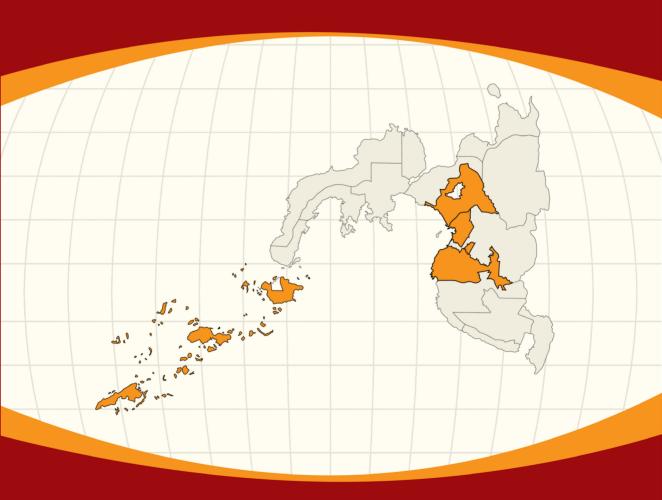
# Prawing Lessons for the Creation of Regional Governments Under a Federal Setup

CASE STUDY ON THE AUTONOMOUS REGION IN MUSLIM MINDANAO



Published by the
CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT
in partnership with the
INSTITUTE FOR AUTONOMY AND GOVERNANCE

# Drawing Lessons for the Creation of Regional Governments Under a Federal Setup

CASE STUDY ON THE AUTONOMOUS REGION IN MUSLIM MINDANAO

# **Published by**

The Congressional Policy and Budget Research Department House of Representatives Batasan Hills, Quezon City 1126 Metro Manila, Philippines Telephone: 931-6032

Website: www.cpbrd.congress.gov.ph

Copyright © 2017 by the CPBRD

ISBN: 978-621-95527-1-4

The opinions and interpretations expressed in this material do not necessarily reflect the views of the House of Representatives as an institution or those of its individual Members.

#### THE RESEARCH TEAM

# ROMULO EMMANUEL M. MIRAL JR., PHD PAMELA DIAZ-MANALO JULIUS I. DUMANGAS

The research team acknowledges the valuable support of the Institute for Autonomy and Governance (IAG), particularly Atty. Benedicto Bacani, Jacqueline Fernandez and Rey Danilo Lacson, for facilitating access to key informants within the ARMM, and for arranging the conduct of focused-group discussions (FGDs) and fieldwork interviews. Also, the team recognizes Arlene Lopez-Tuazon for the research assistance, Byron Bicenio for editing the manuscript, and Alexiz Taaca for the layout and cover design.

#### **FOREWORD**

The Autonomous Region in Muslim Mindanao (ARMM) is the only political entity in the country that approximates a state under a federal system. As the Philippines seriously considers shifting the country's political system from unitary to federal, it is logical and useful to take a hard look at the ARMM, see what works or not, in order to draw lessons and insights for drafters of a Federal Constitution for the Philippines and for the citizenry who will eventually ratify it.

IAG is honored to partner with CPBRD in this study on the ARMM in view of the current debate on federalism. The study reflects actual experiences of people and structures struggling to make autonomy work for peace and development. It looks at gaps in public policies and governance practices that constrain the development of a working and effective autonomous region in Muslim Mindanao. It also identifies lessons that we can build on in this march towards giving autonomy to envisioned regions/states under a federal set-up.

A key element to a successful shift to federalism is to develop a "federal culture" among public leaders and citizens where the center freely lets go of powers and resources to the regions which in turn demonstrates the commitment to develop their capacities for self-governance. This study, hopefully, will help nurture this "federal culture".

Atty. Benedicto Bacani IAG Executive Director

# TABLE OF CONTENTS \_\_\_\_\_

INTRODU	CTION	Page	
CHAPTER Socio-Eco	2 1 onomic Conditions of the ARMM	5	
CHAPTER 2 Key Issues on the Assignment of Powers			
CHAPTER 3 Fiscal Autonomy Issues in the ARMM			
CHAPTER		77	
CHAPTER	es on Intergovernmental Relations	77	
	or Creating Regional Governments	91	
TABLES			
Table 1	Regional Comparison of GRDP and Poverty Incidence (2009, 2012, and 2015)	6	
Table 2	Infrastructure Development Indicators by Region	8	
Table 3	Education Indicators by Region	9	
Table 4	Malnutrition Among Children, 0-5 Years Old (2015)	10	
Table 5	Number of Conflict Incidents and Deaths in the ARMM (2011-2015)	11	
Table 6	Overlapping Powers and Responsibilities of the RG and LGUs	37	
Table 7	Overlapping RG-LGU Assignments in Health	38	
Table 8	Proposed vs. Approved Budget for ARMM (2010-2017)	53	
Table 9	Sources of Budgetary Cuts in the ARMM Budget (2017)	54	
Table 10	Appropriations for ARMM and IRA of ARMM-LGUs (2010-2017)	56	
Table 11	Income Sources of ARMM-LGUs (2011-2015)	57	
Table 12	Tax Impositions by Government Level Based on RA 7160 and MMAA 49	60	

Table 13	Revenue Sources of the Regional Government (2013-2015)	61
Table 14	BIR-Certified ARMM Shares by Payment Mode (2010-2016)	65
Table 15	Appropriated ARMM Shares (2011-2016)	66
Table 16	ARMM Budget by Allotment Class Based on the GAA (2007-2016)	67
Table 17	Appropriations and Budgetary Adjustments for ARMM (2013-2015)	68
Table 18	ARMM Local Budget Fund vs. Appropriations (2005-2016)	69
Table 19	Appropriations for ARMM Infrastructure Projects (2011-2016)	70
Boxes		
Box 1	Contending Legal Framework in Health	21
Box 2	Unclear Assignment of RG Power to Create a Province	25
Box 3	Assignment of Powers in Infrastructure under EO 426	30
Box 4	Establishment of a National DPWH District Engineering Office in Marawi City	34
Box 5	Taxes Retained by the National Government	58
Box 6	South Africa's IGR Mechanisms Under the 2015 IGR Act	112
ANNEXES	;	
Annex 1	Key Powers and Functions of the RG under RA 9054	121
Annex 2	Assignment of Government Powers, Functions and Responsibilities in the ARMM	125
Annex 3	Assignment of Powers in Basic Education	127

#### Introduction

The President has elevated to the top of the government's reform agenda the proposal to change the country's form of government from a unitary to a federal system. In line with this, more discussions on changes in the 1987 Philippine Constitution are forthcoming to pave the way for the federal system in the Philippines.

Prior to the conduct of this case study, the Congressional Policy and Budget Research Department (CPBRD) and the Institute for Autonomy and Governance (IAG) jointly organized a lecture series on federalism in an attempt to learn from the experiences of older and existing federations. However, even countries that serve as models of federal systems continue to evolve as new issues and challenges emerge. There is no perfect model that can be readily adopted—hence, it is important for the Philippines to identify its own context for the kind of federal setup that it wants to establish.

Fundamental to any federal setup is the presence of regional governments (also referred to as states). With substantial powers and responsibilities, regional governments play a vital role in addressing problems of local government fragmentation and uneven development across geographic divisions in the country. Regional governments are differentiated from the administrative regions that are coordinative in nature, and composed of satellite offices of the different sectoral agencies of the national government.

The Autonomous Region in Muslim Mindanao (ARMM) is the only regional government that currently exists in the Philippines. The extent to which it is autonomous may be subject to debates, but it is the closest that the country has so far in implementing some form of federalism. Its experience can provide lessons to improve the policy environment when creating regional governments under the proposed federal system.

The study aims to provide a deeper understanding of the issues confronting the ARMM, and how these issues affect regional governance. From the ARMM experience, lessons are drawn to help avoid similar lapses in policy or implementation from being replicated. The legal framework that shall

govern future regional governments should be able to address the problem areas that limit their effectiveness.

