EN BANC

G.R. No. 170867 — REPUBLIC OF THE PHILIPPINES, 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* v. PROVINCIAL GOVERNMENT OF PALAWAN, represented by Governor ABRAHAM KAHLIL B. MITRA, *respondent.* G.R. No. 185941 — BISHOP PEDRO DULAY ARIGO, CESAR N. SARINO, DR. JOSE ANTONIO N. SOCRATES, and PROF. H. HARRY L. ROQUE, JR., *petitioners* v. HON. EXECUTIVE SECRETARY EDUARDO R. ERMITA, HON. ENERGY SECRETARY ANGELO T. REYES, HON. FINANCE SECRETARY MARGARITO B. 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, *respondents*.

Promulgated:
December 4, 2018

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SEPARATE CONCURRING OPINION

LEONEN, *J.:*

I concur, but only in the result.

The Province of Palawan should be entitled to an equitable share in the utilization and development of resources within its territorial jurisdiction. Due to Palawan's unique position and archipelagic shape, its territorial jurisdiction should not only encompass land mass. It should also include its coastline, subsoil, and seabed.

However, the maps submitted to this Court failed to substantially prove that the Camago-Malampaya Natural Gas Project was within the area of responsibility of the Province of Palawan.

The factual antecedents of this case are undisputed. On December 11, 1990, the Republic, through the Department of Energy, entered into a service

contract (Service Contract No. 38) with Shell Philippines Exploration B.V. (Shell) and Occidental Philippines, Inc. (Occidental) for the drilling of a natural gas reservoir in the Camago-Malampaya area, located about 80 kilometers from the main island of Palawan.[1]

Specifically, Camago-Malampaya is located:

From Kalayaan Island Group	93.264 kilometers or 50.3585 nautical miles
Mainland Palawan (Nacpan Point, south of Patuyo Cove, Municipality of El Nido)	55.476 kilometers or 29.9546 nautical miles
Tapiutan Island, Municipality of El Nido	48.843 kilometers or 26.[3731] nautical miles[2]

Service Contract No. 38 provides for a production sharing scheme, where the National Government would receive 60% of the net proceeds from the sale of petroleum while Shell and Occidental, as service contractors, would receive 40% of the net proceeds. Subsequently, Shell and Occidental were replaced by a consortium of Shell, Occidental, Shell Philippines LLC, Chevron Malampaya LLC, and Philippine National Oil Company Explorations Corporation (Shell Consortium).[3]

On February 17, 1998, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 381,[4] which provided that the National Government's share from the net proceeds of the Camago-Malampaya Natural Gas Project would "be reduced . . . by the share of the concerned local government units pursuant to the Local Government Code[.]"[5] 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"[6] throughout the 20-year contract period. For reference, 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

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1 *Rollo* (G.R. No. 170867), p. 89.
2 Id. at 1465. The *rollo* indicated that Camago-Malampaya is located 26.9546 nautical miles northwest of Tapiutan Island.
3 Id. at 1305. Exec. Order No. 683 (2007), whereas clause.
4 Id. at 549–550-A.
5 Id. at 550.
6 Id. at 549-A.

jurisdiction.

On June 10, 1998, then Secretary of Energy Francisco L. Viray (Viray) wrote to then Palawan Governor Salvador P. Socrates (Socrates), requesting that the payment of 50% of Palawan's share in the Camago-Malampaya Natural Gas Project be "spread over in the initial seven years of operations . . . to pay [for] the [National Power Corporation]'s . . . obligations" in its Gas Sales and Purchase Agreements with Shell Consortium.[7]

On July 30, 2001, then Secretary of Finance Jose Isidro N. Camacho wrote to then Secretary of Justice Hernando B. Perez, seeking legal opinion on whether the Province of Palawan had a share in the national wealth from the proceeds of the Camago-Malampaya Natural Gas Project. It was the position of the Department of Finance that a local government unit's territorial jurisdiction was only within its land area and excludes marine waters more than 15 kilometers from its coastline.[8]

On October 16, 2001, the Camago-Malampaya Natural Gas Project was formally inaugurated.[9]

