

**ARSADI M. DISOMANGCOP AND RAMIR M. DIMALOTANG,
PETITIONERS, VS. THE SECRETARY OF THE DEPARTMENT OF
PUBLIC WORKS AND HIGHWAYS SIMEON A. DATUMANONG AND THE
SECRETARY OF BUDGET AND...**

G.R. No. 149848. November 25, 2004

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TINGA, J.:

At stake in the present case is the fate of regional autonomy for Muslim Mindanao which is the epoch-making, Constitution-based project for achieving national unity in diversity.

Challenged in the instant petition for certiorari, prohibition and mandamus with prayer for a temporary restraining order and/or writ of preliminary injunction[1] (Petition) are the constitutionality and validity of Republic Act No. 8999 (R.A. 8999),[2] entitled “An Act Establishing An Engineering District in the First District of the Province of Lanao del Sur and Appropriating Funds Therefor,” and Department of Public Works and Highways (DPWH) Department Order No. 119 (D.O. 119)[3] on the subject, “Creation of Marawi Sub-District Engineering Office.”

The Background

The uncontested legal and factual antecedents of the case follow.

For the first time in its history after three Constitutions, the Philippines ordained the establishment of regional autonomy with the adoption of the 1987 Constitution. Sections 1[4] and 15, Article X mandate the creation of autonomous regions in Muslim Mindanao and in the Cordilleras. Section 15 specifically provides that “[t]here shall be created autonomous regions in Muslim Mindanao and in the Cordilleras consisting of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines.” To effectuate this mandate, the Charter devotes a number of provisions under Article X.[5]

Pursuant to the constitutional mandate, Republic Act No. 6734 (R.A. 6734), entitled “An Act Providing for An Organic Act for the Autonomous Region in Muslim Mindanao,” was enacted and signed into law on 1 August 1989. The law called for the holding of a plebiscite in the provinces of Basilan, Cotabato, Davao del Sur, Lanao del Norte, Lanao del Sur, Maguindanao, Palawan, South Cotabato, Sultan Kudarat, Sulu, Tawi-Tawi, Zamboanga del Norte, and Zamboanga del Sur, and the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Puerto Princesa and Zamboanga.[6] In the ensuing plebiscite held on 19 November 1989, only four (4) provinces voted for the creation of an autonomous region, namely: Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi. These provinces became the Autonomous Region in Muslim Mindanao (ARMM).[7] The law contains elaborate provisions on the powers of the Regional Government and the areas of jurisdiction which are reserved for the National Government.[8]

In accordance with R.A. 6734, then President Corazon C. Aquino issued on 12 October 1990, Executive Order

No. 426 (E.O. 426), entitled “Placing the Control and Supervision of the Offices of the Department of Public Works and Highways within the Autonomous Region in Muslim Mindanao under the Autonomous Regional Government, and for other purposes.” Sections 1 to 3[9] of the Executive Order are its operative provisions.

ARMM was formally organized on 6 November 1990. President Corazon C. Aquino flew to Cotabato, the seat of the Regional Government, for the inauguration. At that point, she had already signed seven (7) Executive Orders devolving to ARMM the powers of seven (7) cabinet departments, namely: (1) local government; (2) labor and employment; (3) science and technology; (4) public works and highways; (5) social welfare and development; (6) tourism; and (7) environment and national resources.[10]

Nearly nine (9) years later, on 20 May 1999, then Department of Public Works and Highways (DPWH) Secretary Gregorio R. Vigilar issued D.O. 119 which reads, thus:

Subject: Creation of Marawi Sub-District Engineering Office

Pursuant to Sections 6 and 25 of Executive Order No. 124 dated 30 January 1987, there is hereby created a DPWH Marawi Sub-District Engineering Office which shall have jurisdiction over all national infrastructure projects and facilities under the DPWH within Marawi City and the province of Lanao del Sur. The headquarters of the Marawi Sub-District Engineering Office shall be at the former quarters of the Marawi City Engineering Office.

Personnel of the above-mentioned Sub-District Engineering Office shall be made up of employees of the National Government Section of the former Marawi City Engineering Office who are now assigned with the Iligan City Sub-District Engineering Office as may be determined by the DPWH Region XII Regional Director. (Emphasis supplied)

Almost two (2) years later, on 17 January 2001, then President Joseph E. Estrada approved and signed into law R.A. 8999. The text of the law reads:

AN ACT ESTABLISHING AN ENGINEERING DISTRICT IN THE FIRST DISTRICT OF THE PROVINCE OF LANA DEL SUR AND APPROPRIATING FUNDS THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The City of Marawi and the municipalities comprising the First District of the Province of Lanao del Sur are hereby constituted into an engineering district to be known as the First Engineering District of the Province of Lanao del Sur.

SEC. 2. The office of the engineering district hereby created shall be established in Marawi City, Province of Lanao del Sur.

SEC. 3. The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law. Thereafter, such sums as may be necessary for the maintenance and continued operation of the engineering district office shall be included in the annual General Appropriations Act.

SEC. 4. This Act shall take effect upon its approval. (Emphasis supplied)

Congress later passed Republic Act No. 9054 (R.A. 9054), 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 the Autonomous Region in Muslim Mindanao, as Amended.” Like its forerunner, R.A. 9054 contains detailed provisions on the powers of the Regional Government and the retained areas of governance of the National Government.[11]

R.A. 9054 lapsed into law^[12] on 31 March 2001. It was ratified in a plebiscite held on 14 August 2001. The province of Basilan and the City of Marawi also voted to join ARMM on the same date. R.A. 6734 and R.A. 9054 are collectively referred to as the ARMM Organic Acts.

On 23 July 2001, petitioners Arsadi M. Disomangcop (Disomangcop) and Ramir M. Dimalotang (Dimalotang) addressed a petition to then DPWH Secretary Simeon A. Datumanong, seeking the revocation of D.O. 119 and the non-implementation of R.A. 8999. No action, however, was taken on the petition.^[13]

Consequently, petitioners Disomangcop and Dimalotang filed the instant petition, in their capacity as Officer-in-Charge and District Engineer/Engineer II, respectively, of the First Engineering District of the Department of Public Works and Highways, Autonomous Region in Muslim Mindanao (DPWH-ARMM) in Lanao del Sur.

Petitioners seek the following principal reliefs: (1) to annul and set aside D.O. 119; (2) to prohibit respondent DPWH Secretary from implementing D.O. 119 and R.A. 8999 and releasing funds for public works projects intended for Lanao del Sur and Marawi City to the Marawi Sub-District Engineering Office and other administrative regions of DPWH; and (3) to compel the Secretary of the Department of Budget and Management (DBM) to release all funds for public works projects intended for Marawi City and the First District of Lanao del Sur to the DPWH-ARMM First Engineering District in Lanao del Sur only; and to compel respondent DPWH Secretary to let the DPWH-ARMM First Engineering District in Lanao del Sur implement all public works projects within its jurisdictional area.^[14]

The petition includes an urgent application for the issuance of a temporary restraining order (TRO) and, after hearing, a writ of preliminary injunction, to enjoin respondent DBM Secretary from releasing funds for public works projects in Lanao del Sur to entities other than the DPWH-ARMM First Engineering District in Lanao del Sur, and also to restrain the DPWH Secretary from allowing others besides the DPWH-ARMM First Engineering District in Lanao del Sur to implement public works projects in Lanao del Sur.^[15]

To support their petition, petitioners allege that D.O. 119 was issued with grave abuse of discretion and that it violates the constitutional autonomy of the ARMM. They point out that the challenged Department Order has tasked the Marawi Sub-District Engineering Office with functions that have already been devolved to the DPWH-ARMM First Engineering District in Lanao del Sur.^[16]

Petitioners also contend that R.A. 8999 is a piece of legislation that was not intelligently and thoroughly studied, and that the explanatory note to House Bill No. 995 (H.B. 995) from which the law originated is questionable. Petitioners assert as well that prior to the sponsorship of the law, no public hearing nor consultation with the DPWH-ARMM was made. The House Committee on Public Works and Highways (Committee) failed to invite a single official from the affected agency. Finally, petitioners argue that the law was skillfully timed for signature by former President Joseph E. Estrada during the pendency of the impeachment proceedings.^[17]

In its resolution of 8 October 2001, the Court required respondents to file their comment.^[18] In compliance, respondents DPWH Secretary and DBM Secretary, through the Solicitor General, filed on 7 January 2002, their Comment.