There are three areas that the case study focuses on, namely: the assignment of powers, fiscal arrangements, and intergovernmental relations. It identifies issues resulting from policy ambiguities or deviations of practice from the provisions of the law. However, it does not look into the composition and viability of the region. The book is organized into five chapters as follows: Chapter 1 for the Socio-Economic Conditions of the ARMM, Chapters 2-4 for discussions on the identified focus areas, and Chapter 5 for the Lessons.

The study benefited from key informant interviews (KIIs) and focused group discussions (FGDs) with top officials from the Office of the Regional Governor, the ARMM regional line agencies, local government units, and the Regional Legislative Assembly. To validate the initial findings from the field, interviews were also conducted at the national level particularly with the Department of Budget and Management (DBM) and the Bureau of Internal Revenue (BIR). Preliminary findings of the study were presented in forums organized by the IAG under its Pro Politics for Peace Project.



eace and development are two mutually reinforcing drivers that serve as backdrop in the ongoing clamor of the Bangsamoro for genuine autonomy. These are the same aspirations that the creation of the Autonomous Region in Muslim Mindanao (ARMM) sought to achieve almost three decades ago.

The lack of peace and order in the autonomous region has been a major factor that has retarded the growth and development in the area. Conflict and war have not only destroyed and devalued properties and created uncertainties for business, but have also caused frequent displacements of families and interruptions in the delivery of public services. Such development challenges, as reflected by relatively poor living conditions, in turn create unrest that feeds into the peace problem in the region.

Compared with other regions in the country, the ARMM lags behind in various economic and social aspects. The ARMM is characterized by slow economic growth with limited infrastructure development, high poverty incidence, and relatively lower educational and health outcomes.

Slow economic growth. Economic growth in the Philippines is highly uneven across regions. The National Capital Region (NCR) alone accounted for more than one-third (36.5%) of the country's gross domestic product (GDP) in 2015. Neighboring regions (CALABARZON and Central Luzon) combined make up for another 26.4% of GDP while the rest of the regions account for the remaining 37.1%.

Table 1 shows that the ARMM consistently has the lowest contribution to the country's total economic output. In 2015, the ARMM accounted for 0.7% of GDP. In per capita terms, the gross regional domestic product (GRDP) of the ARMM is also lowest at P13,377. This figure is lower than its per capita GRDP of P13,867 in 2009 while the rest of the Mindanao regions were growing. Per capita GRDP of Region XIII (CARAGA) increased from P24,264 in 2009 to P37,196 in 2015.

Table 1

REGIONAL COMPARISON OF GRDP AND POVERTY INCIDENCE (2009, 2012, 2015)

Region	Shar	e to Nat GDP (%)		Per Cap	oita GRDP	(In PhP)	Pov Amon	erty Incide g Populat	ence ion (%)
	2009	2012	2015	2009	2012	2015	2009	2012	2015
PHILIPPINES	100.0	100.0	100.0	58,199	65,332	75,263	26.3	25.2	21.6
NCR	35.8	35.7	36.5	162,321	181,748	215,151	3.6	3.9	3.9
CAR	2.1	1.9	1.8	70,672	70,156	77,728	25.1	22.8	19.7
1	3.2	3.1	3.1	35,813	40,325	47,189	22.0	18.5	13.1
II	1.9	1.8	1.8	31,519	33,816	38,954	25.5	22.1	15.8
III	8.8	9.3	9.3	46,546	55,163	62,964	13.7	12.9	11.2
IVA	17.1	17.4	17.1	73,271	81,562	90,345	11.9	10.9	9.1
IVB	1.9	1.7	1.6	37,724	38,239	41,257	34.5	31.0	24.4
V	2.1	2.0	2.0	20,580	22,502	26,815	44.2	41.1	36.0
VI	4.1	4.1	4.0	30,943	35,139	40,537	30.8	29.1	22.4
VII	5.7	6.3	6.4	44,993	56,061	65,284	31.0	30.2	27.6
VIII	2.8	2.3	2.0	36,058	33,850	34,509	42.6	45.2	38.7
IX	2.2	2.1	2.1	34,353	37,077	43,430	45.8	40.1	33.9
X	3.7	3.8	3.7	46,818	52,842	60,514	40.1	39.5	36.6
XI	3.9	3.8	4.0	46,721	51,657	62,210	31.4	30.7	22.0
XII	2.8	2.7	2.7	36,688	39,417	44,702	38.3	44.7	37.3
XIII	1.1	1.2	1.3	24,264	30,985	37,196	54.4	40.3	39.1
ARMM	0.8	0.8	0.7	13,867	14,052	13,377	47.4	55.8	53.7

Note: GRDP at constant 2000 prices Source of basic data: NSCB. PSA

Total GRDP of the ARMM in 2015 amounted to about P50.6 billion—of which P29.4 billion or about 58.2% is value added from agriculture, hunting, forestry and fishing. The service and industry sectors contribute 36.2% and 5.6%, respectively, to the region's GRDP. Gross value added (GVA) from manufacturing (P637.1 million or 1.3%) and from trade and repair of motor vehicles, personal and household goods (P578.7 million or 1.1%) are relatively low considering that these two are major contributors to the country's GDP.

**Poverty Incidence.** Out of the total 21.9 million poor Filipinos, close to 2 million are from the ARMM. Regions V and VII may have higher magnitude of poor population at roughly 2.2 million and 2.1 million, respectively, but

poverty incidence in these two regions is significantly lower compared with the ARMM (see Table 1). The 2015 poverty statistics show that poverty incidence is highest in the ARMM at 53.7%, which is way higher than the national average of 21.6%. This essentially means that more than half of the people in the autonomous region are living below the poverty line or the annual per capita poverty threshold of P21,563 (i.e., minimum income required for an individual to meet the basic food and non-food needs).

Unlike in other regions (except NCR), poverty incidence in the ARMM has gone up from 47.4% in 2009 to 53.7% in 2015. Region XIII which had the highest poverty incidence (54.4%) in 2009 was able to steadily reduce the percentage of its poor population to 39.1% by 2015. Within the ARMM, poverty incidence in 2015 is highest in Lanao del Sur (71.9%) with the province accounting for over one-third (36.4%) of the total poor population in the autonomous region.

Infrastructure. Inadequate infrastructure has been identified as a critical constraint to the country's economic growth. This inadequacy, both in quantity and quality, is more prominent for some regions, including the ARMM. While the ARMM is highly agricultural with more than half of its GRDP coming from this sector, irrigation development is significantly low at only 29.5% compared with other regions in the country.

For a region that depends significantly on agriculture, it is important that road infrastructure is developed to facilitate transport linkages between farms and markets. Roads are also vital access facilities that enhance mobility of people, goods, and services. In the case of the ARMM, unpaved provincial roads are still relatively high at 82.7% although this appears to be lower compared with other regions in Mindanao, except Region XI (Davao).

Infrastructure quality indicates not only the readiness of the region to host businesses but also reflects the living conditions of households and the opportunities that may be opened through greater access to communication facilities and energy connections. Table 2 shows that access to unsafe water

supply (42%) and unsanitary toilets (15%) is greater among households in ARMM than other regions. The ARMM posts one of the lowest (64%) in terms of percentage of sitios electrified, and lags far behind at 36% based on households with energy connections. Also, teledensity in the autonomous region (0.44%) is lowest among all regions in the country.

