/dictionary/area>>; *Alvarez v. Hon. Guingona, Jr.*, 322 Phil. 774 (1996) [Per J. Hermosisima, Jr., En banc]; *Mariano, Jr. v. COMELEC*, 312 Phil. 259, 265-266 (1995) [Per J. Puno, En Banc]; and *Municipality of Pateros v. Court of Appeals*, 607 Phil. 104 (2009) [Per J. Nachura, Third Division].

⁷⁷ Id.

⁷⁸ CONST., art. X, sec. 7.

Moreover, the Constitution assigns the natural boundaries of local government units as either “territorial and political subdivisions” or “autonomous regions”:

SECTION 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.⁷⁹

Territorial and political subdivisions are the provinces, cities, municipalities, and barangays, and are covered by the entirety of Article X of the Constitution. Autonomous regions are covered by a different set of constitutional provisions;⁸⁰ their territorial jurisdiction, therefore, is not defined akin to that of territorial and political subdivisions.

A local government unit is created by law,⁸¹ with due regard to “verifiable indicators of viability and projected capacity to provide services[.]”⁸² By correlating *territorial jurisdiction* with *territorial boundaries* in its December 4, 2018 Decision, this Court placed too much reliance on *land area* as indicative of the metes and bounds of a local government unit.

The Local Government Code defines “land area” as:

(c) Land Area. - It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).⁸³

Since the Local Government Code requires that the land area “must be contiguous,” this Court emphasized in its Decision that *contiguity* is essential in determining territorial jurisdiction. However, the phrase “must be contiguous” is followed by an important proviso: “*unless it comprises two or more islands[.]*”

⁷⁹ CONST., art. X, sec. 1.

⁸⁰ CONST., art. X, secs. 15, 16, 17, 18, 19, 20, and 21.

⁸¹ LOCAL GOVERNMENT CODE, sec. 6.

⁸² LOCAL GOVERNMENT CODE, sec. 7(c).

⁸³ LOCAL GOVERNMENT CODE, sec. 7(c).

SECTION 386. *Requisites for Creation.* — ...

....

(b) The territorial jurisdiction of the new Barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.

....

SECTION 442. *Requisites for Creation.* — ...

....

(b) The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

....

SECTION 450. *Requisites for Creation.* — ...

....

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

The Implementing Rules and Regulations of the Local Government Code is even more explicit. Article 9(2) provides:

ARTICLE 9. *Provinces.* — (a) Requisites for creation — A province shall not be created unless the following requisites on income and either population or land area are present:

....

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. *The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.* The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds. (Emphasis supplied)

2

Incidentally, Article 9(2)—and notably its exemption to land area requirement—had been put into question before, with this Court eventually upholding its constitutionality.

In *Navarro v. Ermita*,⁸⁴ this Court was confronted with the issue of whether Dinagat Islands could be considered a province since its total land mass was only 802.12 square kilometers, which was below the 2,000 square kilometers required by Article 9(2). Petitioners in that case, who were the former Vice Governor and members of the Provincial Board of Surigao del Norte, questioned the provision's constitutionality, arguing that the exemption to land area requirement was not explicitly provided in the Local Government Code.

The majority initially declared Article 9(2) unconstitutional for being “an extraneous provision not intended by the Local Government Code[.]”⁸⁵ On reconsideration, however, the majority reversed its decision and upheld the constitutionality of the assailed provision.⁸⁶ It found:

[W]hen the local government unit to be created consists of one (1) or more islands, it is exempt from the land area requirement as expressly provided in Section 442 and Section 450 of the LGC if the local government unit to be created is a municipality or a component city, respectively. This exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of the LGC, although it is expressly stated under Article 9 (2) of the LGC-IRR.

There appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. In fact, considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or group of islands would form part of the land area of a newly-created province than in most cities or municipalities. It is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for component cities) of the LGC, but was inadvertently omitted in Section 461 (for provinces). Thus, when the exemption was expressly provided in Article 9 (2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of the LGC — and to reflect the true legislative intent. It would, then, be in order for the Court to uphold the validity of Article 9 (2) of the LGC-IRR.

This interpretation finds merit when we consider the basic policy considerations underpinning the principle of local autonomy.

....

Consistent with the declared policy to provide local government units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict

⁸⁴ 626 Phil. 23 (2010) [Per J. Peralta, En Banc].

⁸⁵ Id. at 54.

⁸⁶ *Navarro v. Ermita*, 663 Phil. 546 (2011) [Per J. Nachura, En Banc].

l

units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict interpretation adopted by the February 10, 2010 Decision could prove to be counter-productive, if not outright absurd, awkward, and impractical. Picture an intended province that consists of several municipalities and component cities which, in themselves, also consist of islands. The component cities and municipalities which consist of islands are exempt from the minimum land area requirement, pursuant to Sections 450 and 442, respectively, of the LGC. Yet, the province would be made to comply with the minimum land area criterion of 2,000 square kilometers, even if it consists of several islands. This would mean that Congress has opted to assign a distinctive preference to create a province with contiguous land area over one composed of islands — and negate the greater imperative of development of self-reliant communities, rural progress, and the delivery of basic services to the constituency. This preferential option would prove more difficult and burdensome if the 2,000-square-kilometer territory of a province is scattered because the islands are separated by bodies of water, as compared to one with a contiguous land mass.