Negotiations were held between the Province of Palawan, the Department of Energy, the Department of Finance, and the Department of Budget and Management to determine the Province of Palawan's share in the net proceeds of the Camago-Malampaya Natural Gas Project.[10] However, on February 11, 2003, the Sangguniang Panlalawigan of Palawan resolved to call off further negotiations since the National Government would not grant its expected share in the net proceeds amounting to approximately over US$2 billion.[11]

On March 14, 2003, then Palawan Governor Mario Joel T. Reyes wrote to the Department of Energy, and the Department of Budget and Management reiterating the Province's claim of its 40% share citing "long historical precedent and the statutory definition of Palawan under Republic Act No. 7611."[12]

On May 7, 2003, the Province of Palawan filed a Petition for Declaratory Relief,[13] docketed as Civil Case No. 3779, before the Regional

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7 Id. at 551–552.

8 Id. at 554. It is unclear from the records whether a legal opinion was issued by the Department of Justice.

9 *Ponencia*, p. 4.

10 *Rollo* (G.R. No. 170867), pp. 127–128.

11 Id. at 129.

12 Id. at 127. Rep. Act No. 7611 (1992), Strategic Environmental Plan (SEP) for Palawan Act.

13 Id. at 130–159.

Trial Court to seek a judicial determination of its rights under Administrative Order No. 381, series of 1998; Republic Act No. 7611; Section 290 of the Local Government Code; and Palawan Provincial Ordinance No. 474, series of 2000. In particular, it sought a judicial declaration that the Camago-Malampaya reservoir was part of its territorial jurisdiction, and hence, it was entitled to an equitable share in its utilization and development.[14]

During the pendency of the case before the Regional Trial Court, or on February 9, 2005, then Secretary of Energy Vincent S. Perez, Jr. (Perez), then Secretary of Budget and Management Mario L. Relampagos (Relampagos), and then Secretary of Finance Juanita D. Amatong (Amatong) executed an Interim Agreement[15] with the Province of Palawan. This Interim Agreement provided for equal sharing of the 40% being claimed by the Province of Palawan, to be called the "Palawan Share," for its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities for the security enhancements of the exclusive economic zone.[16]

The Interim Agreement likewise stated that the release of funds would be without prejudice to the outcome of the legal dispute between the parties. Once Civil Case No. 3779 was decided with finality in favor of either party, the shares already received would be treated as financial assistance. To this end, the parties further agreed that the amount of ₱600,000,000.00 already released to the Province of Palawan would be deducted from the initial release of its 50% share in the 40% of the remitted funds.[17]

On December 16, 2005, the Regional Trial Court rendered a Decision[18] holding that the Province of Palawan was entitled to a 40% share of the revenues generated from the Camago-Malampaya Natural Gas Project from October 16, 2001, in view of Article X, Section 7 of the Constitution and the provisions of the Local Government Code.

Subsequently, the Province of Palawan filed a Motion to require the Secretary of Energy, the Secretary of Budget and Management, and the Secretary of Finance to render a full accounting of the actual payments made by the Shell Consortium to the Bureau of Treasury from October 1, 2001 to December 2005,[19] and to freeze and/or place Palawan's 40% share in an escrow account.[20]

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14 Id. at 85–86.
15 Id. at 555–561.
16 Id. at 557.
17 Id. at 557–558.
18 Id. at 83–112. The Decision was penned by Judge Bienvenido C. Blancaflor of Branch 95, Regional Trial Court, Puerto Princesa City.
19 Id. at 115.
20 Id. at 114.

In its January 16, 2006 Amended Order,[21] the Regional Trial Court issued a Freeze Order directing a full accounting of actual payments made by Shell Consortium and ordering the Secretary of Finance to deposit 40% of the Province of Palawan's share in escrow until the finality of its December 16, 2005 Decision.

On February 16, 2006,[22] the Republic filed a Petition for Review before this Court, docketed as G.R. No. 170867, assailing the Regional Trial Court's December 16, 2005 Decision and its January 16, 2006 Amended Order.[23]

On June 6, 2006, the Regional Trial Court lifted its January 16, 2006 Amended Order in view of the pending Petition before this Court. The Republic subsequently manifested that its arguments relating to the January 16, 2006 Amended Order no longer needed to be resolved unless the Province of Palawan raises them as issues before this Court.[24]

While the Petition was pending before this Court, or on July 25, 2007, the National Government and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, executed a Provisional Implementation Agreement[25] which allowed for the release of 50% of the disputed 40% share of Palawan to be utilized for its development projects.