Table 2 INFRASTRUCTURE DEVELOPMENT INDICATORS BY REGION

	IIII IXASII	COCIONE D	LVLLOFII		,, ,, , ,, ,,	DI KEGION	
Region	Sitios Electrified (%)	Energy Connections 2015 (%)	Access to Unsafe Water Supply	Access to Unsanitary Toilets	Tele- density (2014)	Irrigation Development 2015 (%)	Unpaved Provincial Roads (%)
NCR	-	-	10	2	30.68	-	-
CAR	83	88	23	13	3.76	95.18	71.3
I	99	95	9	1	1.89	66.09	27.0
II	71	92	4	1	0.90	60.21	56.8
III	96	96	1	1	2.79	61.41	27.3
IVA	92	95	9	1	3.80	56.54	19.4
IVB	76	82	22	13	-	57.76	81.2
V	78	89	21	14	1.75	57.60	38.4
VI	91	93	18	7	1.50	60.24	74.8
VII	95	96	20	14	2.47	94.55	49.7
VIII	80	86	13	17	0.65	84.40	74.6
IX	72	71	33	4	1.11	62.14	89.4
X	83	83	27	8	3.69	54.30	90.3
XI	62	77	20	5	4.44	45.11	64.0
XII	75	63	17	7	1.98	39.45	88.4
XIII	93	93	15	5	4.65	40.93	87.6
ARMM	64	36	42	15	0.44	29.46	82.7
Notae: a/ Access to uncefe water and uncenitary tailets are expressed in percentage of families							

Notes: a/ Access to unsafe water and unsanitary toilets are expressed in percentage of families.

Sources of basic data: 2016 Philippine Statistical Yearbook, DPWH, DILG, NEA

**Human Development.** The human development index (HDI) is a summary measure of human development based on three dimensions: health, education, and standard of living. It takes into account indicators such as life expectancy, years of schooling, and per capita income. Based on the 2012 HDI Report, the overall HDI for the Philippines is 0.644 (with 1 being the highest). The HDI for the ARMM provinces were considerably below the

b/ Sitio refers to the territorial enclave that forms part of a barangay, which may be distant to the barangay center. c/ Negros Island Region (NIR) with about 80% sitio electrification and 89% energy connection is not included.

d/ Teledensity is expressed as a whole for Region IV.

national HDI: Lanao del Sur (0.217), Sulu (0.303), Maguindanao (0.309), Tawi-tawi (0.403), and Basilan (0.419).

Table 3 shows that by comparison with other regions, the ARMM also performs low in terms of education indicators. Cohort survival (which is the percentage of enrollees at the beginning grade/year in a given school vear who reached the final grade/vear) is lowest in the ARMM. This is true for both elementary and secondary levels, but alarmingly low (39.6%) at the elementary level.

Meanwhile, results of the National Achievement Test (NAT) indicate that the state of education in the ARMM needs to be significantly improved as learning competencies in Mathematics, English and Science are below the

Table 3 **EDUCATION INDICATORS BY REGION** 

Region	Cohort Survival Rate (SY 2013 -2014)			evement Test** 4 -2015)
Ĭ	Elementary	Secondary*	Grade 6	Grade 10
PHILIPPINES	80.63	80.58	69.10	49.48
NCR	81.10	82.07	58.05	49.28
CAR	83.75	84.50	69.79	49.73
I	91.51	85.72	70.12	43.31
II	89.24	84.60	72.70	49.36
III	91.75	85.50	73.39	48.89
IVA	84.79	82.67	57.89	44.45
IVB	79.58	79.22	75.93	52.10
V	86.41	79.12	67.95	46.90
VI	87.81	82.98	73.80	52.98
VII	89.07	81.51	72.15	52.80
VIII	82.32	77.98	77.06	53.07
IX	62.53	70.29	74.84	54.28
X	74.41	74.00	72.23	51.52
XI	77.58	76.52	73.73	51.57
XII	74.91	77.15	76.12	52.44
XIII	82.13	77.09	79.58	61.40
ARMM	39.61	67.76	59.64	41.07

<sup>\*</sup> Includes both public and private secondary schools

Source: 2016 Philippine Statistical Yearbook

national average (69.1%). The achievement test results for Grade 6 pupils in ARMM are among the lowest at 59.6% along with NCR (58.1%) and Region IV-A (57.9%). The ARMM lags considerably behind other regions in Mindanao with NAT mean percentage scores ranging from 72% to 80%. Moreover, it has the lowest NAT results for Grade 10 students at 41.1%.

Another important factor that greatly influences the quality of human capital is the state of people's health. In the ARMM, prevalence of malnutrition particularly among children is relatively high and above the national average. Statistics show that 25% of children of age 5 years and below in the ARMM are considered underweight (see Table 4). The region posted the highest prevalence of stunting or underheight, and one of

Table 4 MALNUTRITION AMONG CHILDREN 0-5 YEARS OLD (2015)

		-110 OLD (2	/	
Region	F			
Region	Underweight	Stunting	Wasting	Overweight
PHILIPPINES	21.6	33.5	7.1	3.8
NCR	15.2	25.2	6.4	6.0
CAR	16.8	36.8	4.4	3.2
1	19.4	31.5	6.7	3.2
II	19.9	28.8	7.1	3.8
III	16.7	22.9	7.5	5.9
IVA	19.0	27.7	7.6	4.9
IVB	31.6	40.7	9.6	3.2
V	28.5	40.2	8.1	2.6
VI	26.5	39.9	6.3	3.3
VII	22.8	37.7	6.9	2.6
VIII	30.0	42.1	8.4	2.3
IX	21.5	38.1	7.1	2.6
X	20.8	37.0	3.9	1.9
XI	20.8	31.6	6.5	2.7
XII	26.0	40.2	6.9	2.7
XIII	23.9	36.3	8.1	1.6
ARMM	25.0	45.0	8.2	4.1

Source: 2016 Philippine Statistical Yearbook

<sup>\*\*</sup> The score is in Mean Percentage Score (MPS).

the highest in terms of overweight and wasting (the latter indicating acute malnutrition).

The development challenges in the ARMM are exacerbated by "intergenerational cycles of conflict, insecurity and displacement since 1970's". Conflict incidents and deaths were considerably rampant in various ARMM provinces (see Table 5). For the period 2011-2015, a total of 6,759 conflict incidents has been recorded. Such conflict incidents have greatly affected the socio-economic conditions in the region.

Table 5 NUMBER OF CONFLICT INCIDENTS AND DEATHS IN THE ARMM (2011-215)

Province	Conflict Incidents	Deaths
Maguindanao	3,094	1,318
Lanao del Sur	1,282	554
Basilan	1,192	534
Sulu	894	550
Tawi-tawi	297	99
TOTAL	6,759	3,055

Source: International Alert Philippines

Conflict incidents have also caused the displacement of people. The 2000 "all out war" displaced about 982,000 persons while about 145,730 families or 728,658 persons were uprooted during the aftermath of the aborted Memorandum of Agreement on Ancestral Domain (MOA-AD) in 2008. More recent incidents like the Mamasapano tragedy in 2015 also displaced more than 125,000 people in Maguindanao. Meanwhile, the ongoing conflict due to the Marawi siege has led to the exodus of people with great uncertainty of livelihood, security, and general welfare.

#### **END NOTE**

<sup>1</sup> Figures on displacement were taken from the presentation of Atty. Alaisa Alamia on "Fiscal Autonomy in ARMM" during the 3<sup>rd</sup> part of the lecture series on federalism held at the House of Representatives last 23 August 2016.