Moreover, such a very restrictive construction could trench on the equal protection clause, as it actually defeats the purpose of local autonomy and decentralization as enshrined in the Constitution. Hence, the land area requirement should be read together with territorial contiguity.⁸⁷

Thus, it is clear from the laws and regulations defining a local government unit's "respective area" that the requirement of contiguity *shall not apply if the local government unit is comprised of islands*. All that is required is that it is properly identified by its metes and bounds.

This clarification is necessary considering the geographical peculiarities unique to the Province of Palawan.

III

The Province of Palawan, previously known as the Province of Paragua, was created under Act No. 422.⁸⁸ Section 2 of the Act, as amended,⁸⁹ provides the Province of Paragua's specific metes and bounds:

SECTION 2. The Province of Paragua shall consist of all that portion of the Island of Paragua north of a line beginning in the middle of the channel at the mouth of the Ulugan River in the Ulugan Bay, thence following the main channel of the Ulugan River to the village of Bahile, thence along the main trail leading from Bahile to the Tapul River, thence following the course of the Tapul River to its mouth in the Honda Bay; except that the towns of Bahile and Tapul the west boundary line shall be

⁸⁷ Id. at 584–586.

⁸⁸ An Act Providing for the Organization of a Provincial Government in the Province of Paragua, and Defining the Limits of that Province, June 23, 1902.

⁸⁹ Act No. 567 (1902), sec. 2.

Dumaran and the islands forming the Calamianes group and the Cuyos Group.

The Province of Paragua had no technical description based on land area. Act No. 422 instead anchored the province's borders on the bodies of water surrounding it.

The Province of Palawan currently comprises 1,780 islands and islets.⁹⁰ To determine its metes and bounds, one would have to go beyond the contiguity of its land mass.

The Local Government Code provides that a local government unit's territory extends to its municipal waters, defined as:

SECTION 131. Definition of Terms. — . . .

(r) "Municipal Waters" includes not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of their respective municipalities[.]⁹¹

Section 16 of the Philippine Fisheries Code⁹² further provides:

SECTION 16. *Jurisdiction of Municipal/City Government.* — The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

⁹⁰ *Palawan*, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT - LOCAL GOVERNMENT ACADEMY, <<https://lga.gov.ph/province/info/palawan>> (last accessed on January 20, 2020).

⁹¹ LOCAL GOVERNMENT CODE, sec. 131(r).

⁹² Republic Act No. 8550 (1998).

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

Going strictly by these provisions would mean that the Province of Palawan can only exercise jurisdiction over waters that are within 15 kilometers of its general coastline. This narrow interpretation, however, disregards other laws that may have defined and specified portions of the Province of Palawan's territory and its unique archipelagic design.

Foremost of these laws is Presidential Decree No. 1596,⁹³ which established the Kalayaan Island Group:

SECTION 1. The area within the following boundaries:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude;

including the sea-bed, sub-soil, continental margin and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."⁹⁴

Included in the metes and bounds of the Municipality of Kalayaan are the seabed, subsoil, continental margin, and air space over this territory. This is consistent with Article 76(1) of the United Nations Convention on the Law of the Sea, which states:

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Presidential Decree No. 1596 categorically states that the seabed, subsoil, and continental margin shall be included in the Municipality of

⁹³ Declaring Certain Area Part of the Philippine Territory and Providing for their Government and Administration, June 11, 1978.

⁹⁴ Presidential Decree No. 1596 (1978), sec. 1.

Kalayaan and made part of the Province of Palawan. *This means that the territory—and thus, the territorial jurisdiction—of the Province of Palawan extends to the entirety of the Municipality of Kalayaan, including its seabed, subsoil, and the continental margin.*

This interpretation is more consistent with the factual findings of the Permanent Court of Arbitration in its landmark ruling,⁹⁵ which used the Province of Palawan as its baseline point to determine the contested reefs' proximity to the Philippines:

285. Cuarteron Reef is known as “Huayang Jiao” (华阳礁) in China and “Calderon Reef” in the Philippines. It is a coral reef located at 08° 51' 41" N, 112° 50' 08" E and is the easternmost of four maritime features known collectively as the London Reefs that are located on the western edge of the Spratly Islands. Cuarteron Reef is 245.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 585.3 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to the island of Hainan. The general location of Cuarteron Reef, along with the other maritime features in the Spratly Islands, is depicted in Map 3 on page 125 below.

286. Fiery Cross Reef is known as “Yongshu Jiao” (永暑礁) in China and “Kagitingan Reef” in the Philippines. It is a coral reef located at 09° 33' 00" N, 112° 53' 25" E, to the north of Cuarteron Reef and along the western edge of the Spratly Islands, adjacent to the main shipping routes through the South China Sea. Fiery Cross Reef is 254.2 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 547.7 nautical miles from the China's baseline point 39 (Dongzhou (2)) adjacent to the island of Hainan.

287. Johnson Reef, McKennan Reef, and Hughes Reef are all coral reefs that form part of the larger reef formation in the centre of the Spratly Islands known as Union Bank. Union Bank also includes the high-tide feature of Sin Cowe Island. Johnson Reef (also known as Johnson South Reef) is known as “Chigua Jiao” (赤瓜礁) in China and “Mabini Reef” in the Philippines. It is located at 9° 43' 00" N, 114° 16' 55" E and is 184.7 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 570.8 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Although the Philippines has referred to “McKennan Reef (including Hughes Reef)” in its Submissions, the Tribunal notes that McKennan Reef and Hughes Reef are distinct features, albeit adjacent to one another, and considers it preferable, for the sake of clarity, to address them separately. McKennan Reef is known as “Ximen Jiao” (西门礁) in China and, with Hughes Reef, is known collectively as “Chigua Reef” in the Philippines. It is located at 09° 54' 13" N, 114° 27' 53" E and is 181.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 566.8 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Hughes Reef is known as “Dongmen Jiao” (东门礁) in China and, with McKennan Reef, is known collectively as “Chigua Reef” in the Philippines. It is located at

⁹⁵ *In the Matter of the South Sea China Arbitration*, PCA Case No. 2013-19, July 12, 2016, <<https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf>> (last accessed on January 20, 2020).