In their Comment,^[19] respondents, through the Office of the Solicitor General, maintain the validity of D.O. 119, arguing that it was issued in accordance with Executive Order No. 124 (E.O. 124).^[20] In defense of the constitutionality of R.A. 8999, they submit that the powers of the autonomous regions did not diminish the legislative power of Congress.^[21] Respondents also contend that the petitioners have no locus standi or legal standing to assail the constitutionality of the law and the department order. They note that petitioners have no

personal stake in the outcome of the controversy.[22]

Asserting their locus standi, petitioners in their Memorandum[23] point out that they will suffer actual injury as a result of the enactments complained of.[24]

Jurisdictional Considerations

First, the jurisdictional predicates.

The 1987 Constitution is explicit in defining the scope of judicial power. It establishes the authority of the courts to determine in an appropriate action the validity of acts of the political departments. It speaks of judicial prerogative in terms of duty.[25]

Jurisprudence has laid down the following requisites for the exercise of judicial power: First, there must be before the Court an actual case calling for the exercise of judicial review. Second, the question before the Court must be ripe for adjudication. Third, the person challenging the validity of the act must have standing to challenge. Fourth, the question of constitutionality must have been raised at the earliest opportunity. Fifth, the issue of constitutionality must be the very *lis mota* of the case.[26]

In seeking to nullify acts of the legislature and the executive department on the ground that they contravene the Constitution, the petition no doubt raises a justiciable controversy. As held in *Tañada v. Angara*,[27] “where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.” But in deciding to take jurisdiction over this petition questioning acts of the political departments of government, the Court will not review the wisdom, merits, or propriety thereof, but will strike them down only on either of two grounds: (1) unconstitutionality or illegality and (2) grave abuse of discretion.[28]

For an abuse to be grave, the power must be exercised in an arbitrary or despotic manner by reason of passion or personal hostility. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law. There is grave abuse of discretion when respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[29]

The challenge to the legal standing of petitioners cannot succeed. Legal standing or locus standi is defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The term “interest” means a material interest, an interest in issue affected by the decree, as distinguished from a mere interest in the question involved, or a mere incidental interest.[30]

A party challenging the constitutionality of a law, act, or statute must show “not only that the law is invalid, but also that he has sustained or is in immediate, or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way.” He must show that he has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he is about to be subjected to some burdens or penalties by reason of the statute complained of.[31]

But following the new trend, this Court is inclined to take cognizance of a suit although it does not satisfy the requirement of legal standing when paramount interests are involved. In several cases, the Court has adopted a liberal stance on the locus standi of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people.[32]

In the instant case, petitioner Disomangcop holds the position of Engineer IV. When he filed this petition, he was

the Officer-in-Charge, Office of the District Engineer of the First Engineering District of DPWH-ARMM, Lanao del Sur. On the other hand, petitioner Dimalotang is an Engineer II and President of the rank and file employees also of the First Engineering District of DPWH-ARMM in Lanao del Sur. Both are charged with the duty and responsibility of supervising and implementing all public works projects to be undertaken and being undertaken in Lanao del Sur which is the area of their jurisdiction.[33]

It is thus not far-fetched that the creation of the Marawi Sub-District Engineering Office under D.O. 119 and the creation of and appropriation of funds to the First Engineering District of Lanao del Sur as directed under R.A. 8999 will affect the powers, functions and responsibilities of the petitioners and the DPWH-ARMM. As the two offices have apparently been endowed with functions almost identical to those of DPWH-ARMM First Engineering District in Lanao del Sur, it is likely that petitioners are in imminent danger of being eased out of their duties and, not remotely, even their jobs. Their material and substantial interests will definitely be prejudiced by the enforcement of D.O. 119 and R.A. 8999. Such injury is direct and immediate. Thus, they can legitimately challenge the validity of the enactments subject of the instant case.

Points of Contention

In the petition before us, petitioners contend that R.A. 8999 and D.O. 119 are unconstitutional and were issued with grave abuse of discretion.

We agree in part.

Republic Act No. 8999

At the outset, let it be made clear that it is not necessary to declare R.A. No. 8999 unconstitutional for the adjudication of this case. The accepted rule is that the Court will not resolve a constitutional question unless it is the *lis mota* of the case, or if the case can be disposed of or settled on other grounds.[34]

The plain truth is the challenged law never became operative and was superseded or repealed by a subsequent enactment.

The ARMM Organic Acts are deemed a part of the regional autonomy scheme. While they are classified as statutes, the Organic Acts are more than ordinary statutes because they enjoy affirmation by a plebiscite.[35] Hence, the provisions thereof cannot be amended by an ordinary statute, such as R.A. 8999 in this case. The amendatory law has to be submitted to a plebiscite.

We quote excerpts of the deliberations of the Constitutional Commission:

FR. BERNAS. Yes, that is the reason I am bringing this up. This thing involves some rather far-reaching consequences also in relation to the issue raised by Commissioner Romulo with respect to federalism. Are we, in effect, creating new categories of laws? Generally, we have statutes and constitutional provisions. Is this organic act equivalent to a constitutional provision? If it is going to be equivalent to a constitutional provision, it would seem to me that the formulation of the provisions of the organic act will have to be done by the legislature, acting as a constituent assembly, and therefore, subject to the provisions of the Article on Amendments. That is the point that I am trying to bring up. In effect, if we opt for federalism, it would really involve an act of the National Assembly or Congress acting as a constituent assembly and present amendments to this Constitution, and the end product itself would be a constitutional provision which would only be amendable according to the processes indicated in the Constitution.

MR. OPLE. Madam President, may I express my personal opinion in this respect.

I think to require Congress to act as a constituent body before enacting an organic act would be to raise an autonomous region to the same level as the sovereign people of the whole country. And I think the powers of

the Congress should be quite sufficient in enacting a law, even if it is now exalted to the level of an organic act for the purpose of providing a basic law for an autonomous region without having to transform itself into a constituent assembly. We are dealing still with one subordinate subdivision of the State even if it is now vested with certain autonomous powers on which its own legislature can pass laws.

FR. BERNAS. So the questions I have raised so far with respect to this organic act are: What segment of the population will participate in the plebiscite? In what capacity would the legislature be acting when it passes this? Will it be a constituent assembly or merely a legislative body? What is the nature, therefore, of this organic act in relation to ordinary statutes and the Constitution? Finally, if we are going to amend this organic act, what process will be followed?

MR. NOLLEDO. May I answer that, please, in the light of what is now appearing in our report.

First, only the people who are residing in the units composing the regions should be allowed to participate in the plebiscite. Second, the organic act has the character of a charter passed by the Congress, not as a constituent assembly, but as an ordinary legislature and, therefore, the organic act will still be subject to amendments in the ordinary legislative process as now constituted, unless the Gentlemen has another purpose.

FR. BERNAS. But with plebiscite again.

MR. NOLLEDO. Those who will participate in the plebiscite are those who are directly affected, the inhabitants of the units constitutive of the region. (Emphasis supplied)[36]

Although R.A. 9054 was enacted later, it reaffirmed the imperativeness of the plebiscite requirement.[37] In fact, R.A. 9054 itself, being the second or later ARMM Organic Act, was subjected to and ratified in a plebiscite.

The first ARMM Organic Act, R.A. 6074, as implemented by E.O. 426, devolved the functions of the DPWH in the ARMM which includes Lanao del Sur (minus Marawi City at the time)[38] to the Regional Government. By creating an office with previously devolved functions, R.A. 8999, in essence, sought to amend R.A. 6074. The amendatory law should therefore first obtain the approval of the people of the ARMM before it could validly take effect. Absent compliance with this requirement, R.A. 8999 has not even become operative.

From another perspective, R.A. 8999 was repealed and superseded by R.A. 9054. Where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect.

Of course, the intention to repeal must be clear and manifest.[39] Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other.[40]

The Court has also held that statutes should be construed in light of the objective to be achieved and the evil or mischief to be suppressed, and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended.[41]

R.A. 9054 is anchored on the 1987 Constitution. It advances the constitutional grant of autonomy by detailing the powers of the ARG covering, among others, Lanao del Sur and Marawi City, one of which is its jurisdiction over regional urban and rural planning. R.A. 8999, however, ventures to reestablish the National Government's jurisdiction over infrastructure programs in Lanao del Sur. R.A. 8999 is patently inconsistent with R.A. 9054, and it destroys the latter law's objective.

Clearly, R.A. 8999 is antagonistic to and cannot be reconciled with both ARMM Organic Acts, R.A. 6734 and R.A. 9054. The kernel of the antagonism and disharmony lies in the regional autonomy which the ARMM

Organic Acts ordain pursuant to the Constitution. On the other hand, R.A. 8999 contravenes true decentralization which is the essence of regional autonomy.