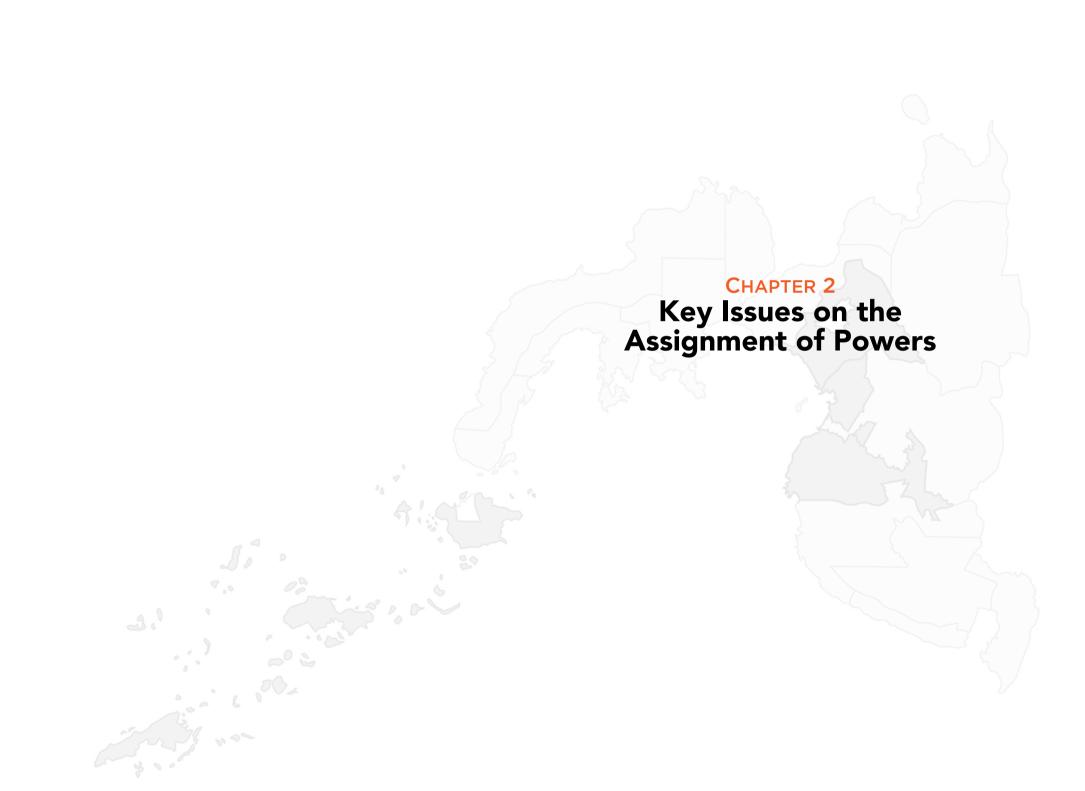
#### REFERENCES

International Alert Philippines. (October 2016). Violence in the Bangsamoro and Southern Mindanao: Emerging Actors and New Sites of Conflict 2011-2015. Conflict Alert 2016. Available online: http://conflictalert.info/publication.

Mira, R. and Gutierrez, E. (April 2017). Decentralizing Infrastructure: Promoting Regional Development in the Philippines. CPBRD Discussion Paper, Issue No. 6. Congressional Policy and Budget Research Department.

Philippine Statistics Authority. (October 2016). 2016 Philippine Statistical Year Book.

(May 2017). <i>Gros</i> Available online: psa.gov.ph	s Regional Domestic	Product, Bo	ase Year	2000:	2014-2016.
(October 2016). Available online: psa.gov.ph	2015 Full Year Officio	al Poverty S	Statistics (	of the	Philippines.



### The Autonomous Region Under a Unitary Government Setup

The Autonomous Regional Government in Muslim Mindanao (ARGMM) is the only regional government in the Philippines. It operates under a unitary government setup wherein the National Government (NG) holds all the powers of government but can delegate, amend, and take back the powers it assigned to subnational governments (i.e., LGUs and autonomous regions) (Bernas, 2006).1

Unitary government systems differ from federal systems which constitutionally guarantee, rather than grant by legislation, the status and powers of regional governments (RGs) (Riker, 1964; Hutchcroft, 2016).<sup>2</sup> Thus, RGs in federal systems possess the right of existence and their powers could not be unilaterally changed by the NG without their consent.

Traditional unitarism treats subnational governments as NG's administrative divisions under its direct control and supervision. However, the unitary government setup in the Philippines differs from traditional unitarism because it provides some constitutional empowerment of LGUs, encourages local political autonomy, and authorizes the creation of autonomous regions (Bernas, 2009). Still, LGUs and the only autonomous region in the country exercise powers delegated by the NG. The powers, functions, and responsibilities not granted to autonomous regions form part of the NG's residual powers.<sup>3</sup>

While Section 20, Article 10 of the 1987 Constitution enumerates the powers (e.g., administrative organization, creation of sources of revenues) of autonomous regions, it requires that these powers be defined through a national law (i.e., the Organic Act).

Like other autonomous regions in the world, the ARMM has features of a territorial autonomy setup, which has a regional parliament with power to legislate and an elected executive that implements regional legislation within the region's geographic jurisdiction (Benedikter, 2009). Having

territorial autonomy under a unitary government setup, an autonomous region has special status compared to other subnational territories and thus enjoys some considerable powers of self-government (Ghai, 2016).<sup>5</sup>

In old federal systems like the United States, the assignment of exclusive and shared powers of government is only between the federal/national government and the state/regional governments. Prior to the creation of autonomous region in the country, the assignment of powers, functions and responsibilities was only between the NG and LGUs.<sup>4</sup> The creation of autonomous regions in 1987 further complicated the assignment of powers under a unitary government setup because three levels of government (i.e., the NG, RG and LGUs) are involved.

# **Principles Governing the Assignment of Powers**

The assignment of functions to different levels of government is one of the most fundamental issues in federal systems (Shah, 2007). It has implications on the effectiveness and accountability of government: it provides guidance on the performance of exclusive (Boex, 2015)<sup>5</sup> and shared governmental functions.

It is important to recognize that the delivery of government services involves different types of responsibilities: (1) policy-setting and regulation, (2) financing, (3) provision<sup>6</sup>, and (4) production. The delivery of government services also involves different types of inputs: (1) functionaries or human resource, (2) operation and maintenance, (3) supplies, (4) facilities, and (5) coordination and monitoring.<sup>7</sup>

If all the dimensions pertaining to the performance of a particular government function are assigned to one government level, then it may be referred to as an "exclusive" central or local government function. When the different dimensions of a government function are performed or assigned to different government levels, it is then referred to as a shared, joint or "concurrent" function (Boex, 2015).

There is no single best assignment of functions and responsibilities that can be prescribed for all jurisdictions at any given time. Nonetheless, there are rules and principles that can guide the assignment of functional responsibilities to different levels of government. More importantly, the assignment of functions and functional responsibilities must be clear and stable.

The principle of subsidiarity favors the assignment to the lowest level of government that can deliver certain public services (such as social welfare services) in the most efficient manner (see Boex, 2015:7; Shah, 2007). As they are closer to the communities they serve, local policy makers are presumed to be more informed about, and responsive to, the needs and service preferences of communities they serve.

Fiscal equivalence suggests the assignment of a public service to a level of government whose jurisdiction is the same as the service's "benefit area" (Boex, 2015). It assumes correspondence between those who benefit from a service and those who pay for it. Some services such as national defense whose benefit areas transcend the political jurisdictions of local and regional governments are thus more suitable as an NG assignment. Solid waste collection is more suitable as a municipal government function because its "benefit area" is confined within the political jurisdiction of the municipality paying for such service. Services such as sewerage and transportation facilities have externalities or spill-over benefits and costs beyond the jurisdiction of local government units (LGUs) providing them. The various responsibilities involved in the delivery of such services may be assigned jointly to jurisdictions absorbing the externalities.

The affected local or regional governments can work jointly to manage or address the externalities of certain functions. Alternatively, a higher level of government can be assigned the responsibility of coordinating the actions of LGUs affected by and addressing these externalities.

Equity is another consideration in the assignment of functions and responsibilities. For instance, to fulfill every Filipino citizen's right to quality

education, the NG may set minimum national standards for basic education services provided by the RG. It may also help finance the RG's provision of education services to correct regional inequities due to varying fiscal capacities of regional governments (Shah, 2007).