09° 54' 48" N 114°29' 48" E and is 180.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 567.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

288. The Gaven Reefs are known as "Nanxun Jiao" (南薰礁) in China and "Burgos" in the Philippines. They constitute a pair of coral reefs that forms part of the larger reef formation known as Tizard Bank, located directly to the north of Union Bank. Tizard Bank also includes the high-tide features of Itu Aba Island, Namyt Island, and Sand Cay. Gaven Reef (North) is located at 10° 12' 27" N, 114° 13' 21" E and is 203.0 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 544.1 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Gaven Reef (South) is located at 10° 09' 42" N 114° 15' 09" E and is 200.5 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 547.4 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

289. Subi Reef is known as "Zhubi Jiao" (渚碧礁) in China and "Zamora Reef" in the Philippines. It is a coral reef located to the north of Tizard Bank and a short distance to the south-west of the high-tide feature of Thitu Island and its surrounding Thitu Reefs. Subi Reef is located at 10° 55' 22" N, 114° 05' 04" E and lies on the north-western edge of the Spratly Islands. Subi Reef is 231.9 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 502.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

290. Mischief Reef and Second Thomas Shoal are both coral reefs located in the centre of the Spratly Islands, to the east of Union Bank and to the south-east of Tizard Bank. Mischief Reef is known as "Meiji Jiao" (美济礁) in China and "Panganiban" in the Philippines. It is located at 09° 54' 17" N, 115° 31' 59" E and is 125.4 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 598.1 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Second Thomas Shoal is known as "Ren'ai Jiao" (仁爱礁) in China and "Ayungin Shoal" in the Philippines. It is located at 09° 54' 17" N, 115° 51' 49" E and is 104.0 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 616.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.⁹⁶

Including the Kalayaan Island Group's continental shelf in the Province of Palawan's territorial jurisdiction is likewise consistent with the Republic's manifestations on Reed Bank in asserting its sovereignty over the Kalayaan Island Group:

FIRST, the Republic of the Philippines has sovereignty and jurisdiction over the Kalayaan Island Group (KIG);

SECOND, even while the Republic of the Philippines has sovereignty and jurisdiction over the KIG, the Reed Bank where GSEC 101 is situated does not form part of the "adjacent waters," specifically the 12 M territorial waters of any relevant geological feature in the KIG either under

⁹⁶ Id. at 121-122

of the Sea (UNCLOS);

THIRD, Reed Bank is not an island, a rock, or a low tide elevation. Rather, Reed Bank is a completely submerged bank that is part of the continental margin of Palawan. Accordingly, Reed Bank, which is about 85 M from the nearest coast of Palawan and about 595 M from the coast of Hainan, forms part of the 200 M continental shelf of the Philippine archipelago under UNCLOS[.]⁹⁷ (Citation omitted)

It is, thus, inaccurate to declare that a local government unit's territory, and by extension, its territorial jurisdiction, can only be over land that is contiguous. When the territory consists of one (1) or more islands, territorial jurisdiction can also be exercised over all waters found inland, or in any area that is part of its seabed, subsoil, or continental margin, "in the manner provided by law[.]"⁹⁸

IV

This Court must also clarify whether the Province of Palawan was misled into believing that it was entitled to an equitable share in the proceeds of the Natural Gas Project.

According to this Court's December 4, 2018 Decision, this entitlement was "based on a mistaken assumption"⁹⁹ from the prior acts of the Republic. The Province of Palawan, however, cannot be faulted for relying on the Republic's prior repeated recognition that it was indeed entitled to its claimed share.

In 1998, then President Ramos expressly recognized in Administrative Order No. 381 that the Province of Palawan would partake in the Republic's share in the net proceeds of the Natural Gas Project.¹⁰⁰ In particular, the whereas clauses of Administrative Order No. 381 provide:

WHEREAS, under SC 38, as clarified, a production sharing scheme has been provided whereby the Government is entitled to receive an amount equal to sixty percent (60%) of the net proceeds from the sale of Petroleum (including Natural Gas) produced from Petroleum Operations (all as defined in SC 38) while Shell/Oxy, as Service Contractor is entitled to receive an amount equal to forty percent (40%) of the net proceeds;

....

WHEREAS, the Government has determined that it can derive the

⁹⁷ Id. at 266.

⁹⁸ CONST., art X, sec. 7.

⁹⁹ *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868>> [Per J. Tijam, En Banc].

¹⁰⁰ *Rollo* (G.R. No. 170867), pp. 549–550-A.

following economic and social benefits from the Natural Gas Project:

....

2. based on the estimated production level and Natural Gas pricing formula between the Sellers and the Buyers of such Natural Gas, the estimated Government revenues for the 20-year contract period will be around US\$8.1 billion; this includes estimated revenues to be generated from the available oil and condensate reserves of the Camago-Malampaya Reservoir; the province of Palawan is expected to receive about US\$2.1 billion from the total Government share of US\$8.1 billion;

....