Regional Autonomy Under R.A. 6734 and R.A. 9054

The 1987 Constitution mandates regional autonomy to give a bold and unequivocal answer to the cry for a meaningful, effective and forceful autonomy.[42] According to Commissioner Jose Nollado, Chairman of the Committee which drafted the provisions, it “is an indictment against the status quo of a unitary system that, to my mind, has ineluctably tied the hands of progress in our country . . . our varying regional characteristics are factors to capitalize on to attain national strength through decentralization.”[43]

The idea behind the Constitutional provisions for autonomous regions is to allow the separate development of peoples with distinctive cultures and traditions.[44] These cultures, as a matter of right, must be allowed to flourish.[45]

Autonomy, as a national policy, recognizes the wholeness of the Philippine society in its ethnolinguistic, cultural, and even religious diversities. It strives to free Philippine society of the strain and wastage caused by the assimilationist approach.[46] Policies emanating from the legislature are invariably assimilationist in character despite channels being open for minority representation. As a result, democracy becomes an irony to the minority group.[47]

Several commissioners echoed the pervasive sentiment in the plenary sessions in their own inimitable way. Thus, Commissioner Blas Ople referred to the recognition that the Muslim Mindanao and the Cordilleras “do not belong to the dominant national community” as the justification for conferring on them a “measure of legal self-sufficiency, meaning self-government, so that they will flourish politically, economically and culturally,” with the hope that after achieving parity with the rest of the country they would “give up their own autonomous region in favor of joining the national mainstream.”[48] For his part, the Muslim delegate, Commissioner Ahmad Alonto, spoke of the diversity of cultures as the framework for nation-building.[49] Finally, excerpts of the poignant plea of Commissioner Ponciano Bennagen deserve to be quoted verbatim:

. . . They see regional autonomy as the answer to their centuries of struggle against oppression and exploitation. For so long, their names and identities have been debased. Their ancestral lands have been ransacked for their treasures, for their wealth. Their cultures have been defiled, their very lives threatened, and worse, extinguished, all in the name of national development; all in the name of public interest; all in the name of common good; all in the name of the right to property; all in the name of Regalian Doctrine; all in the name of national security. These phrases have meant nothing to our indigenous communities, except for the violation of their human rights.

. . .

Honorable Commissioners, we wish to impress upon you the gravity of the decision to be made by every single one of us in this Commission. We have the overwhelming support of the Bangsa Moro and the Cordillera Constitution. By this we mean meaningful and authentic regional autonomy. We propose that we have a separate Article on the autonomous regions for the Bangsa Moro and Cordillera people clearly spelled out in this Constitution, instead of prolonging the agony of their vigil and their struggle. This, too is a plea for national peace. Let us not pass the buck to the Congress to decide on this. Let us not wash our hands of our responsibility to attain national unity and peace and to settle this problem and rectify past injustices, once and for all.[50]

The need for regional autonomy is more pressing in the case of the Filipino Muslims and the Cordillera people

who have been fighting for it. Their political struggle highlights their unique cultures and the unresponsiveness of the unitary system to their aspirations.[51] The Moros' struggle for self-determination dates as far back as the Spanish conquest in the Philippines. Even at present, the struggle goes on.[52]

Perforce, regional autonomy is also a means towards solving existing serious peace and order problems and secessionist movements. Parenthetically, autonomy, decentralization and regionalization, in international law, have become politically acceptable answers to intractable problems of nationalism, separatism, ethnic conflict and threat of secession.[53]

However, the creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic, as it can be installed only "within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines." [54]

Regional autonomy is the degree of self-determination exercised by the local government unit vis-à-vis the central government.

In international law, the right to self-determination need not be understood as a right to political separation, but rather as a complex net of legal-political relations between a certain people and the state authorities. It ensures the right of peoples to the necessary level of autonomy that would guarantee the support of their own cultural identity, the establishment of priorities by the community's internal decision-making processes and the management of collective matters by themselves.[55]

If self-determination is viewed as an end in itself reflecting a preference for homogeneous, independent nation-states, it is incapable of universal application without massive disruption. However, if self-determination is viewed as a means to an end—that end being a democratic, participatory political and economic system in which the rights of individuals and the identity of minority communities are protected—its continuing validity is more easily perceived.[56]

Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government.[57]

The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. This is achieved through the establishment of a special governance regime for certain member communities who choose their own authorities from within the community and exercise the jurisdictional authority legally accorded to them to decide internal community affairs.[58]

In the Philippine setting, regional autonomy implies the cultivation of more positive means for national integration. It would remove the wariness among the Muslims, increase their trust in the government and pave the way for the unhampered implementation of the development programs in the region.[59] Again, even a glimpse of the deliberations of the Constitutional Commission could lend a sense of the urgency and the inexorable appeal of true decentralization:

MR. OPLE. . . . We are writing a Constitution, of course, for generations to come, not only for the present but for our posterity. There is no harm in recognizing certain vital pragmatic needs for national peace and solidarity, and the writing of this Constitution just happens at a time when it is possible for this Commission to help the cause of peace and reconciliation in Mindanao and the Cordilleras, by taking advantage of a heaven-sent opportunity. . . . [60]. . .

MR. ABUBAKAR. . . . So in order to foreclose and convince the rest of the of the Philippines that Mindanao autonomy will be granted to them as soon as possible, more or less, to dissuade these armed men from going

outside while Mindanao will be under the control of the national government, let us establish an autonomous Mindanao within our effort and capacity to do so within the shortest possible time. This will be an answer to the Misuari clamor, not only for autonomy but for independence.[61]. . .

MR. OPLE. . . . The reason for this abbreviation of the period for the consideration of the Congress of the organic acts and their passage is that we live in abnormal times. In the case of Muslim Mindanao and the Cordilleras, we know that we deal with questions of war and peace. These are momentous issues in which the territorial integrity and the solidarity of this country are being put at stake, in a manner of speaking.

We are writing a peace Constitution. We hope that the Article on Social Justice can contribute to a climate of peace so that any civil strife in the countryside can be more quickly and more justly resolved. We are providing for autonomous regions so that we give constitutional permanence to the just demands and grievances of our own fellow countrymen in the Cordilleras and in Mindanao. One hundred thousand lives were lost in that struggle in Mindanao, and to this day, the Cordilleras is being shaken by an armed struggle as well as a peaceful and militant struggle.

. . .

Rather than give opportunity to foreign bodies, no matter how sympathetic to the Philippines, to contribute to the settlement of this issue, I think the Constitutional Commission ought not to forego the opportunity to put the stamp of this Commission through definitive action on the settlement of the problems that have nagged us and our forefathers for so long.[62]

A necessary prerequisite of autonomy is decentralization.[63]

Decentralization is a decision by the central government authorizing its subordinates, whether geographically or functionally defined, to exercise authority in certain areas. It involves decision-making by subnational units. It is typically a delegated power, wherein a larger government chooses to delegate certain authority to more local governments. Federalism implies some measure of decentralization, but unitary systems may also decentralize. Decentralization differs intrinsically from federalism in that the sub-units that have been authorized to act (by delegation) do not possess any claim of right against the central government.[64]

Decentralization comes in two forms—deconcentration and devolution. Deconcentration is administrative in nature; it involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local offices. This mode of decentralization is also referred to as administrative decentralization.[65]

Devolution, on the other hand, connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to local government units.[66] This is a more liberal form of decentralization since there is an actual transfer of powers and responsibilities.[67] It aims to grant greater autonomy to local government units in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities.[68]

This Court elucidated the concept of autonomy in *Limbona v. Mangelin*,[69] thus:

Autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments “more responsive and accountable,” and “ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.” At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises “general supervision” over them, but only to “ensure that local affairs are administered

according to law.” He has no control over their acts in the sense that he can substitute their judgments with his own.

Decentralization of power, on the other hand, involves an abdication of political power in the favor of local government units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to “self-immolation,” since in that event the autonomous government becomes accountable not to the central authorities but to its constituency.