The complexity of government functions makes it prudent to design shared assignments between levels of government. However, to avoid over- or under-provision of a service, shared assignments must clearly define the roles of various levels of government (Ibid.).

Three major issues characterize the assignment of powers, functions, responsibilities and public services in the ARMM context: (1) contending and unstable legal framework; (2) unclear assignment; and (3) limited autonomy.

### **Contending and Unstable Legal Framework**

The ARMM legal framework consists of separate national laws and executive orders as well as regional laws. 8 The ARMM Organic Act (RA 6734 as amended by RA 9054) is the primary national law that defines the RG's powers, functions, and responsibilities. 9 10 It empowers the RG to promote comprehensive and integrated regional, urban and rural development planning within the ARMM<sup>11</sup> and to design its administrative organization. <sup>12</sup> It empowers the RG to exercise general supervision<sup>13</sup> over ARMM-LGUs in the region.

The 1989 ARMM Organic Act (RA 6734) empowered the RG to enact a Regional Local Government Code (RLGC). 14 However, because the NG has powers over LGUs under a unitary government setup, the national legislature has powers to pass laws governing LGUs without considering the special status of ARMM-LGUs. Thus, two years after giving the RG the power to enact an RLGC, the Philippine Congress enacted the 1991 Local Government Code (LGC) into law. The LGC applies to all provinces, cities, municipalities, and barangays in the ARMM until the RG's enactment of an RLGC. 15

The Organic Act itself has provisions that constrain the RG's power over ARMM-LGUs. Thus, while the RG through its regional legislature has power to enact an RLGC under RA 9054 (Section 1, Article IV), it may not pass any law that reduces the powers and functions of LGUs under the 1991 LGC. This provision, in effect, makes the LGC the default legal framework for ARMM-LGUs.

The NG's power to pass laws governing LGUs including those in the autonomous region has made the RG's assigned powers not only unclear but also confusing. For instance, the enactment into law of the 1991 LGC effectively devolves to ARMM-LGUs certain powers, functions, and responsibilities of the NG already assigned to the RG under the 1989 Organic Act (RA 6734). The passage of a national law (the 1991 LGC) has thus created confusion on the assigned powers, functions, and responsibilities not only of the RG but also its constituent LGUs in the ARMM.

The enactment of the 1995 RLGC (MMAA 25) by the Regional Legislative Assembly (RLA) has added confusion as not all NG powers, functions, and responsibilities devolved to LGUs under the 1991 LGC were devolved to ARMM-LGUs. In the ARMM context, there is thus confusion as to which laws (i.e., RA 9054, RA 7160, or MMAA 25) define the scope of powers, functions, and responsibilities of the RG and its constituent LGUs.

Under Executive Order (EO) 133 which was issued by the President in 1993 based on the 1989 ARMM Organic Act, the RG has the power of administrative control and supervision over all regional, provincial, city, municipality, district and barangay health units and government-owned or controlled establishments such as hospitals. This power of the RG, however, overlaps with the power of LGUs under the 1991 LGC to operate health facilities (hospitals, health centers) necessary to carry out health services.

The separate laws governing the assigned responsibilities of the RG and ARMM-LGUs have resulted in a confusing setup for health, agriculture, and

social welfare. While these functions are assigned to LGUs under the 1991 LGC and the 1995 RLGC, in practice, they are still being performed by the RG. The RG appoints and pays for the salaries of devolved social welfare, health and agriculture personnel. Outside ARMM, same set of responsibilities is assigned to and performed by LGUs.

For instance, the Provincial Health Officer (PHO), who is one of the mandatory officials of the Provincial Government (PG) under RA 7160 and in the 1995 RLGC, is appointed by the Regional Governor and receives salary from the Regional Government. However, based on a 2002 Supreme Court (SC) decision, the Provincial Governor has the authority to control and supervise the Provincial Health Officer appointed by the Regional Governor<sup>16</sup> (see Box 1). This complicates both local and regional governance because a PG official appointed by the Regional Governor and who receives salary from the RG would tend to be accountable to the RG instead of the PG.

In agriculture, some PG officials interviewed in this study reported that the RG-appointed Provincial Agricultural Officer (PAO), also one of the mandatory PG officials under the 1991 LGC, barely coordinated with the Provincial Governor. Because of this, the Provincial Governor appointed the province's own PAO based on his authority under the 1991 LGC. This resulted in the duplication of the PAO positions serving the same benefit area for agricultural extension services.

Outside the ARMM, social welfare services are delivered by LGUs who appoint and pay for the salaries of social welfare officers. In the ARMM, instead of being an enabler and policy setter, the RG acts as a direct provider and producer of social welfare services although social welfare is one of the devolved functions of LGUs under the 1991 LGC and the 1995 RLGC. Under its Regional Administrative Code (MMAA 287), it is mandated to operate provincial, city and municipal social welfare services.

#### Box 1 CONTENDING LEGAL FRAMEWORK IN HEALTH

One of the key issues addressed in a 2002 Supreme Court (SC) ruling involves the RG's power of supervision and appointment of a Provincial Health Officer (PHO) in the ARMM. The SC set aside an earlier decision of the Court of Appeals (CA) that upheld the Provincial Governor's power to appoint a PHO under the 1991 Local Government Code (LGC), which devolved the NG's health function to LGUs and made the PHO a mandatory appointive official of the Provincial Government (PG).

The SC said that upon the passage of RA 6734 (1989 Organic Act), the national Minister of Health still had the authority to appoint a PHO, who was then an NG official under the 1984 LGC, which was in effect then. From the passage of RA 6734 until the issuance of EO 133 in October 1993 transferring the DOH's powers to the RG, the PHO remained an NG rather than RG or PG official. The SC said that the 1991 LGC, which empowers the Provincial Governor to appoint the PHO, did not actually amend RA 6734 because as an ordinary statute it can only amend the Organic Act if it is affirmed through a plebiscite.

EO 133 transferred the powers of supervision and control of the national Health Secretary to the Regional Governor, and thus made the PHO an RG official. However, the enactment of the 1995 Regional Local Government Code (RLGC) effectively made the PHO a PG official even if he/she is appointed and paid by the RG.

The Regional Governor's power to appoint a PHO under the RLGC was subject to the requirement that the Regional Governor appoints the PHO from a list of three recommendees of the Provincial Governor. If a province is willing to shoulder the salary of the PHO, then the Provincial Governor can be the appointing authority. The 1995 RLGC also gives the Provincial Governor the power of supervision and control over all provincial government officials which include the PHO.

However, RA 9054 adopted, as a minimum, the devolution under RA 7160. It gives a Provincial Governor in the ARMM the same powers and functions of a Provincial Governor under RA 7160. It limits the power of the regional legislature to amend the regional LGC, to reduce a Provincial Governor's power to supervise the PHO under RA 7160.

Source: G.R. No. 116850, April 11, 2002.

The contending legal framework has resulted in the under-provision of health and social welfare services. ARMM-LGUs are not allocating as much for devolved functions under the 1991 LGC because they consider these as RG functions and, in fact, they see the RG performing these functions. ARMM-LGUs may find it difficult to provide funds for LGU functions performed by RG officials who are not accountable to them. The DBM is also reluctant to provide as much funds to RG for these functions that were devolved to the LGU because funds for these functions are already part of the IRA given to ARMM-IGUs.