WHEREAS, the Government's share in Petroleum (including Natural Gas) produced under SC 38, as clarified, will be reduced (i) by the share of concerned local government units pursuant to the Local Government Code and (ii) by amounts of income taxes due from and paid on behalf of the Service Contractor (the resulting amounts hereinafter called the "Net Government Share") [.]

Then Energy Secretary Viray also wrote to then Palawan Governor Socrates, requesting that 50% of Palawan's share in the Natural Gas Project be deferred.¹⁰¹ This shows that the executive branch indeed exerted efforts to fulfill its commitments to the Province of Palawan.

After the Natural Gas Project had been launched, meetings were held between the executive branch and the Province of Palawan to determine the province's share in the net proceeds.¹⁰² Even while the declaratory relief case was pending before the Regional Trial Court, the executive branch executed an Interim Agreement¹⁰³ with the Province of Palawan. This provided for equal sharing of the 40% claim by the Province of Palawan, to be called the "Palawan Share," for the province's use and development.¹⁰⁴

Officers from the Arroyo administration and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, likewise executed a Provisional Implementation Agreement,¹⁰⁵ which allowed for the release of 50% of the disputed 40% share to be used for development projects in Palawan.

Then President Macapagal-Arroyo even issued Executive Order No. 683, the pertinent portions of which state:

WHEREAS, on 11 December, 1990, the Republic of the Philippines, represented by the Department of Energy (DOE), entered into

¹⁰¹ Id. at 551–552.

¹⁰² Id. at 127–129.

¹⁰³ Id. at 555–561.

¹⁰⁴ Id. at 557.

¹⁰⁵ *Rollo* (G.R. No. 185941), pp. 498–503.

Philippines, represented by the Department of Energy (DOE), entered into Service Contract No. 38 (SC 38) and engaged the services of a consortium composed today of Shell B.V., Shell Philippines LLC, Chevron Malampaya LLC and PNOC-Exploration Corporation (EC), as Contractor for the exploration, development and production of petroleum resources in an identified offshore area, known as the Camago-Malampaya Reservoir, to the West Philippines Sea;

....

WHEREAS, President as Chief Executive has a broad perspective of the requirements to develop Palawan as a major tourism destination from the point of view of the National Government, which has identified the Central Philippines Superregion, of which Palawan is a part, for tourism infrastructure investments;

WHEREAS, there is a pending court dispute between the National Government and the Province of Palawan on the issue of whether Camago-Malampaya Reservoir is within the territorial boundaries of the Province of Palawan thus entitling the said province to 40% of the Net Government Share in the proceeds of SC 38 pursuant to Sec. 290 of Republic Act No. (RA) 7160, otherwise known as the "Local Government Code";

WHEREAS, Sec. 25 of RA 7160 provides that the President may, upon request of the local government unit (LGU) concerned, direct the appropriate national government agency to provide financial, technical or other forms of assistance to the LGU;

WHEREAS, the duly-authorized representatives of the National Government and the Province of Palawan, with the conformity of the Representatives of the Congressional District of Palawan, have agreed on a Provisional Implementation Agreement (PIA) that would allow 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 to be utilized for the immediate and effective implementation of development projects for the people of Palawan;

NOW, THEREFORE, I, GLORIA M. ARROYO, President of the Philippines, by virtue of the power vested in me by law, do hereby order:

SECTION 1. Subject to existing laws, and the usual government accounting and auditing rules and regulations, the Department of Budget and Management (DBM) is hereby authorized to release funds to the implementing agencies (IA) pursuant to the PIA, upon the endorsement and submission by the DOE and/or the PNOC Exploration Corporation of the following documents:

- 1.1. Directive by the Office of the President or written request of the Province of Palawan, the Palawan Congressional Districts or the Highly Urbanized City of Puerto Princesa, for the funding of designated projects;
- 1.2. A certification that the designated projects fall under the investment program of the Province of Palawan, City of Puerto Princesa, and/or the development projects identified in the development program of the National Government or its agencies; and

- 1.3. Bureau of Treasury certification on the availability of funds from the 50% of the 40% share being claimed by the Province of Palawan from the Net Government Share under SC 38;

Provided, that the DBM shall be subject to the actual collections deposited with the National Treasury, and shall be in accordance with the Annual Fiscal Program of the National Government.

....

SECTION 3. The National government, with due regard to the pending judicial dispute, shall allow the Province of Palawan, the Congressional Districts of Palawan and the City of Puerto Princesa to securitize their respective shares in the 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 pursuant to the PIA. For the purpose, the DOE shall, in consultation with the Department of Finance, be responsible for preparing the Net Government Revenues for the period of to (sic) June 30, [2]010.

SECTION 4. The amounts released pursuant to this EO shall be without prejudice to any on-going discussions or final judicial resolution of the legal dispute regarding the National Government's territorial jurisdiction over the areas covered by SC 38 in relation to the claim of the Province of Palawan under Sec. 290 of RA 7160.¹⁰⁶

From these enactments, the executive branch's interpretation and implementation of Section 290 of the Local Government Code in relation to Service Contract No. 38 are shown; that is, that the Province of Palawan's territorial jurisdiction included the Camago-Malampaya natural gas reservoirs. Otherwise stated, its prior acts are its contemporaneous construction of an otherwise ambiguous provision of law.