In the case, the Court reviewed the expulsion of a member from the Sangguniang Pampook, Autonomous Region. It held that the Court may assume jurisdiction as the local government unit, organized before 1987, enjoys autonomy of the former category. It refused, though, to resolve whether the grant of autonomy to Muslim Mindanao under the 1987 Constitution involves, truly, an effort to decentralize power rather than mere administration.[70]

A year later, in *Cordillera Broad Coalition v. Commission on Audit*,^[71] the Court, with the same composition, ruled without any dissent that the creation of autonomous regions contemplates the grant of political autonomy—an autonomy which is greater than the administrative autonomy granted to local government units. It held that “the constitutional guarantee of local autonomy in the Constitution (Art. X, Sec. 2) refers to administrative autonomy of local government units or, cast in more technical language, the decentralization of government authority.... On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions.”^[72]

And by regional autonomy, the framers intended it to mean “meaningful and authentic regional autonomy.”^[73] As articulated by a Muslim author, substantial and meaningful autonomy is “the kind of local self-government which allows the people of the region or area the power to determine what is best for their growth and development without undue interference or dictation from the central government.”^[74]

To this end, Section 16, Article X^[75] limits the power of the President over autonomous regions.^[76] In essence, the provision also curtails the power of Congress over autonomous regions.^[77] Consequently, Congress will have to re-examine national laws and make sure that they reflect the Constitution’s adherence to local autonomy. And in case of conflicts, the underlying spirit which should guide its resolution is the Constitution’s desire for genuine local autonomy.^[78]

The diminution of Congress’ powers over autonomous regions was confirmed in *Ganzon v. Court of Appeals*,^[79] wherein this Court held that “the omission (of “as may be provided by law”) signifies nothing more than to underscore local governments’ autonomy from Congress and to break Congress’ ‘control’ over local government affairs.”

This is true to subjects over which autonomous regions have powers, as specified in Sections 18 and 20, Article X of the 1987 Constitution. Expressly not included therein are powers over certain areas. Worthy of note is that the area of public works is not excluded and neither is it reserved for the National Government. The key provisions read, thus:

SEC. 18. The Congress shall enact an organic act for each autonomous region with the assistance and participation of the regional consultative commission composed of representatives appointed by the President from a list of nominees from multisectoral bodies. The organic act shall define the basic structure of government for the region consisting of the executive department and legislative assembly, both of which shall be elective and representative of the constituent political units. The organic acts shall likewise provide for

special courts with personal, family and property law jurisdiction consistent with the provisions of the Constitution and national laws.

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

SEC. 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

(1)

Administrative organization;

(2)

Creation of sources of revenues;

(3)

Ancestral domain and natural resources;

(4)

Personal, family and property relations;

(5)

Regional urban and rural planning development;

(6)

Economic, social, and tourism development;

(7)

Educational policies;

(8)

Preservation and development of the cultural heritage; and

(9)

Such other matters as may be authorized by law for the promotion of general welfare of the people of the region. (Emphasis supplied)

E.O. 426 officially devolved the powers and functions of the DPWH in ARMM to the Autonomous Regional Government (ARG). Sections 1 and 2 of E.O. 426 provide:

SECTION 1. Transfer of Control and Supervision. The offices of the Department of Public Works and Highways (DPWH) within the Autonomous Region in Muslim Mindanao (ARMM) including their functions, powers and responsibilities, personnel, equipment, properties, budgets and liabilities are hereby placed under the control and supervision of the Autonomous Regional Government.

In particular, these offices are identified as the four (4) District Engineering Offices (DEO) in each of the four provinces respectively and the three (3) Area Equipment Services (AES) located in Tawi-Tawi, Sulu and Maguindanao (Municipality of Sultan Kudarat).

SEC. 2. Functions Transferred. The Autonomous Regional Government shall be responsible for highways, flood control and water resource development systems, and other public works within the ARMM and shall exercise the following functions:

- Undertake and evaluate the planning, design, construction and works supervision for the infrastructure projects whose location and impact are confined within the ARMM;
- Undertake the maintenance of infrastructure facilities within the ARMM and supervise the maintenance of such local roads and other infrastructure facilities receiving financial assistance from the National Government;
- Ensure the implementation of laws, policies, programs, rules and regulations regarding infrastructure projects as well as all public and private physical structures within the ARMM;
- Provide technical assistance related to their functions to other agencies within the ARMM, especially the local government units;
- Coordinate with other national and regional government departments, agencies, institutions and organizations, especially the local government units within the ARMM in the planning and implementation of infrastructure projects;
- Conduct continuing consultations with the local communities, take appropriate measures to make the services of the Autonomous Regional Government responsive to the needs of the general public and recommend such appropriate actions as may be necessary; and
- Perform such other related duties and responsibilities within the ARMM as may be assigned or delegated by the Regional Governor or as may be provided by law. (Emphasis supplied)

More importantly, Congress itself through R.A. 9054 transferred and devolved the administrative and fiscal management of public works and funds for public works to the ARG. Section 20, Article VI of R.A. 9054 provides:

ARTICLE VI

THE LEGISLATIVE DEPARTMENT

...

SEC. 20. Annual Budget and Infrastructure Funds. – The annual budget of the Regional Government shall be enacted by Regional Assembly. Funds for infrastructure in the autonomous region allocated by the central government or national government shall be appropriated through a Regional Assembly Public Works Act.

Unless approved by the Regional Assembly, no public works funds allocated by the central government or national government for the Regional Government or allocated by the Regional Government from its own revenues may be disbursed, distributed, realigned, or used in any manner.

The aim of the Constitution is to extend to the autonomous peoples, the people of Muslim Mindanao in this case, the right to self-determination—a right to choose their own path of development; the right to determine the political, cultural and economic content of their development path within the framework of the sovereignty and territorial integrity of the Philippine Republic.[80] Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction.[81]

In treading their chosen path of development, the Muslims in Mindanao are to be given freedom and independence with minimum interference from the National Government. This necessarily includes the freedom

to decide on, build, supervise and maintain the public works and infrastructure projects within the autonomous region. The devolution of the powers and functions of the DPWH in the ARMM and transfer of the administrative and fiscal management of public works and funds to the ARG are meant to be true, meaningful and unfettered. This unassailable conclusion is grounded on a clear consensus, reached at the Constitutional Commission and ratified by the entire Filipino electorate, on the centrality of decentralization of power as the appropriate vessel of deliverance for Muslim Filipinos and the ultimate unity of Muslims and Christians in this country.

With R.A. 8999, however, this freedom is taken away, and the National Government takes control again. The hands, once more, of the autonomous peoples are reined in and tied up.

The challenged law creates an office with functions and powers which, by virtue of E.O. 426, have been previously devolved to the DPWH-ARMM, First Engineering District in Lanao del Sur.

E.O. 426 clearly ordains the transfer of the control and supervision of the offices of the DPWH within the ARMM, including their functions, powers and responsibilities, personnel, equipment, properties, and budgets to the ARG. Among its other functions, the DPWH-ARMM, under the control of the Regional Government shall be responsible for highways, flood control and water resource development systems, and other public works within the ARMM. Its scope of power includes the planning, design, construction and supervision of public works. According to R.A. 9054, the reach of the Regional Government enables it to appropriate, manage and disburse all public work funds allocated for the region by the central government.

The use of the word “powers” in E.O. 426 manifests an unmistakable case of devolution.

In this regard, it is not amiss to cite Opinion No. 120, S. 1991[82] of the Secretary of Justice on whether the national departments or their counterpart departments in the ARG are responsible for implementation of roads, rural water supply, health, education, women in development, agricultural extension and watershed management. Referring to Section 2, Article V of R.A. 6734 which enumerates the powers of the ARG, he states:

It is clear from the foregoing provision of law that except for the areas of executive power mentioned therein, all other such areas shall be exercised by the Autonomous Regional Government (“ARG”) of the Autonomous Region in Muslim Mindanao. It is noted that programs relative to infrastructure facilities, health, education, women in development, agricultural extension and watershed management do not fall under any of the exempted areas listed in the abovequoted provision of law. Thus, the inevitable conclusion is that all these spheres of executive responsibility have been transferred to the ARG.

Reinforcing the aboveview (sic) are the various executive orders issued by the President providing for the devolution of the powers and functions of specified executive departments of the National Government to the ARG. These are E.O. Nos. 425 (Department of Labor and Employment, Local Government, Tourism, Environment and Natural Resources, Social Welfare and Development and Science and Technology), 426 (Department of Public Works and Highways), 459 (Department of Education, Culture and Sports) and 460 (Department of Agriculture). The execution of projects on infrastructure, education, women, agricultural extension and watershed management within the Autonomous Region of Muslim Mindanao normally fall within the responsibility of one of the aforementioned executive departments of the National Government, but by virtue of the aforestated EOs, such responsibility has been transferred to the ARG.

E.O. 426 was issued to implement the provisions of the first ARMM Organic Act, R.A. 6734—the validity of which this Court upheld in the case of *Abbas v. Commission on Elections*.^[83] In Section 4, Article XVIII of said Act, “central government or national government offices and agencies in the autonomous region which are not excluded under Section 3, Article IV^[84] of this Organic Act, shall be placed under the control and supervision of the Regional Government pursuant to a schedule prescribed by the oversight committee.”