# **Weak Supervisory Power of RG Over ARMM-LGUs**

Another issue created by the contending legal framework for the ARMM is the weak RG power of supervision over its constituent LGUs. Pursuant to Section 4, Article X of the 1987 Philippine Constitution, the President is vested with the constitutional power of general supervision over local governments. Same provision provides higher-level LGUs with the power to exercise general supervision over their constituent LGUs: "Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions." However, this same constitutional power is not assigned to autonomous region under the 1987 Philippine Constitution. 17

The RG's power of general supervision over ARMM-LGUs is not based on a constitutional but on a statutory provision specifically Section 1, Article V of RA 9054 which provides that "the power of supervision of the President over the provincial governors and the mayors of the highly urbanized cities shall be exercised through the Regional Governor."18 Under this provision, the regional governor is only a designated agent of the President exercising his or her constitutional power of general supervision over LGUs.

but to the NG. These fiscal accountability arrangements, together with the reporting requirements under the 1991 LGC provisions, have oriented the accountability of ARMM-LGUs more towards the NG than to the RG.

Under the 1991 LGC, provinces are assigned the power of ensuring that the acts of component cities and municipalities within their territorial jurisdiction are within the scope of their prescribed powers and functions. 19 The Provincial Governor can review all executive orders promulgated by mayors of component cities and municipalities of the province, to check conformity with existing laws including provincial, city or municipal ordinances.<sup>20</sup> In addition, the Sangguniang Panlalawigan (SP) has the power of review over municipal ordinances and even resolutions approving local development plans and public investment programs formulated by local development councils.<sup>21</sup>

# In comparison, the RG's power of supervision over its component provinces appears weaker than those assigned to the province. The ARMM Organic Act does not specify the power of the Regional Legislative Assembly (RLA) to review the provincial ordinances and resolutions passed by the Sangguniang Panlalawigan within the ARMM. In addition, while the Regional Local Government Code (RLGC) specifies the Regional Governor's power of review over executive orders promulgated by ARMM provincial governors, 22 it does not specify and define the RLA's power to review local government ordinances.

The RG's power of supervision over its component provinces does not cover the power to review the annual or supplemental appropriations ordinances of ARMM provinces. In fact, under both the 1991 LGC<sup>23</sup> and the 1995 RLGC,<sup>24</sup> the power to review the annual or supplemental appropriations ordinances of provinces is assigned to the DBM. Furthermore, while municipal, city and provincial budget officers are required by the 1991 LGC to submit periodic budgetary reports to the DBM,<sup>25</sup> there is no similar reporting requirement on ARMM-LGUs to the RG.

The RG's power of supervision over its component LGUs is further weakened by the fact that ARMM-LGUs receive financial transfers (i.e., Internal Revenue Allotment and other financial assistance) directly from the NG, and are thus required to submit fiscal accountability reports not to the RG

# **Unstable Legal Framework**

Another key issue is the unstable legal framework for the ARMM arising from the fact that the powers, functions, and responsibilities of the RG are not enshrined in the 1987 Philippine Constitution. Rather than enshrining the powers of autonomous region in the 1987 Constitution, Section 20 thereof only provides that such powers shall be defined by a national law (i.e., the Organic Act) to include 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) other matters authorized by law for the promotion of the general welfare of the people of the region.

The RG's powers under a national law (i.e., the Organic Act) can be declared inoperative by the courts. For instance, a Supreme Court (SC) ruling<sup>26</sup> has made the power of the RG to create provinces<sup>27</sup> unconstitutional because it conflicts with the NG's exclusive power under the 1987 Philippine Constitution to create legislative districts (see Box 2). The Shariff Kabunsuan case highlights the need to strengthen the constitutional basis for the RG's powers.

Since the powers, functions, and responsibilities of the RG are specified by a national law than by the Constitution, they can also be amended by other national laws. Under RA 9054, the Organic Act can be amended through: (1) a supermajority vote of two-thirds of the membership of the House of Representatives and the Senate, voting separately;<sup>28</sup> (2) a supermajority approval (two-thirds vote) of the members of the Philippine Congress on proposed amendments made by regional legislature<sup>29</sup> and (3) a majority of the votes cast in a plebiscite of any amendment of the Organic Act. 30 These

provisions seem to indicate that amending the Organic Act is difficult. They were reinforced by an SC ruling in April 2002 saying that an ordinary national law, passed only by a majority vote of the membership of the Philippine Congress, cannot amend an Organic Act.

However, in February 2012, the SC essentially declared the supermajority and plebiscite requirements to amend the Organic Act unconstitutional.<sup>31</sup> The SC said that the supermajority vote requirement violates the principle

#### Box 2 **UNCLEAR ASSIGNMENT OF RG POWER TO CREATE A PROVINCE**

In August 2006, the RLA passed MMAA 201, creating the Province of Shariff Kabunsuan composed of eight municipalities from the Province of Maguindanao whose voters ratified the regional law in a plebiscite in October 2006. However. the creation of this new province led to a constitutional issue: whether a province created by regional law is entitled to have one representative in the national legislature?

Those supporting the constitutionality of MMAA 201 said that when a province is created by a regional law, a representative district in the Philippine Congress is created by automatic operation of Section 5 (3), Article VI of the 1987 Philippine Constitution. Those who said that MMAA 201 was unconstitutional argued that the province referred to in the Philippine Constitution is one created by an act of the Philippine Congress.

The Supreme Court ruled that the RLA's power to create a province is unconstitutional because it requires also the power to create a legislative district. Congress is a national legislature, thus, only a national law creating a new province can authorize any increase in its membership.

While the RLA abstained from creating a legislative district under MMAA 201, the SC said the regional law is still unconstitutional because it violates the constitutional requirement that each province shall have at least one representative in the national legislature.

Source: Consolidated En Banc Resolution of the Supreme Court on G.R. No. 177597 and G.R. No. 178628, July 8, 2008.

that Congress cannot pass irrepealable laws.<sup>32</sup> It said that the higher vote threshold to amend the ARMM Organic Act effectively takes RA 9054 beyond the reach of the amendatory powers of Congress.

The plebiscite requirement was also declared unconstitutional by the SC because it would "impede Congress from enacting laws that timely address problems as they arise in the regions" (Ibid.). The SC viewed the plebiscite requirement "an unreasonable enlargement of the plebiscite requirement set forth in the Constitution"

An ordinary national law can thus amend the Organic Act without complying with the supermajority and plebiscite requirements. In fact, the 1991 LGC (RA 7160) amended the 1989 ARMM Organic Act (RA 6734) by providing that the LGC shall apply to all provinces, cities, municipalities and barangays in the ARMM until such time as the RG shall have enacted its own RLGC.33 While the SC said that RA 7160 did not take effect in the ARMM until 2001. when RA 9054 adopted the LGC as the minimum standard for ARMM-LGUs, in practice, RA 7160 has governed the accountability of the ARMM-LGUs to the NG. The SC decision declaring the supermajority vote and plebiscite requirements to amend the Organic Act unconstitutional makes the legal basis for the RG's powers unstable. The unstable legal framework highlights the need to enshrine the assigned powers, functions, and responsibilities of the RG in the national constitution.

The unstable legal framework is also due to the fact that the EOs issued by the President operationalizing the RG's assigned powers, functions, and responsibilities under the Organic Act, can be repealed or amended by the NG. For example, the RG's devolved powers in higher education under EO 459 (May 1991) were repealed by the passage in 1996 of RA 7722 creating the Commission on Higher Education (CHED).34 While EO 315 issued by President Fidel V. Ramos re-devolved the functions of the CHED to the ARMM,<sup>35</sup> it initially retained the RG's power, previously devolved under EO 459, to establish and operate new private schools and programs on higher education in the region.

Some powers of the RG could also be affected by orders and guidelines issued by national government agencies (NGAs). For example, prior to DBM's adoption of line-item budgeting guidelines to promote fiscal transparency. the RLA normally passed an annual Regional Assembly Public Works Act (RAPWA) which specified the list of projects charged against the NG's lumpsum allocation for ARMM's infrastructure development, after the passage of the annual General Appropriations Act (GAA). The list of projects under the RAPWA enacted by the RLA after the passage of the GAA was never subjected to the scrutiny of the national legislature. With line-item budgeting, however, the RLA had to concur in advance to the list of ARMM infrastructure projects<sup>36</sup> incorporated in the proposed national budget submitted for scrutiny and approval by Congress. The DBM's use of line-item budgeting thus subjected the RLA's appropriations power to the scrutiny of the national legislature.