Contemporaneous construction is resorted to when there is an ambiguity in the law and its provisions cannot be discerned through plain meaning. The interpretation of those called upon to implement the law is given great respect.¹⁰⁷ In *Tamayo v. Manila Hotel Company*:¹⁰⁸

It is a rule of statutory construction that "courts will and should respect the contemporaneous construction placed upon a statute by the executive officers, whose duty it is to enforce it and unless such interpretation is clearly erroneous will ordinarily be controlled thereby."¹⁰⁹

Similarly, in *Alvarez v. Guingona, Jr.*:¹¹⁰

¹⁰⁶ Executive Order No. 683 (2007), whereas clauses and secs. 3 and 4.

¹⁰⁷ See *Lim Hoa Ting v. Central Bank of the Philippines*, 104 Phil. 573 (1958) [Per J. Montemayor, En Banc].

¹⁰⁸ 101 Phil. 810 (1957) [Per J. Reyes, A., En Banc].

¹⁰⁹ Id. at 815 citing *Molina v. Rafferty*, 37 Phil. 545 (1918) [Per J. Malcom, First Division]; *In re Allen*, 2 Phil. 630 (1903) [Per J. McDonough, En Banc]; and *Everett v. Bautista*, 69 Phil. 137 (1939) [Per J. Diaz, En Banc].

¹¹⁰ 322 Phil. 774 (1996) [Per J. Hermosisima, Jr., En Banc].

[An] order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.¹¹¹ (Citation omitted)

Thus, this Court will give due weight to the executive branch's interpretation and implementation of "equitable share" and "territorial jurisdiction" in Article 290 of the Local Government Code.

This contemporaneous construction will be upheld unless it is in clear conflict with the Constitution, the statute being interpreted, or other laws.

V

Unfortunately, none of the maps on record or the relevant laws could conclusively prove that the Province of Palawan has territorial jurisdiction over the Camago-Malampaya natural gas reservoirs.

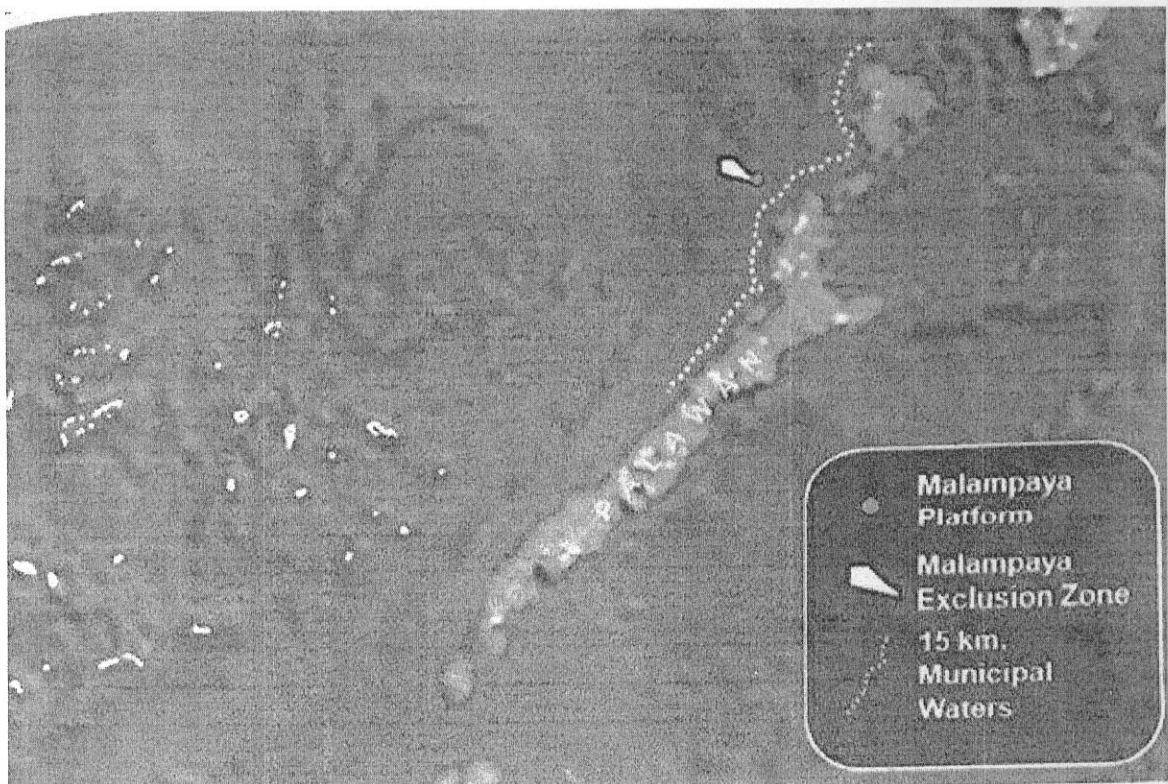
In the amicus brief¹¹² submitted by then Department of Foreign Affairs - Commission on Maritime and Ocean Affairs Secretariat Secretary General Henry S. Bensurto, Jr. (Secretary General Bensurto), it can be clearly seen that the reservoirs are not within the scope of the Province of Palawan's territory.