Evidently, the intention is to cede some, if not most, of the powers of the national government to the autonomous government in order to effectuate a veritable autonomy. The continued enforcement of R.A. 8999, therefore, runs afoul of the ARMM Organic Acts and results in the recall of powers which have previously been handed over. This should not be sanctioned, elsewise the Organic Acts' desire for greater autonomy for the ARMM in accordance with the Constitution would be quelled. It bears stressing that national laws are subject to the Constitution one of whose state policies is to ensure the autonomy of autonomous regions. Section 25, Article II of the 1987 Constitution states:

Sec. 25. The State shall ensure the autonomy of local governments.

R.A. 8999 has made the DPWH-ARMM effete and rendered regional autonomy illusory with respect to infrastructure projects. The Congressional Record shows, on the other hand, that the "lack of an implementing and monitoring body within the area" has hindered the speedy implementation, of infrastructure projects.[85] Apparently, in the legislature's estimation, the existing DPWH-ARMM engineering districts failed to measure up to the task. But if it was indeed the case, the problem could not be solved through the simple legislative creation of an incongruous engineering district for the central government in the ARMM. As it was, House Bill No. 995 which ultimately became R.A. 8999 was passed in record time on second reading (not more than 10 minutes), absolutely without the usual sponsorship speech and debates.[86] The precipitate speed which characterized the passage of R.A. 8999 is difficult to comprehend since R.A. 8999 could have resulted in the amendment of the first ARMM Organic Act and, therefore, could not take effect without first being ratified in a plebiscite. What is more baffling is that in March 2001, or barely two (2) months after it enacted R.A. 8999 in January 2001, Congress passed R.A. 9054, the second ARMM Organic Act, where it reaffirmed the devolution of the DPWH in ARMM, including Lanao del Sur and Marawi City, to the Regional Government and effectively repealed R.A. 8999.

DPWH Department Order No. 119

Now, the question directly related to D.O. 119.

D.O. 119 creating the Marawi Sub-District Engineering Office which has jurisdiction over infrastructure projects within Marawi City and Lanao del Sur is violative of the provisions of E.O. 426. The Executive Order was issued pursuant to R.A. 6734—which initiated the creation of the constitutionally-mandated autonomous region[87] and which defined the basic structure of the autonomous government.[88] E.O. 426 sought to implement the transfer of the control and supervision of the DPWH within the ARMM to the Autonomous Regional Government. In particular, it identified four (4) District Engineering Offices in each of the four (4) provinces, namely: Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi.[89] Accordingly, the First Engineering District of the DPWH-ARMM in Lanao del Sur has jurisdiction over the public works within the province.

The office created under D.O. 119, having essentially the same powers, is a duplication of the DPWH-ARMM First Engineering District in Lanao del Sur formed under the aegis of E.O. 426. The department order, in effect, takes back powers which have been previously devolved under the said executive order. D.O. 119 runs counter to the provisions of E.O. 426. The DPWH's order, like spring water, cannot rise higher than its source of power—the Executive.

The fact that the department order was issued pursuant to E.O. 124—signed and approved by President Aquino in her residual legislative powers—is of no moment. It is a finely-imbedded principle in statutory construction that a special provision or law prevails over a general one.[90] *Lex specialis derogant generali*. As this Court expressed in the case of *Leveriza v. Intermediate Appellate Court*,[91] "another basic principle of statutory construction mandates that general legislation must give way to special legislation on the same subject, and generally be so interpreted as to embrace only cases in which the special provisions are not applicable, that specific statute

prevails over a general statute and that where two statutes are of equal theoretical application to a particular case, the one designed therefor specially should prevail.”

E.O. No. 124, upon which D.O. 119 is based, is a general law reorganizing the Ministry of Public Works and Highways while E.O. 426 is a special law transferring the control and supervision of the DPWH offices within ARMM to the Autonomous Regional Government. The latter statute specifically applies to DPWH-ARMM offices. E.O. 124 should therefore give way to E.O. 426 in the instant case.

In any event, the ARMM Organic Acts and their ratification in a plebiscite in effect superseded E.O. 124. In case of an irreconcilable conflict between two laws of different vintages, the later enactment prevails because it is the later legislative will.[92]

Further, in its repealing clause, R.A. 9054 states that “all laws, decrees, orders, rules and regulations, and other issuances or parts thereof, which are inconsistent with this Organic Act, are hereby repealed or modified accordingly.”[93] With the repeal of E.O. 124 which is the basis of D.O. 119, it necessarily follows that D.O. 119 was also rendered *functus officio* by the ARMM Organic Acts.

Grave abuse of discretion

Without doubt, respondents committed grave abuse of discretion. They implemented R.A. 8999 despite its inoperativeness and repeal. They also put in place and maintained the DPWH Marawi Sub-District Engineering Office in accordance with D.O. 119 which has been rendered *functus officio* by the ARMM Organic Acts.

Still, on the issue of grave abuse of discretion, this Court, however, cannot uphold petitioners’ argument that R.A. 8999 was signed into law under suspicious circumstances to support the assertion that there was a capricious and whimsical exercise of legislative authority. Once more, this Court cannot inquire into the wisdom, merits, propriety or expediency of the acts of the legislative branch.

Likewise, the alleged lack of consultation or public hearing with the affected agency during the inception of the law does not render the law infirm. This Court holds that the Congress did not transgress the Constitution nor any statute or House Rule in failing to invite a resource person from the DPWH-ARMM during the Committee meeting. Section 27, Rule VII of the Rules of the House[94] only requires that a written notice be given to all the members of a Committee seven (7) calendar days before a regularly scheduled meeting, specifying the subject matter of the meeting and the names of the invited resource persons. And it must be emphasized that the questions of who to invite and whether there is a need to invite resource persons during Committee meetings should be addressed solely to Congress in its plenary legislative powers.[95]

Conclusion

The repeal of R.A. 8999 and the *functus officio* state of D.O. 119 provide the necessary basis for the grant of the writs of certiorari and prohibition sought by the petitioners. However, there is no similar basis for the issuance of a writ of mandamus to compel respondent DBM Secretary to release funds appropriated for public works projects in Marawi City and Lanao del Sur to the DPWH-ARMM First Engineering District in Lanao del Sur and to compel respondent DPWH Secretary to allow the DPWH-ARMM, First Engineering District in Lanao del Sur to implement all public works projects within its jurisdictional area. Section 20, Article VI of R.A. 9054 clearly provides that “(f)unds for infrastructure in the autonomous region allocated by the central government or national government shall only be appropriated through a Regional Assembly Public Works Act” passed by the Regional Assembly. There is no showing that such Regional Assembly Public Works Act has been enacted.

WHEREFORE, considering that Republic Act No. 9054 repealed Republic Act No. 8999 and rendered DPWH

Department Order No. 119 *functus officio*, the petition insofar as it seeks the writs of certiorari and prohibition is GRANTED. Accordingly, let a writ of prohibition ISSUE commanding respondents to desist from implementing R.A. 8999 and D.O. 119, and maintaining the DPWH Marawi Sub-District Engineering Office and the First Engineering District of the Province of Lanao del Sur comprising the City of Marawi and the municipalities within the First District of Lanao del Sur. However, the petition insofar as it seeks a writ of mandamus against respondents is DENIED.

No costs.

SO ORDERED.

Puno, (Acting C.J.), Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.

Davide, Jr., C.J., on official leave.

Corona, J., on leave.

[1] Dated 25 September 2001; Rollo, pp. 3-30, with annexes.

[2] Approved on 17 January 2001.

[3] Dated 20 May 1999.

[4] SEC. 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. (Art. X, 1987 Const.)

[5] SEC. 16. The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

SEC. 17. All powers, functions, and responsibilities not granted by this Constitution or by law to the autonomous regions shall be vested in the National Government.

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

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

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

SEC. 20. Within its territorial jurisdiction and subject to the provisions of this Constitution and national laws, the organic act of autonomous regions shall provide for legislative powers over:

(1)

Administrative organization;

(2)

Creation of sources of revenues;

(3)

Ancestral domain and natural resources;

(4)

Personal, family and property relations;

(5)

Regional urban and rural planning development;

(6)

Economic, social, and tourism development;

(7)

Educational policies;

(8)

Preservation and development of the cultural heritage; and

(9)

Such other matters as may be authorized by law for the promotion of general welfare of the people of the region.

SEC. 21. The preservation of peace and order within the regions shall be the responsibility of the local police agencies which shall be organized, maintained, supervised, and utilized in accordance with applicable laws. The defense and security of the regions shall be the responsibility of the National Government.

[6] Par. (2), Sec. 1, R.A. 6734.