Another example pertains to the RG's power to issue Environmental Compliance Certificate (ECC) to mining firms pursuant to its power under Section 5, Article XII of RA 9054 to exercise control and supervision over the exploration, utilization and development of minerals and natural resources within the ARMM except for strategic minerals such as uranium, petroleum, and other fossil fuels. However, the Department of Environment and Natural Resources (DENR) issued Department Administrative Order (DAO) No. 2012-7, classifying nickel as one of the strategic minerals, thus taking away the RG's power to issue an ECC to firms that want to mine nickel in the region.

In summary, owing to a unitary government setup, the existing powers of the RG are vested not by the Constitution but by a national law, whose provisions can be declared unconstitutional, amended by other national laws, or can be taken back by the NG. In addition, most of the powers of the RG are operationalized by EOs, which can similarly be repealed or amended. These issues highlight the need for a clearer and stable legal framework defining and enshrining the powers of the RG under the national constitution. A federal government setup can potentially give more clarity and stability to the RG's powers because they are constitutionally enshrined and cannot be easily taken back.

# **Unclear Assignment of Powers and Responsibilities**

Clarity of assignment lessens conflicts and confusions in the powers, functions, and responsibilities of various levels of government in multilevel governance setup such as federations. It enhances accountability by providing guidance and impetus for policy and service-delivery initiatives of various levels of government.

Clear delineation of assignments within shared functions may be achieved by defining the functional responsibilities and tasks of various levels of government as planners, policy setters, financiers, providers, producers, coordinators or regulators of government functions and their component services. It is critical in the provision and production of public services because it shapes the decisions, activities, and accountabilities of various levels of government.

Unclear assignment of powers, functions, and responsibilities is a pervasive problem in the ARMM context. It manifests in the unclear delineation of the responsibilities and tasks of the NG, RG and LGUs in shared functions. Annex 1 summarizes the key powers and functions of the RG under RA 9054 (the 2001 ARMM Organic Act) while Annex 2 maps out the functional responsibilities of the NG, RG and LGUs under same law. What these tables essentially demonstrate is that the NG has exclusive functions<sup>37</sup> in more than 15 policy areas including foreign affairs and national defense; in comparison, because of the NG's role as the primary policy setter<sup>38</sup> in all government functions, the RG essentially has no exclusive functions. The non-exclusive assignment of RG functions makes the unclear delineation of NG and RG responsibilities and tasks within these functions a major concern.

Several observations may be drawn from Annex 2 on the assignment of powers in the ARMM. While the RG's assignments are dispersed across the seven functional responsibilities<sup>39</sup>, they are more pronounced in (1) provision, (2) production, and (3) policy setting. Across the 36 functions/ sub-functions in Annex 2, the RG's assignments in regulation, financing,

planning, and coordination are not as pronounced compared to provision, production, and policy setting.

Meanwhile, the NG's specified and implicit powers and responsibilities and tasks under RA 9054 occur more frequently in (1) policy setting, (2) provision, and (3) production. The NG's responsibilities are least specified in regulation, financing, coordination, and planning. It is important to remember that even with the creation of autonomous regions under a unitary government setup, the NG has residual powers as provided under Section 17, Article X of the 1987 Philippine Constitution which states that "all powers, functions, and responsibilities not granted by the Constitution or by law to the autonomous regions shall be vested in the National Government."

Annex 2 suggests that in the performance of RG's devolved functions, the NG and RG interface more in the dimensions of policy setting, provision, and production. However, the delineation of NG and RG tasks is unclear because the approach to the assignment of powers is to specify the RG's powers, functions, and responsibilities and then to assign whatever is not specified as part of the NG's policy jurisdiction. Various EOs operationalizing regional autonomy largely use the same approach. For instance, EO 426 uses the vague language of residual powers to define the NG's jurisdiction in infrastructure. It provides that "functions not specified herein shall be retained by the DPWH"40 (see Box 3).

In basic education, the assignment of powers features NG and RG interfaces in policy setting and even in the assigned operational activities of institutions providing and producing basic education services (see Annex 3).41 In policy setting, the RG has the power to formulate basic education policies in the ARMM. Its assigned power, however, is subordinate to the NG's constitutional power to set education policies and standards to protect and promote the right of all citizens to quality, complete, adequate, relevant and integrated system of education at all levels. 42 The RG's power to set regional education policies is not delineated from the NG's policy-setting power because it has to observe national education policies set by the NG under a unitary government setup.

#### Box 3

#### ASSIGNMENT OF POWERS IN INFRASTRUCTURE **UNDER EO 426**

- Transfer of control and supervision. The offices of the DPWH within the ARMM including their functions, powers, and responsibilities, personnel, equipment, properties, budgets and liabilities are placed under the control and supervision of the RG (Section 1).
- Functions Transferred. The RG shall be responsible for highways, flood control and water resource development systems, and other public works within the ARMM. It shall exercise the following functions (Section 2):
  - 1. Undertake and evaluate the planning design, construction and works supervision for the infrastructure projects whose location and impact are confined within the ARMM:
  - 2. Maintain the infrastructure facilities within the ARMM and supervise the maintenance of such local roads and other infrastructure receiving financial assistance from the NG:
  - 3. 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:
  - 4. Provide technical assistance related to their functions to other agencies within the ARMM, especially the local government units;
  - 5. Coordinate with other national and regional government department agencies, institutions, and organizations, especially the local government units within the ARMM in the planning and implementation of infrastructure projects;
  - 6. 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.
- Functions Retained by the NG. Functions not specified herein shall be retained by the DPWH. These include, among others, the NG's reserved powers in accordance with Article V, Section 2, as well as those subject to specific provisions, of Republic Act No. 6734. The DPWH and the RG may enter into a Memorandum of Agreement (MOA) with reference to operationalizing these functions within the ARMM subject to the approval of the Office of the President, provided that the NG's operations are not prejudiced (Section 3).

In operational activities, the NG through the Instructional Materials Council (IMC) of the national education department was given the primary responsibility for the selection and adoption of textbooks for use in public elementary and secondary schools in the ARMM under EO 459 issued pursuant to the 1989 ARMM Organic Act. The preparation, writing, revision and printing of textbooks became a concurrent NG-RG responsibility under the 2001 ARMM Organic Act. 43 However, the distinct tasks of the NG and RG in performing this responsibility were not clearly delineated. As a consequence. under the 2011 Regional Administrative Code (MMAA 287), the RG made the development of textbooks and other instructional materials for the use of schools in the ARMM as its responsibility.<sup>44</sup>

In summary, under a unitary government setup, it is not easy to clearly delineate the powers of the RG from the NG. While the RG's powers are specified by the Organic Act, its policy jurisdiction could not be easily delineated from that of the NG with overarching and superior policy-setting and other residual powers of government.

### **Unclear Scope of Assignment**

Because of a unitary government setup, the NG's powers often extend to the geographic and policy jurisdictions assigned to the RG under the ARMM Organic Act. Through its national programs, the NG continues to get involved in the performance of certain functions and the provisions of public services, which had been assigned to the RG under the ARMM Organic Act and various EOs operationalizing regional autonomy by function. This arrangement in the assignment of powers, however, makes it difficult to clearly define the scope of essentially national and regional government functions and responsibilities.

In education, the RG is given the power to enact legislation for the development and strengthening of the Madrasah education<sup>45</sup>, which focuses on teaching Arabic language and Islamic values to Muslim learners in the ARMM. However, it is specifically the national Department of Education (DepEd) rather than the RG's education department that is given the power to supervise the Madrasah education system in the region, which is supposed to be the competence of the RG. The national DepEd also has the power to review, and submit monthly reports to the Philippine Congress on, the Madrasah education system.