The area is beyond the province's territory when the 15-kilometer boundary of the Local Government Code and the Philippine Fisheries Code is applied:¹¹³

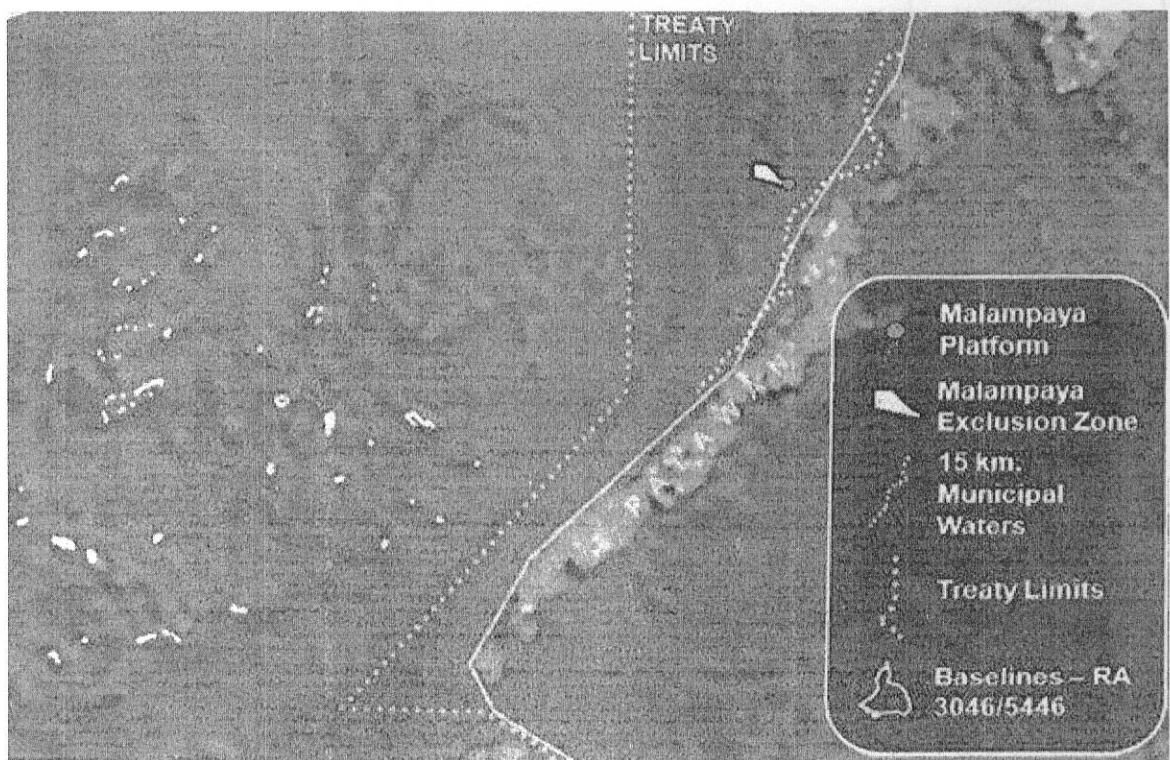
¹¹¹ Id. at 786.

¹¹² *Rollo* (G.R. No. 170867), pp. 1336–1358.

¹¹³ Id. at 1345. Figure #1 in the *Amicus Curiae* Memorandum.



The area is also beyond the Province of Palawan's territory when the United Nations Convention on the Law of the Sea, Republic Act No. 9522,¹¹⁴ and the 1898 Treaty of Paris are applied:¹¹⁵

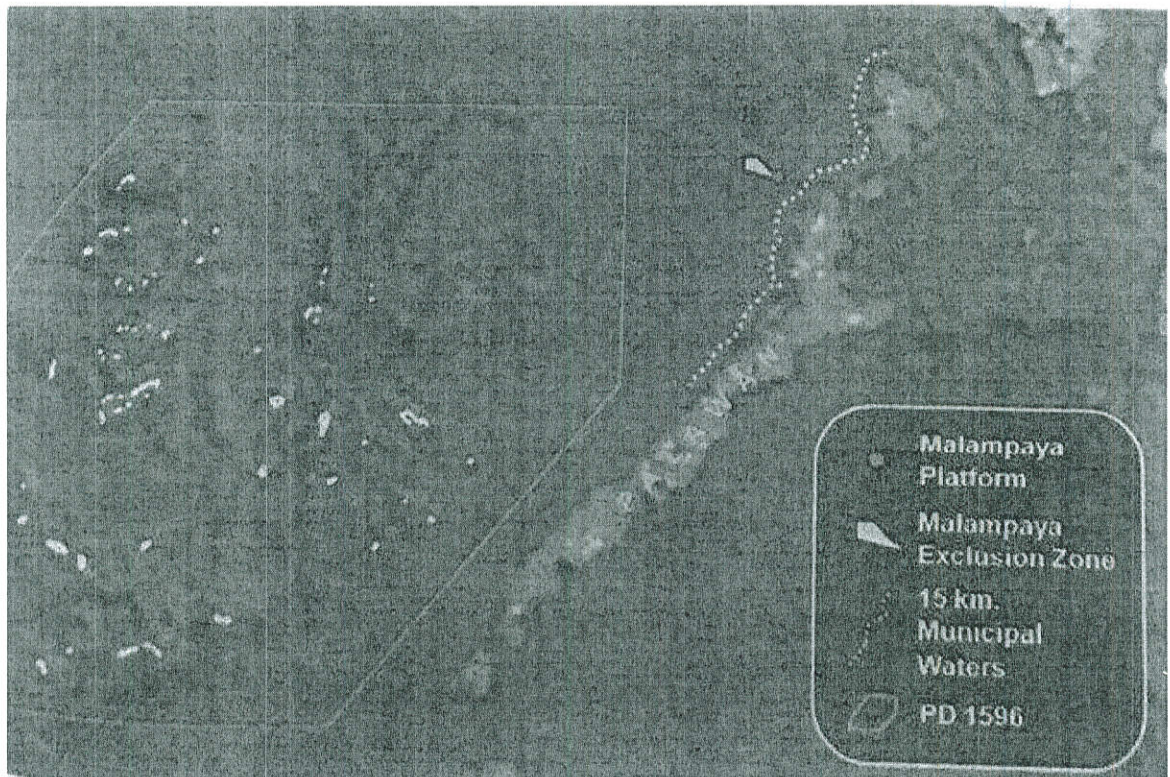


Likewise, the area is beyond the province's territory when Presidential Decree No. 1596 is applied:¹¹⁶

¹¹⁴ An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes, March 10, 2009.