[7] *Chiongbian v. Orbos*, 315 Phil. 251, 257 (1995).

[8]

ARTICLE V

POWERS OF GOVERNMENT

SECTION 1. The Regional Government shall exercise powers and functions necessary for the proper governance and development of all the constituent units within the Autonomous Region consistent with the constitutional policy on regional and local autonomy and decentralization: Provided, That nothing herein shall authorize the diminution of the powers and functions already enjoyed by local government units.

SEC. 2. The Autonomous Region is a corporate entity with jurisdiction in all matters devolved to it by the Constitution and this Organic Act as herein enumerated:

(1)

Administrative organization;

(2)

Creation of sources of revenues;

(3)

Ancestral domain and natural resources;

(4)

Personal, family and property relations;

(5)

Regional urban and rural planning development;

(6)

Economic, social, and tourism development;

(7)

Educational policies;

(8)

Preservation and development of the cultural heritage;

(9)

Powers, functions and responsibilities now being exercised by the departments of the National Government except;

(a)

Foreign affairs;

(b)

National defense and security;

(c)

Postal service;

(d)

Coinage, and fiscal and monetary policies;

(e)

Administration of justice;

(f)

Quarantine;

(g)

Customs and tariff;

(h)

Citizenship;

(i)

Naturalization, immigration and deportation;

(j)

General auditing, civil service and elections;

(k)

Foreign trade;

(l)

Maritime, land and air transportation and communications that affect areas outside the Autonomous Region;
and

(m)

Patents, trademarks, tradenames, and copyrights; and

(10)

Such other matters as may be authorized by law for the promotion of the general welfare of the people of the Region.

ARTICLE XII

URBAN AND RURAL PLANNING AND DEVELOPMENT

SECTION 1. The Regional Government shall promote and formulate comprehensive and integrated regional urban and rural development policies, plans, programs and projects responsive to the needs, aspirations and values of the people within the Region.

...

ARTICLE XIX

TRANSITORY PROVISIONS

...

SEC. 4. Upon the organization of the Autonomous Region, the line agencies and offices of the National Government dealing with local government, social services, science and technology, labor, natural resources, and tourism, including their personnel, equipment, properties and budgets, shall be immediately placed under the control and supervision of the Regional Government.

Other National Government offices and agencies in the Autonomous Region which are not excluded under paragraph (9), Section 2, Article V of this Organic Act, together with their personnel, equipment, properties and budgets, shall be placed under the control and supervision of the Regional Government pursuant to a schedule prescribed by the Oversight Committee mentioned in Section 3, Article XIX of this Organic Act: Provided, however, That the transfer of these offices and agencies and their personnel, equipment, properties and budgets shall be accomplished within six (6) years from the organization of the Regional Government.

The National Government shall continue such levels of expenditures as may be necessary to carry out the functions devolved under this Act: Provided, however, That the annual budgetary support shall, as soon as practicable, terminate as to the line agencies or offices devolved to the Regional Government.

...

SEC. 10. The National Government shall, in addition to its regular annual allotment to the Autonomous Region, provide the Regional Government Two billion pesos (P2,000,000,000.00) as annual assistance for five (5) years, to fund infrastructure projects duly identified, endorsed and approved by the Regional Planning and Development Board herein created: Provided, however, That the annual assistance herein mentioned shall be appropriated and disbursed through a Public Works Act duly enacted by the Regional Assembly: Provided, further, That this annual assistance may be adjusted proportionately in accordance with the number of provinces and cities joining the Autonomous Region: and Provided, finally, That the national programs and projects in the Autonomous Region shall continue to be financed out of national funds.

[9] SEC. 1. Transfer of Control and Supervision. The offices of the Department of Public Works and Highways (DPWH) within the Autonomous Region in Muslim Mindanao (ARMM) including their functions, powers and responsibilities, personnel, equipment, properties, budgets and liabilities are hereby placed under the control and supervision of the Autonomous Regional Government.

In particular, these offices are identified as the four (4) District Engineering Offices (DEO) in each of the four provinces respectively and the three (3) Area Equipment Services (AES) located in Tawi-Tawi, Sulu and Maguindanao (Municipality of Sultan Kudarat).

SEC 2. Functions Transferred. The Autonomous Regional Government shall be responsible for highways, flood control and water resource development systems, and other public works within the ARMM and shall exercise the following functions:

- Undertake and evaluate the planning, design, construction and works supervision for the infrastructure projects whose location and impact are confined within the ARMM;
- Undertake the maintenance of infrastructure facilities within the ARMM and supervise the maintenance of such local roads and other infrastructure facilities receiving financial assistance from the National Government;
- Ensure the implementation of laws, policies, programs, rules and regulations regarding infrastructure projects as

well as all public and private physical structures within the ARMM;

- Provide technical assistance related to their functions to other agencies within the ARMM, especially the local government units;
- Coordinate with other national and regional government departments, agencies, institutions and organizations, especially the local government units within the ARMM in the planning and implementation of infrastructure projects;
- Conduct continuing consultations with the local communities, take appropriate measures to make the services of the Autonomous Regional Government responsive to the needs of the general public and recommend such appropriate actions as may be necessary; and
- Perform such other related duties and responsibilities within the ARMM as may be assigned or delegated by the Regional Governor or as may be provided by law.

SEC. 3. Functions Retained by the National Government. Functions not specified herein shall be retained by the DPWH. These include, among others, the reserved powers of the National Government in accordance with Article V, Section 2, as well as those subject to specific provisions, of Republic Act No. 6734; Provided, That, the DPWH and the Autonomous Regional Government may enter into a Memorandum of Agreement with reference to operationalizing these functions within the ARMM subject to the approval of the Office of the President; Provided, however, That the operations of the National Government are not prejudiced.

[10] M. Tiquia, AUTONOMY: A HISTORICAL EXPERIMENT, Congressional Research and Training Service 15 (1991).

[11]

ARTICLE IV

POWERS OF GOVERNMENT

SEC. 1. Powers and Functions. – Subject to the provisions of the Constitution, the Regional Government shall exercise those powers and functions expressly granted to it in this Organic Act, or necessary for or incidental to the proper governance and development of all the constituent units within the autonomous region consistent with the policy on regional and local autonomy and decentralization.

The Regional Government may enact its own regional administrative code and regional local government code consistent with the Constitution. The powers and functions already vested upon and the shares of the national taxes provided by Republic Act No. 7160, the Local Government Code of 1991, to provinces, cities, municipalities, and barangay in the autonomous region shall not be reduced.

SEC. 2. Corporate Entity. – The autonomous region is a corporate entity with jurisdiction over all matters devolved to it by the Constitution and this Organic Act.

SEC. 3. Scope of Regional Assembly Legislative Power; Exceptions. – The Regional Assembly may exercise legislative power in the autonomous region for the benefit of the people and for the development of the region except on the following matters:

(a)

Foreign affairs;

(b)

National defense and security;

(c)

Postal service;

(d)

Coinage and fiscal and monetary policies;

(e)

Administration of justice; It may, however, legislate on matters covered by the Shari'ah. The Shari'ah shall apply only to Muslims. Its application shall be limited by pertinent constitutional provisions, particularly by the prohibition against cruel and unusual punishment and by pertinent national legislation that promotes human rights and the universally accepted legal principles and precepts;

(f)

Quarantine;

(g)

Customs and tariff;

(h)

Citizenship;

(i)

Naturalization, immigration and deportation;

(j)

General auditing;

(k)

National Elections;

(l)

Maritime, land, air transportation, and communications; The autonomous government shall, however, have the power to grant franchises, licenses and permits to land, sea and air transportation plying routes in the provinces or cities within the region, and communications facilities where frequencies are confined to and whose main offices are located within the autonomous region;

(m)

Patents, trademarks, trade names, and copyrights, and

(n)

Foreign trade.

...

ARTICLE VI

THE LEGISLATIVE DEPARTMENT

...

SEC. 20. Annual Budget and Infrastructure Funds. – The annual budget of the Regional Government shall be enacted by Regional Assembly. Funds for infrastructure in the autonomous region allocated by the central government or national government shall be appropriated through a Regional Assembly Public Works Act.

Unless approved by the Regional Assembly, no public works funds allocated by the central government or national government for the Regional Government or allocated by the Regional Government from its own revenues may be disbursed, distributed, realigned, or used in any manner.

...

ARTICLE XI

URBAN AND RURAL PLANNING AND DEVELOPMENT

SECTION 1. Urban and Rural Development. – The Regional Government shall promote and formulate comprehensive and integrated regional urban and rural development policies, plans, programs, and projects responsive to the needs, aspirations, and values of the people in the autonomous region.