On December 1, 2007, then President Gloria Macapagal Arroyo (President Arroyo) issued Executive Order No. 683, authorizing the release of funds pursuant to the Provisional Implementation Agreement, or 50% of the disputed 40% share, without prejudice to this Court's final resolution of Palawan's claim in G.R. No. 170867.[26]

On February 7, 2008, Bishop Pedro Dulay Arigo (Bishop Arigo), Cesar N. Sarino (Sarino), Dr. Jose Antonio N. Socrates (Dr. Socrates), and H. Harry L. Roque, Jr. (Roque), as citizens and taxpayers, filed a Petition for Certiorari against the Executive Secretary, the Secretary of Energy, the Secretary of Finance, the Secretary of Budget and Management, the Palawan Governor, the Representative of the First District of Palawan, the Philippine National Oil Company Explorations Corporation President and Chief Executive Officer before the Court of Appeals. The Petition assailed Executive Order No. 683, series of 2007, and the Provisional

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21 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.

22 Id. at 9.

23 *Ponencia*, p. 2.

24 Id. at 8–9.

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

26 Id. at 489–491.

Implementation Agreement for being contrary to the Constitution and the Local Government Code. It also sought the release of the Province of Palawan's full 40% share in the Camago-Malampaya Natural Gas Project.[27]

In its May 29, 2008 Resolution,[28] the Court of Appeals dismissed the Petition on procedural grounds, finding that Bishop Arigo, Sarino, Dr. Socrates, and Roque failed to submit the required documents substantiating their allegations. 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 Court of Appeals also took judicial notice of the "on-going efforts"[29] by the Executive and Legislative branches to arrive at a common position on the country's baselines under the United Nations Convention on the Law of the Sea. Thus, any judicial ruling may be tantamount to a "collateral adjudication"[30] of a policy issue.

Bishop Arigo, Sarino, Dr. Socrates, and Roque filed a Motion for Reconsideration, which was denied by the Court of Appeals in its December 16, 2008 Resolution. Hence, they filed a Petition for Review on Certiorari before this Court, docketed as G.R. No. 185941, insisting that Executive Order No. 683, series of 2007, and the Provisional Implementation Agreement were invalid for being unconstitutional and for violating the provisions of the Local Government Code.[31]

G.R. Nos. 170867 and 185941 were consolidated by this Court on June 23, 2009. Oral arguments were heard on September 1, 2009 and November 24, 2009.[32]

As of August 31, 2009, ₱61,190,210,012.25 has been remitted to the Department of Energy. The amount claimed by the Province of Palawan as its 40% share was ₱35,521,789,184.63 as of August 31, 2009.[33]

It is the position of the ponencia that the interpretation of the phrase "within their respective areas" in Article X, Section 7 of the Constitution[34]

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27 *Ponencia*, p. 11.

28 *Rollo* (G.R. No. 185941), pp. 218–224. The Resolution, docketed as CA-G.R. SP No. 102247, was penned by Associate Justice Rebecca De Guia-Salvador (Chair) and concurred in by Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr. of the Eleventh Division, Court of Appeals, Manila.

29 Id. at 223.

30 Id.

31 *Ponencia*, pp. 12–13.

32 Id. at 13. Dean Raul Pangalangan and Secretary General Henry Bensurto, Jr. were made *amici curiae* for the oral arguments. Only Secretary General Bensurto submitted an *amicus* brief.

33 Id. at 13–14.

34 CONST., art. X, sec. 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.

refers to only to areas where a local government unit exercises territorial jurisdiction. The ponencia further opines that the territorial jurisdiction of a local government unit is limited only to its land area and will not extend to its marine waters, seabed, and subsoil. Thus, the equitable share of a local government unit in the proceeds of the utilization and development of national wealth within its respective area refers only to national wealth that can be found within its land mass.

I disagree.

I

The Constitution declares it a policy of the State to ensure the autonomy of local governments.[35]

The entirety of Article X of the Constitution is devoted to local governments. Under this article, local autonomy means "a more responsive and accountable local government structure instituted through a system of decentralization."[36] To this end, the Local Government Code reiterates the declared policy of the State to ensure local autonomy, providing:

> Section 2. Declaration of Policy. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

Under this concept of autonomy, administration over local affairs is delegated by the national government to the local government units to be more responsive and effective at the local level.[37] Thus, Section 17 of the Local Government Code tasks local government units to provide basic services and facilities to their local constituents:

> Section 17. Basic Services and Facilities. — (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national

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35 CONST., art. II, sec. 25.