¹¹⁵ *Rollo* (G.R. No. 170867), p. 1345. Figure #3 in the *Amicus Curiae* Memorandum.

¹¹⁶ *Id.* at 1346. Figure #4 in the *Amicus Curiae* Memorandum.



The non-applicability of Presidential Decree No. 1596 over the Camago-Malampaya area was even clarified during the oral arguments:

JUSTICE DE CASTRO: Now, the question is - if in the other islands even assuming that there is a continental shelf which extends up to Camago there is now that legal question of whether that belongs to Palawan, whether Palawan, that is within the area of Palawan even if it is protruding from an island in Palawan because there is no such law like P.D. 1596 pertaining to the other islands?

ATTY. HENRY BENSURTO: Yes, Your Honor.

JUSTICE DE CASTRO: So, if there is none and Camago is in the continental shelf protruding from any other island in Palawan and then we cannot apply 1596?

ATTY. HENRY BENSURTO: No, Your Honor.¹¹⁷

It is true that Republic Act No. 7611, or the Strategic Environmental Plan for Palawan Act, appears to have extended the territory of the Province of Palawan:

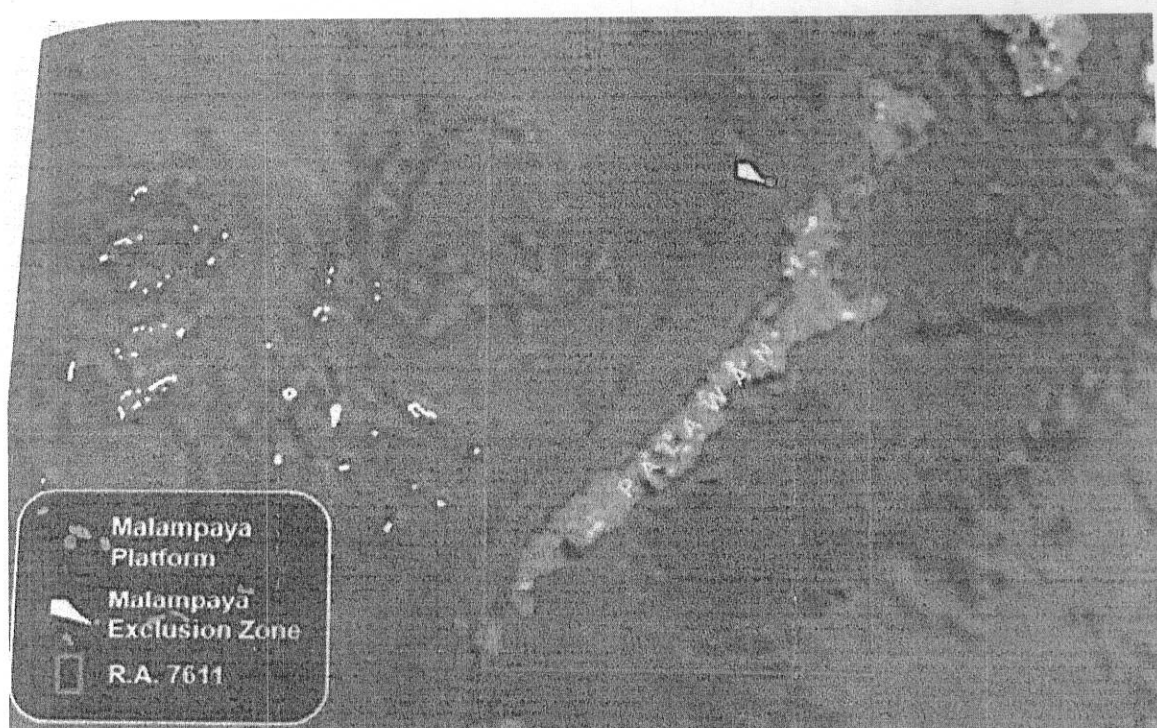
SECTION 3. *Definition of Terms.* — As used in this Act, the following terms are defined as follows:

(1) “Palawan” refers to the Philippine province composed of

¹¹⁷ *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868>> [Per J. Tijam, En Banc].

islands and islets located 7°47' and 12°22' north latitude and 117°00' and 119°51' east longitude, generally bounded by the South China Sea to the northwest and by the Sulu Sea to the east.¹¹⁸

These coordinates, when plotted, show that the Camago-Malampaya reservoirs are within the area known as "Palawan":¹¹⁹



Republic Act No. 7611 includes in its Environmentally Critical Areas Network the following components:

SECTION 8. *Main Components.* — ...