...

ARTICLE XVIII

TRANSITORY PROVISIONS

SEC. 11. Annual Assistance.- In addition to the regular annual allotment to fund the regular operations of the Regional Government, such amounts as may be needed to fund the infrastructure projects duly identified, endorsed, and approved by the Regional Economic and Development Planning Board as created herein shall be provided by the central government or national government as annual assistance for six (6) years after the approval of this Organic Act, and shall be included in the annual General Appropriations Act (GAA). The annual assistance herein mentioned shall be appropriated and disturbed through a Public Works Act duly enacted by the Regional Assembly. The national programs and projects in the autonomous region shall continue to be financed by the central government or national government funds.

[12] See Sec. 27 (1), Art. VI, 1987 CONST.

[13] Rollo, p. 9.

[14] Id. at 5 and 10.

[15] Id. at 19.

[16] Id. at 14.

[17] Id. at 17-18.

[18] Id. at 31.

[19] Dated 7 January 2002; Rollo pp. 36-49.

[20] Entitled “Reorganizing The Ministry Of Public Works and Highways, Redefining Its Powers And Functions, And For Other Purposes;” Approved on 30 January 1987.

D.O. 119 was issued pursuant to Sections 6 and 25 of E.O. 124:

SEC. 6. Minister of Public Works and Highways. – The authority and responsibility for the exercise of the

mandate of the Ministry and for the discharge of its powers and functions shall be vested in the Minister of Public Works and Highways, hereinafter referred to as the Minister, who shall have supervision and control over the Ministry and shall be appointed by the President for such purposes, the Minister shall:

(a)

Advise the President on the promulgation of executive or administrative orders, regulations, proclamations and other issuances relative to matters under the jurisdiction of the Ministry;

(b)

Establish the policies and standards for the operation of the Ministry pursuant to the President's guidelines;

(c)

Promulgate rules and regulations necessary to carry out Ministry objectives, policies, and functions;

(d)

Exercise supervision and control over all Bureaus and Offices under the Ministry;

(e)

Supervise all attached agencies and corporations in accordance with law;

(f)

As deemed appropriate by the Minister, delegate authority for the performance of any power or function, as defined herein or as delegated by the President of the Philippines, to officers and employees under his direction;

(g)

Perform such other authorities and responsibilities as may be provided by law.

SEC. 25. District Office. – There shall be a District Office in each of the provinces and cities throughout the country to be headed by a District Engineer appointed by the Minister. A province or city may, however, be divided into two (2) or more engineering districts, upon determination and issuance of an administrative order by the Minister. The District Office shall be responsible for all highways, flood control and water resource development system, and other public works within the district, except those defined under Section 5 (d) hereof. For this purpose, it shall have the following duties and responsibilities:

(a)

Undertake and evaluate the planning, design, construction and works supervision functions of the Ministry for the abovementioned infrastructure in the district;

(b)

Undertake the maintenance of the abovementioned infrastructure within the district and supervise the maintenance of such local roads and other infrastructure receiving national government financial assistance as the Minister may determine;

(c)

Coordinate with other Ministries, agencies, institutions, and organizations, especially local government units within the district in the planning and implementation of infrastructure projects;

(d)

Provide technical assistance to other agencies at the local level on public works planning, design, construction, maintenance, and other engineering matters including securing assistance from the Regional Office or, through the same office, assistance from the Ministry proper or Bureaus;

(e)

Conduct continuing consultations with the local communities, take appropriate measures to make the services of the Ministry responsive to the needs of the general public, compile and submit such information to the Regional Office, and recommend such appropriate actions may be necessary;

(f)

Perform such other related duties and responsibilities as may be assigned or delegated by the Minister or as may be required by law.

SEC. 5. Powers and Functions. – The Ministry, in order to carry out its mandate shall have the following powers and functions;

...

(d) Identify, plan, secure funding for program, design, construct or undertake prequalification, bidding, and award of contracts of public works projects with the exception only of specialized projects undertaken by Government corporate entities with established technical capability and as directed by the President of the Philippines or as provided by law;

[21] Rollo, p. 47.

[22] Id. at 43-45.

[23] Id. at 27-48.

[24] Id. at 44-45.

[25] *Santiago v. Guingona, Jr.*, 359 Phil. 276, 293 (1998). Par. 2, Sec. 1, Article VIII of the 1987 CONST., provides:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[26] *Mirasol v. Court of Appeals*, G.R. No. 128448, 1 February 2001, 351 SCRA 44, 53-54 citing *Board of Optometry v. Colet*, 260 SCRA 88, 103 (1996); See also *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766, 19 August 1994, 235 SCRA 506, 518 [citing *Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51, (1990); *Dumlao v. Comelec*, 95 SCRA 392 (1980); *People v. Vera*, 65 Phil 56 (1937)]; *Mariano, Jr. vs. Comelec*, 312 Phil. 259, 270 (1995); *Commissioner of Internal Revenue v. Court of Tax Appeals*, G.R. No. 44007, 20 March 1991, 195 SCRA 444, 452; *Fernandez v. Torres*, G.R. No. 102940, 6 November 1992, 215 SCRA 489, 493; *Macasiano v. National Housing Authority*, G.R. No. 107921, 1

July 1993, 224 SCRA 236, 242; Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 632, (2000), Citations omitted.

[27] 338 Phil. 546, 574 (1997).

[28] Supra note 25 at 294.

[29] Microsoft Corporation v. Best Deal Computer Center Corporation, 438 Phil. 408, 414 (2002), citations omitted; J. L. Bernardo Construction v. Court of Appeals, 381 Phil. 25, 36 (2000), Citation omitted; Bayan (Bagong Alyansang Makabayan) v. Zamora, G.R. Nos. 138570, 138572, 138587, 138680, 138698, 10 October 2000, 342 SCRA 449, 494. See also Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, 16 January 2001, 349 SCRA 240, 252-253; Toh v. Court of Appeals, G.R. No. 140274, 15 November 2000, 344 SCRA 831, 836-837 citing Solvic Industrial Corporation v. NLRC, 296 SCRA 432, 441 (1998).

[30] Integrated Bar of the Philippines v. Zamora, 392 Phil. 618, 632-633 (2000), citations omitted.

[31] Bayan (Bagong Alyansang Makabayan) v. Zamora, G.R. Nos. 138570, 138572, 138587, 138680, 138698, 10 October 2000, 342 SCRA 449, 478, citing Valmonte v. Philippine Charity Sweepstakes Office, (res.) G.R. No. 78716, 22 September 1987. See also Bugnay Const. and Dev. Corp. v. Laron, G.R. 79983, 10 August 1989, 176 SCRA 240, 251-252; Tatad v. Garcia, Jr., G.R. No. 114222, 6 April 1995, 243 SCRA 436, 474.

[32] Supra note 30 at 634.

[33] Memorandum for the Petitioners, Rollo pp. 44-45.

[34] Separate Opinion of J. Panganiban in Sanlakas and Partido and Manggagawa v. Executive Secretary Angelo Reyes, Gen. Narciso Abaya, Dir. Gen. Hermogenes Ebdane, G.R. No. 159085, 3 February 2004.

[35] J. BERNAS, The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY 1103 (2003).

[36] III RECORD OF THE CONSTITUTIONAL COMMISSION (III RECORD) 182-183; 11 August 1986.

[37] Sec. 3, Art. XVII of R.A. 9054 provides:

Any amendment to or revision of this Organic Act shall become effective only when approved by a majority of the vote cast in a plebiscite called for the purpose, which shall be held not earlier than sixty (60) days or later than ninety (90) days after the approval of such amendment or revision.

[38] Marawi City joined ARMM after voting affirmatively at the plebiscite for the ratification of R.A. 9054 on 14 August 2001.

[39] Mecano v. Commission on Audit, G.R. No. 103982, 11 December 1992 216 SCRA 505-506, Citations omitted.

[40] Mecano v. Commission on Audit, G.R. No. 103982, 11 December 1992 216 SCRA 505-506, citations omitted; See also Berces, Sr. v. Guingona, Jr., 311 Phil. 614, 620 (1995); Republic v. Asuncion, G.R. No. 108208, 11 March 1994, 231 SCRA 211, 230; Hon. Hagad v. Hon. Gozodadole, 321 Phil. 604, 613-614 (1995), citations omitted; Manzano v. Hon. Valera, 354 Phil. 66, 76 (1998), citations omitted.

[41] Intia, Jr. v. COA, 366 Phil. 273, 291 (1999) citing Paat v. Court of Appeals, G.R. No. 111107, 10 January 1997, 266 SCRA 167.