36 CONST., art. X, sec. 3. *See also Ganzon v. Court of Appeals*, 277 Phil. 311 (1991) [Per J. Sarmiento, En Banc].

37 *Pimentel v. Aguirre*, 391 Phil. 84 (2000) [Per J. Panganiban, En Banc].

> agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

In addition to administrative autonomy, local governments are likewise granted fiscal autonomy, or "the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities."[38] Section 18 of the Local Government Code provides:

> Section 18. Power to Generate and Apply Resources. — Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits; to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals.

The Local Government Code mandates that local government units shall have "an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions." This provision implements Article X, Section 7 of the Constitution, which reads:

> 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.

Thus, Section 290 of the Local Government Code provides:

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[38] Id. at 103.

> 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.

The controversy in this case revolves around the proper interpretation of "within their respective areas" and "within their territorial jurisdiction."

II

The Constitution itself provides for the natural boundaries of the State's political units. Article X, Section 1 of the Constitution allocates them as either "territorial and political subdivisions" or "autonomous regions," thus:

> ARTICLE X
> Local Government
>
> General Provisions
>
> 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.

Territorial and political subdivisions are the provinces, cities, municipalities, and barangays. Article X, Section 2 of the Constitution further provides:

> Section 2. The territorial and political subdivisions shall enjoy local autonomy.

Autonomous regions are covered by a different set of provisions in the Constitution.[39] Thus, the territorial jurisdiction of an autonomous region is not defined in the same manner as that of a territorial and political subdivision.

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[39] CONST., art. X, secs. 15 to 21.

A local government unit can only be created by an act of Congress.[40] Its creation is based on "verifiable indicators of viability and projected capacity to provide services,"[41] one of which is land area, thus:

> (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.
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> 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).[42]

The Local Government Code requires that the land area be contiguous unless it comprises of two (2) or more islands. The same provision is repeated throughout the Code, thus:

> 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.
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> . . . .
>
> 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.
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> . . . .
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> 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.
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> . . . .

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40 LOCAL GOVT. CODE, sec. 6.
41 LOCAL GOVT. CODE, sec. 7.
42 LOCAL GOVT. CODE, sec. 7(c).

The requirement of contiguity does not apply if the territory is comprised of islands. All that is required is that it is properly identified by its metes and bounds.

The Province of Palawan, previously known as Paragua, was organized under Act No. 422.[43] Section 2 of the Act, as amended, provided:

> 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 the arc of a circle with one mile radius, the center of the circle being the center of the said towns of Bahile and Tapul. There shall be included in the Province of Paragua the small islands adjacent thereto, including Dumaran and the islands forming the Calamianes group and the Cuyos Group.[44]

The law that created the Province of Palawan had no technical description. Instead, it anchored the province's borders on the bodies of water surrounding it. Since, the province's metes and bounds are not technically described, reference must be made to other laws interpreting the province's borders.

Palawan comprises 1,780 islands. To determine its metes and bounds would be to go beyond the contiguity of its land mass.

The ponencia places too much reliance on *Tan v. Commission on Election*,[45] a case that was decided long before the passage of the present Local Government Code. In *Tan*, a petition was filed before this Court to halt the conduct of a plebiscite to pass a law creating the province of Negros. A question was raised on whether the marginal sea within the three (3)-mile limit should be considered in determining a province's extent. This Court, in finding the argument unmeritorious, held:

> As so stated therein the "territory need not be contiguous if it comprises two or more islands." The use of the word territory in this particular provision of the Local Government Code and in the very last sentence thereof, clearly, reflects that "territory" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control.[46] (Emphasis omitted)

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43 Act No. 422 (1902), An Act Providing for the Organization of a Provincial Government in the Province of Paragua, and Defining the Limits of that Province.

44 Act No. 567 (1902).

45 226 Phil. 624 (1986) [Per J. Alampay, En Banc].

46 Id. at 646.

This Court's wording is peculiar. It speaks of territory as a mass of land area, not waters, over which the political unit exercises control. In the same breath, *Tan* also establishes that political units may have control over the waters in their territory.