- (1) Terrestrial — The terrestrial component shall consist of the mountainous as well as ecologically important low hills and lowland areas of the whole province. It may be further subdivided into smaller management components;
- (2) Coastal/marine area — *This area includes the whole coastline up to the open sea.* This is characterized by active fisheries and tourism activities; and
- (3) Tribal Ancestral lands — These are the areas traditionally occupied by the cultural communities.¹²⁰ (Emphasis supplied)

Local chief executives, together with representatives of national government, are tasked with protecting and preserving environmentally critical areas in Palawan. These duties necessarily include the exercise of

¹¹⁸ Republic Act No. 7611 (1992), sec. 3.

¹¹⁹ *Rollo* (G.R. No. 170867), p. 1348. Figure #5 in the *Amicus Curiae* Memorandum.

¹²⁰ Republic Act No. 7611 (1992), sec. 8.

jurisdiction beyond the Province of Palawan's land mass.

However, strictly applying Republic Act No. 7611 to determine the Province of Palawan's territory poses a problem: it excludes several municipalities that have always been part of the province, namely Balabac, Cagayancillo, Busuanga, Coron, Agutaya, Magsaysay, Cuyo, Araceli, Linapacan, and Dumaran.¹²¹ This results in a substantial alteration of its boundaries, an act that can only be done through a plebiscite called for that purpose.¹²² Thus, Republic Act No. 7611 cannot be the basis to prove that the Camago-Malampaya reservoirs are within the Province of Palawan.

For their part, none of the parties have presented maps or statutes that conclusively prove that the Camago-Malampaya reservoirs are within the Province of Palawan. This Court is, thus, constrained to uphold the ruling that the area remains under the territorial jurisdiction of the Republic, unless otherwise provided by law.

VI

The Province of Palawan argues that it should be entitled to its share based on equity, considering its proximity and the environmental repercussions of the Natural Gas Project.¹²³

Indeed, *amicus curiae* Secretary General Bensurto made the following observations:

1. The proximity of the Camago-Malampaya gas reservoir to the Province of Palawan makes the latter environmentally vulnerable to any major accidents in the gas reservoir;
2. The gas pipes of the Camago-Malampaya pass through the Northern part of the Palawan Province.¹²⁴

The Republic, however, correctly states¹²⁵ that whatever environmental or socio-economic impact the Natural Gas Project may have has been addressed by the Environmental Compliance Certificate issued to the Shell Consortium, which provides:

26. The proponent shall set up an Environmental Guarantee Fund (EGF) to cover expenses for environmental monitoring and the establishment of a readily available and replenishable fund to compensate for whatever damage, may be caused by the project, for the rehabilitation and/or

¹²¹ *Rollo* (G.R. No. 170867), p. 1535.

¹²² LOCAL GOVERNMENT CODE, sec. 10.

¹²³ *Rollo* (G.R. No. 170867), p. 2298.

¹²⁴ *Id.* at 1356.

¹²⁵ *Id.* at 2390–2392.

restoration of affected-areas, the future abandonment/decommissioning of project facilities and other activities related to the prevention of possible negative impacts.

The amount and mechanics of the EGF shall be determined by the DENR and the proponent taking into consideration the concerns of the affected areas stakeholders and formalized through a MOA which shall be submitted within ninety (90) days prior to project implementation. The absence of the EGF shall cause the cancellation of this Certificate;

.....

29. In cases where pipe laying activities will adversely affect existing fishing grounds, the proponent in coordination with the Bureau of Fisheries and Aquatic Resources (BFAR) shall identify alternative fishing grounds and negotiate with affected fisherfolks (*sic*) the reasonable compensation to be paid[.]¹²⁶

Notably, since the Camago-Malampaya Natural Gas Project was launched in 2001, the Province of Palawan has yet to submit any factual documentation of the environmental or socio-economic damage it may have caused, such that the province may be entitled to a share in its proceeds on equitable grounds.

It is to be recalled, however, that Executive Order No. 683 authorized the release of funds from Natural Gas Project's proceeds to the Province of Palawan, to be used for development projects for the people of Palawan, without prejudice to the final outcome of this case.

It was clear with the Executive Order that the national government did not commit itself to perpetually share the proceeds from the Natural Gas Project. However, it was also clear that the Province of Palawan was not required to diminish its future resources in order to reimburse the national government for the funds received should there be a final ruling in this Resolution.

For this Court, it is a reasonable presumption that the national government wanted to immediately augment the Province of Palawan's funds for its constituents. Certainly, at that point when the funds were made available, both the national government and the Province of Palawan intended to provide for the general welfare. To require the return of funds now after this Court finally decides not only undermines public welfare and the presumption of regularity of the actions of public officials, but it will likewise weaken the very local autonomy envisioned by the Constitution.

Therefore, the Province of Palawan need not return the ₱600 million it received under Executive Order No. 683. Moving forward, any share that

¹²⁶ Id. at 2392.


Congress will allot for the province will purely be an act of political discretion. Executive Order No. 683 has, thus, become *functus officio*.

WHEREFORE, the Motion for Reconsideration and Supplemental Motion for Reconsideration in G.R. No. 170867 and the Motion for Reconsideration in G.R. No. 185941 are **DENIED** with **FINALITY**. Let entry of judgment be issued immediately.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

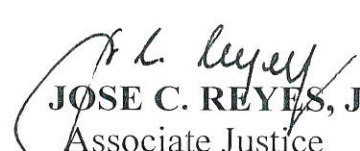

DIOSDADO M. PERALTA
Chief Justice



ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On official leave)
ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice


EDGARDO L. DE LOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the court.


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court