[42] Supra note 36 at 169.

[43] Ibid.

[44] S. Rood, Intergovernmental Relations in a Cordillera Autonomous Region, VOL. XXXIII No. 4 PHIL. J. PUB. ADM 379, 391 (1989).

[45] Supra note 35 at 1099.

[46] S. Tanggol, Regional Autonomy and Social Development, in LOCAL GOVERNMENT IN THE PHILIPPINES: A BOOK OF READINGS, VOL. II, CURRENT ISSUES IN GOVERNANCE 631, 651 (1998).

[47] S. TANGGOL, MUSLIM AUTONOMY IN THE PHILIPPINES: RHETORIC AND REALITY 12 (1993).

[48] III RECORD 570; 21 August 1986.

[49] Supra note 36 at 170; SPONSORSHIP SPEECH OF COMMISSIONER ALONTO.

[50] Id. at 171-172.

[51] S. TANGGOL, op. cit. supra note 47.

[52] Id. at 13.

[53] N. Roht-Arriaza, The Committee on the Regions and the Role of Regional Governments in the European Union, 20 Hastings Int'l. & Comp. L. Rev. 413, 417 (1997).

[54] Sec. 15, Art. X, 1987 CONST.

See also III Record 235, 12 August 1986:

MR. NOLLEDO. As I already stated, these autonomous regions are established within the framework of our national sovereignty. And in answer to the question of Commissioner Bengzon this morning that should there be rebels against the government, whether this will prevent the President from sending armed forces to suppress the rebellion, I said, "No, because of the expression 'within the framework of national sovereignty.'" We are not granting sovereignty to the autonomous region. That is why the term "power of autonomous region" was appropriately used because as an accepted principle in constitutional law, sovereignty is indivisible. That is why we also maintain the provision in both Committee Report Nos. 21 and 25 that the President of the Philippines has supervisory power over autonomous regions to see to it that laws are faithfully executed. So, I find no inconsistency between the powers to be granted to autonomous regions and the sovereignty of the Republic of the Philippines.

[55] H. Rojas, Stop Cultural Exclusions (In Chile!): Reflections on the Principle of Multiculturalism, 55 Fla. L. Rev. 121, 149 (2003).

[56] H. Hannum, Rethinking Self-Determination, 34 Va. J. Int'l. L. 1, 66 (1993).

[57] A. Brillantes and J. Cuaresma, Jr., Local Governments, Local Autonomy and Decentralization 29 (1990).

[58] H. Rojas, op. cit. supra note 55 at 140.

[59] S. Tanggol, op. cit. supra note 46.

[60] III RECORD 534; 20 August 1986.

[61] Id. at 536; 20 August 1986.

[62] Ibid.

[63] P. Tapales, The Nature and State of Local Government, in LOCAL GOVERNMENT IN THE PHILIPPINES: A BOOK OF READINGS, VOL. I, LOCAL GOVERNMENT ADMINISTRATION 5, 12-13 (1998).

[64] F. Cross, The Folly of Federalism, 24 Cardozo L. Rev. 1, 19, 28 (2002).

[65] R. Guzman, and M. Reforma, Decentralization Towards Democratization and the Development in the Asian Pacific Region, in LOCAL GOVERNMENT IN THE PHILIPPINES: A BOOK OF READINGS, VOL. I, LOCAL GOVERNMENT ADMINISTRATION, 21, 24 (1998); A. Brillantes and J. Cuaresma, Jr., op. cit. supra note 57 at 28.

[66] P. Tapales, op. cit. supra note 63; Id. at 23-24.

[67] A. Brillantes and J. Cuaresma, Jr., op. cit. supra note 57.

[68] R. Guzman, and M. Reforma, op. cit. supra note 65 at 23-24.

[69] G.R. No. 80391, 28 February 1989, 170 SCRA 786, 794-795, citations omitted.

[70] Ibid.

[71] G.R. Nos. 79956 and 82217, 29 January 1990, 181 SCRA 495, 506.

[72] Ibid; emphasis supplied.

[73] Supra note 36 at 172; SPONSORSHIP SPEECH OF BENNAGEN.

[74] M. TAMANO, AUTONOMY: TO KEEP THIS NATION INTACT 131 (1986).

[75] Sec. 16, Art. X, 1987 Const.: "The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed."

[76] Fr. Bernas stressed this point:

FR. BERNAS. I think what we were saying is that when we speak of autonomy, we are speaking of autonomy not just vis-à-vis the President but also vis-à-vis the Legislature. So that while we are curtailing the power of the President, we are also curtailing the power of the Legislature. (III Record 515; 19 August 1986).

[77] J. Bernas, op. cit. supra note 35 at 1100, citing III RECORD 514-516.

[78] Id. at 1107.

[79] G.R. Nos. 93252, 93746, 95245, 5 August 1991, 200 SCRA 271, 281.

[80] III RECORD 224; 12 August 1986.

[81] S. Tanggol, op. cit. supra note 46 at 159.

[82] Dated 20 August 1991.

[83] G.R. Nos. 89651, 89965, 10 November 1989, 179 SCRA 287.

[84] SEC. 3. Scope of Regional Assembly Legislative Power; Exceptions.- The Regional Assembly may exercise legislative power in the autonomous region for the benefit of the people and for the development of the region except on the following matters:

(a)

Foreign affairs;

(b)

National defense and security;

(c)

Postal service;

(d)

Coinage and fiscal and monetary policies;

(e)

Administration of justice; It may, however, legislate on matters covered by the Shari'ah. The Shari'ah shall apply only to Muslims. Its application shall be limited and permits to land, sea and air transportation plying routes in the provinces or cities within the region, and communications facilities where frequencies are confined to and whose main offices are located within the autonomous region.

(m)

Patents, trademarks, trade names, and copyrights; and

(n)

Foreign trade.

[85] The Explanatory Note of House Bill No. 995, the source of R.A. 8999, was adopted as its sponsorship speech. It reads:

EXPLANATORY NOTE

This bill aims to establish an engineering district in the First District of the Province of Lanao del Sur. It seeks to respond to the urgent need to accelerate the completion of the infrastructural foundation that will bring about the timely fulfillment Lanao del Sur's economic and social objectives in consonance with the national goals.

Lanao del Sur teems with natural riches including a highly trainable human resource. But despite such abundance, the province is immersed in destitution. There are concerted efforts to improve the plight of the inhabitants but these are being hampered by an acute infrastructural deficiency. Projects are being earmarked for the province but the lack of an implementing and monitoring body within the area hinders their speedy implementation. This snag can, however, be eradicated if an engineering district is established in the province, particularly in the First District where the seat of the provincial government is located.

With an engineering district in the vicinity, all the infrastructural programs envisioned for Lanao del Sur can be realized and once the physical requirements for progress are effectively laid down, the province can then hasten its development.

Early approval of this bill is therefore earnestly sought. (Emphasis supplied)

[86] Transcript of Session, 3 February 1999, pp. 108-110.

[87] *Supra* note 83 at 301.

[88] Sec. 18, Art. X, 1987 CONST.

[89] Sec. 1, E.O. 426.

[90] Bayan (Bagong Alyansang Makabayan) v. Zamora, G.R. Nos. 138570, 138572, 138587, 138680, 138698, 10 October 2000, 342 SCRA 483-484.

[91] No. L-66614, 25 January 1988, 157 SCRA 282, 294, citations omitted.

[92] David v. Comelec, 337 Phil. 535, 547 (1997), citation omitted.

[93] Sec. 18, R.A. 9054.

[94] SEC. 27. Place and Time of Meetings.- Committee and subcommittee meetings, conferences or hearings shall be held in the House building or whenever necessary in any government office during periods of session or during recess. They may, however, be held in any other place when so authorized by the Speaker.

Except the Committee on Rules, no committee may meet while the House is sitting in plenary session without special permission from the Committee on Rules.

All standing committees and subcommittees shall meet at the hour and place provided by schedule, unless otherwise ordered by the House.

Seven (7) calendar days before a regularly scheduled committee meeting, written notice thereof shall be given to all Members, specifying therein the subject matter and the names of the resource persons invited to said meeting.

No bill, resolution or petition shall be set for hearing unless it has been officially referred to an appropriate committee or subcommittee, provided that, no initial hearing on any bill, resolution or petition shall be conducted unless written notice thereof has been issued to members of the concerned committee or subcommittee at least seven (7) calendar days before such hearing.

The committees and/or subcommittees shall, as far as practicable, schedule bills, resolutions or petitions of similar or related subject matter for the same hearing.

[95] Sec. 1, Art. VI, 1987 CONST.: “The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.”

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