It can be presumed that when *Tan* discussed the metes and bounds of a local government unit's territory, it only meant to refer to its physical land area. It did not include a discussion on what may encompass a local government unit's *territorial jurisdiction.*

In any case, the creation of a local government unit is not solely dependent on land mass. Article 9(2) of the Implementing Rules and Regulations of the Local Government Code 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)

In *Navarro v. Ermita*,[47] a controversy arose on the creation of the Province of Dinagat Islands considering that its total land mass was only 802.12 square kilometers, or below the 2,000 square kilometers required by law. Petitioners in that case, who were the former Vice Governor and members of the Provincial Board of the Province of Surigao del Norte, questioned the constitutionality of Article 9(2), arguing that the exemption to land area requirement was not explicitly provided for 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.

On reconsideration, however, the majority reversed its prior decision and upheld the constitutionality of the assailed provision.[48] In particular,

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47 626 Phil. 23 (2010) [Per J. Peralta, En Banc].

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

Navarro 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.
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> This interpretation finds merit when we consider the basic policy considerations underpinning the principle of local autonomy.
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> . . . .
>
> 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 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.[49]

Neither can it be said that a local government unit's territorial jurisdiction can only be exercised over its municipal waters.

The Local Government Code provides:

> (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.[50]

Under this provision, Palawan can only exercise jurisdiction over waters that are within 15 kilometers from its general coastline.

This narrow interpretation, however, disregards other laws that have defined and specified portions of Palawan's territory and the extent of its territorial jurisdiction.

Presidential Decree No. 1596[51] established the Kalayaan Island Group, delineated as follows:

> 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

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49 Id. at 584, 586.

50 LOCAL GOVT. CODE, sec. 131(r).

51 Pres. Decree No. 1596 (1978), Declaring Certain Area Part of the Philippine Territory and Providing for their Government and Administration.

> 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."[52]

The law categorically states that the area includes the seabed, subsoil, and the continental margin, and that the island shall be a municipality in the Province of Palawan.

Republic Act No. 7611, or the Strategic Environmental Plan for Palawan, includes in its Environmentally Critical Areas Network:

> 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. (Emphasis supplied)

Under this law, local chief executives, together with representatives of national government, are tasked with the protection and preservation of environmentally critical areas in Palawan. This includes the exercise of jurisdiction beyond the province's land mass.

Under Article 76(1) of the United Nations Convention on the Law of the Sea:

> 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.

In the recent arbitral case between the Republic and China, the Permanent Court of Arbitration, in ruling favorably for the Republic, made

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[52] Pres. Decree No. 1596 (1978), sec. 1.

the following factual findings:

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 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, Namyit 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.[53]

The Permanent Court of Arbitration used the Province of Palawan as its baseline point to determine the reefs' proximity to the Philippines. The Republic likewise made argument with regard to 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

[53] *In the Matter of the South Sea China Arbitration*, PCA Case No. 2013-19, July 12, 2016, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf> 121–122.

> waters of any relevant geological feature in the KIG either under customary international law or the United Nations Convention on the Law 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[.][54]

The Republic has manifested before an international audience that it exercises sovereignty over territories without a definitive land mass on the ground that they form part and parcel of the Province of Palawan. Thus, it recognized that jurisdiction can be established even over areas which are not susceptible of land mass or defined by contiguity.

In any case, the grant of an equitable share in the utilization and development of resources within a local government unit's territorial jurisdiction has practical basis.

When resources are being utilized and developed in a certain area, there will be a need for the surrounding areas to be secured. The environmental impacts to the nearby community will have to be addressed. While *amicus curiae* Secretary General Bensurto eventually concluded that the Camago-Malampaya reservoir was not within Palawan's territorial jurisdiction, he nonetheless 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.[55]

The local government unit's equitable share is meant to address the possible effects that the project may have on the local population. It can also assist in strengthening the economic development of the local government unit and uplift the lives of its constituents.

III

The ponencia submits that there was no estoppel on the part of the Executive Branch when it promulgated issuances recognizing the Province

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54 Id. at 266.

55 *Rollo* (G.R. No. 170867), p. 1356.

of Palawan's share in the Camago-Malampaya Project, as they were merely "based on a mistaken assumption."[56]

The doctrine of contemporaneous construction is settled. In *Tamayo v. Manila Hotel Company*:[57]

> 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."[58]

Another variation of the doctrine states:

> . . . [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.[59] (Citation omitted)

The National Government has repeatedly recognized that the Province of Palawan was entitled to an equitable share in the proceeds of its utilization and development.

Administrative Order No. 381, issued by then President Ramos, expressly recognized that the National Government would share in the net proceeds of the Camago-Malampaya Natural Gas Project.[60] In particular, it provided:

> 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 following economic and social benefits from the Natural Gas Project:

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56 Id. at 75.

57 101 Phil. 810 (1957) [Per J. Reyes, A., En Banc].

58 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].

59 *Alvarez v. Guingona, Jr.*, 322 Phil. 774, 786 (1996) [Per J. Hermosisima, Jr., En Banc].

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

. . . .

> 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")[.][61]

On June 10, 1998, then Secretary of Energy Viray wrote a letter to then Palawan Governor Socrates, requesting for a deferred payment of 50% of Palawan's share in the Camago-Malampaya Natural Gas Project,[62] which likewise shows an effort by the Executive Branch to fulfill its commitments to the Province of Palawan.

After the formal launch of the Camago-Malampaya Natural Gas Project, negotiations occurred between agents of the National Government and the Province of Palawan, to determine the Province of Palawan's share in the net proceeds, until it was called off by the Province of Palawan.[63] This is yet another instance of the Executive Branch's acceptance of the Province of Palawan's territorial jurisdiction over the area. Otherwise, there would have been no need to negotiate.

Even when the case before the Regional Trial Court was pending, then Secretary of Energy Perez, then Secretary of Budget and Management Relampagos, and then Secretary of Finance Amatong executed an Interim Agreement[64] with the Province of Palawan, providing for equal sharing of the 40% being claimed by the Province of Palawan, to be called the "Palawan Share," for its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities for the security enhancements of the exclusive economic zone.[65]

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61 Adm. Order No. 381 (1998), whereas clauses.
62 *Rollo* (G.R. No. 170867), pp. 551–552.
63 Id. at 127–128.
64 Id. at 555–561.
65 Id. at 557.

Representatives of the National Government, with authority from then President Arroyo, and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, likewise executed a Provisional Implementation Agreement which allowed for the release of 50% of the disputed 40% share to be utilized for development projects in Palawan.

Then President Arroyo issued Executive Order No. 683 dated December 1, 2007, pertinent portions of which state:

> WHEREAS, on 11 December, 1990, the Republic of the 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 June 30, 1010.

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.

These enactments show the Executive Branch's contemporaneous construction of Section 290 of the Local Government Code in relation to Service Contract No. 38.

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.[66]

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

Given the ambiguity of the phrase "within their respective areas" under Article X, Section 7 of the Constitution, it was necessary to resort to the examination of prior and subsequent acts of those required to implement the law.

Considering that the Executive Branch has consistently recognized the Province of Palawan's entitlement to its equitable share in the net proceeds of the Camago-Malampaya Natural Gas Project, its interpretation must be given its due weight.

The ponencia, in confining territorial jurisdiction to only that of land mass, does a disservice to the entirety of Article X, Section 7, which reads:

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.

Under this provision, local governments are 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*. This means that law may define what could be included within a local government's respective area.

Thus, the extent of a local government unit's territorial jurisdiction cannot be limited only to its land mass, as defined by the Local Government Code. Reference must also be made to other statutes.

In this instance, Presidential Decree No. 1596 and Republic Act No. 7611 grants the Province of Palawan territorial jurisdiction over areas that are beyond its coastline. Presidential Decree No. 1596 even explicitly declares that the Province of Palawan may have territorial jurisdiction over the continental shelf of the Kalayaan Island Group. Thus, I cannot agree with the ponencia's recommendation that territorial jurisdiction is exercised solely over a local government's land mass.

Unfortunately, the Province of Palawan failed to provide sufficient evidence to show that the Camago-Malampaya Natural Gas Project was within its area of responsibility. The maps submitted to this Court were inadequate to prove that the Province of Palawan's claims. Thus, I am constrained to vote with the majority.

Accordingly, I vote to **GRANT** the Petition in G.R. No. 170867 and **DENY** the Petition in G.R. No. 189514.

MARVIC M.V. F. LEONEN
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court