Another issue is the NG's retention of some essential responsibilities of its offices that were devolved to the RG. For example, EO 435 provides that all offices of the Department of Transportation and Communication (DOTC) existing in the ARMM are transferred to and placed under the control and supervision of the RG. However, the powers, functions, and responsibilities of the Land Transportation Office (LTO) transferred to the RG exclude car registration services and cover only the issuance of driver's license to operate motor vehicles, registration of motorcycles and motorcycles, enforcement of transportation and traffic laws, and the issuance of regulations to govern traffic and transportation in the ARMM. As a result, the RG ended up with its own LTO that has no authority to carry out a service commonly associated with that NG office.

Because the NG has retained the car registration function, it continues to operate LTO extension offices in Maguindanao, Marawi City and other ARMM areas. In Shariff Aguak in Maguindanao province, the national LTO extension office coexists with the RG's LTO which has no power of car registration. However, the national LTO extension in Shariff Aguak is not yet connected to the national LTO database and could only issue manual registration paper. As a result, car owners in the ARMM would prefer to renew their car registrations in LTO offices outside the ARMM.

A dominant feature of the devolution framework for the ARMM is the NG's retention of attached bureaus and offices of NGAs devolved to the RG.<sup>46</sup> For example, under EO 460, the NG devolves the powers and functions of the Department of Agriculture (DA) to the RG. These powers and functions include, among others, providing integrated services to farmers and fishermen and other food producers, and planning, formulating and implementing policies and programs relating to agriculture/food production and supply.

FO 460 does not devolve the DA's bureaus such as the Bureau of Animal Industry (BAI) to the RG, but only makes available the technical expertise of these bureaus. While the BAI performs national functions such as prescribing quality standards in the importation, distribution and sale of livestock, some of its functions like coordinating projects relating to livestock, poultry and allied industries<sup>47</sup> can be devolved to the RG. Similarly, some services of the Bureau of Fire Protection of the DILG such as the prevention and suppression of fires on buildings, houses and other structures may also be devolved to the RG. The devolution framework--largely excluding essentially regional functions and responsibilities of attached bureaus and offices of NGAs devolved to the RG—limits the menu of public services that the RG can deliver to its constituents.

Another key issue arises from the NG's provision of functions, responsibilities, and services devolved to the RG. The complexity of government functions provides legitimate reasons (e.g., ensuring equity in the provision of education services to citizens) for the NG's involvement as policy setter, regulator and financier of RG's devolved functions, responsibilities, and services. In fact, as a related example under the 1991 LGC, the NG's performance of devolved LGU functions is allowed to augment the basic services and facilities assigned to LGUs when such services are not made available or are not adequate to meet the requirements of its inhabitants. 48 At times, however, the NG's involvement in RG's devolved functions is out of bounds of what is considered legitimate.

For example, in a case<sup>49</sup> resolved by the SC, the DPWH created a district engineering office (DEO) in Marawi City which was not yet a part of the expanded ARMM prior to 2001. However, the responsibilities of this DEO included the supervision and control of infrastructure projects in the province of Lanao del Sur, which is already part of the ARMM upon its creation in 1989 (see Box 4). The SC said that the NG's act of re-establishing a part of its policy jurisdiction devolved to the RG is unconstitutional because it violates the State policy on regional autonomy.

#### Box 4 ESTABLISHMENT OF A NATIONAL DPWH DISTRICT **ENGINEERING OFFICE IN MARAWI CITY**

EO 426 issued in October 1990 placed the national DPWH offices within the ARMM including the DPWH District Engineering Office (DEO) in the Province of Lanao del Sur under the RG's control and supervision. In May 1999, the DPWH through Department Order (DO) 119 created the Marawi Sub-District Engineering Office with jurisdiction over all national infrastructure projects and facilities under the DPWH within Marawi City (which was not yet part of the ARMM before 2001) and the Province of Lanao del Sur. one of the component provinces of the ARMM. In January 2001, prior to the enactment of RA 9054, the Philippine Congress also passed into law RA 8999 which established a DEO in the First District (which includes Marawi City) of the Province of Lanao del Sur.

A petition was filed before the Supreme Court to declare DO 119 and RA 8999 unconstitutional. The Office of the Solicitor General argued that DO 119 was valid because it was in accordance with DPWH's powers under existing laws. It also argued for the constitutionality of RA 8999, stating that the powers of the ARMM did not diminish the legislative powers of Congress to create such an office.

The SC ruled that DO 119 and RA 8999 were unconstitutional. It said that the powers and responsibilities of the DEO in Marawi City/First District of Lanao del Sur were almost identical to that of the DPWH-ARMM, affecting the performance of duties of ARMM employees to implement public works projects in Lanao del Sur. It said that RA 8999 is unconstitutional because it attempted to establish the NG's jurisdiction over infrastructure programs in a component province of the ARMM. It added that RA 8999 is unconstitutional because it recalled the NG powers devolved to the RG, thereby violating the state policy to ensure the autonomy of autonomous regions.

Source: G.R. No. 149848 (Disomangcop and Dimalotang vs Datumanong and Boncodin)

Another related issue illustrating the unclear scope of assignment is the NGAs' implementation of national programs in the ARMM providing goods and services (e.g., roads) falling within the RG's assigned functions and responsibilities. The NGAs implement national programs in the ARMM by entering into a Memorandum of Agreement (MOA) with RGAs acting as the NG's agents in delivering goods and services related to the RG's devolved functions and responsibilities. Because of the unclear assignment especially within shared functions, implementing national programs in the ARMM extends to functions, responsibilities, and services devolved to the RG.

NG implementation of national programs covering RG's devolved functions is different from NG augmentation of basic services assigned to LGUs under the 1991 LGC. The overriding goal of NG implementation of national programs is to ensure the provision of certain NG services. Because of their nationwide coverage, implementation of national programs within the ARMM extends to functions and services assigned already to the RG by virtue of the Organic Act and various EOs operationalizing regional autonomy. NG's involvement in the provision of services assigned to the ARMM thus occurs in the context of shared functions. Shared functions between the NG and the RG are pervasive because the NG continues to have authority to perform these functions not only outside the ARMM, but also inside the region through the implementation of national programs.

In contrast, devolved services of LGUs rather than NG services are the focus of NG augmentation, which is essentially the NG's safeguard against the under-provision or non-provision of services it devolved to LGUs. Thus, under the 1991 LGC, the NG can perform local functions when LGUs fail to provide devolved services or facilities or when the level of provision is inadequate to meet the requirements of local inhabitants.<sup>50</sup>

One of the top RG officials said that the MOA governing the implementation of national programs in the ARMM mainly considers the national rather than the regional context in the formulation of program goals and implementation methods which may not be suitable to the ARMM<sup>51</sup> (e.g., in the implementation of the PAMANA program<sup>52</sup>, NG invests more in ARMM areas with good peace and situation than in conflict-afflicted areas).

Implementing national programs in the ARMM through a MOA with RGAs makes the NG the provider and the RG the producer of its assigned services. It manifests the NG's strong control powers over the national budget, which includes annual allocations for the ARMM. As the provider, the NG decides what services to deliver, the areas to be benefited, and the budget allocations for beneficiary areas in the ARMM.<sup>53</sup> As the NG's agent producing services which are also assigned to it, the RG is constrained from fully exercising its power to formulate and implement programs responsive to the needs of the ARMM.

There are instances, however, when it is proper that the RG acts as the NG's agent in delivering NG-retained services. For example, in the NG-retained function of providing quarantine services, the NG can provide and finance health-emergency measures for implementation by the RG acting as the NG's agent in preventing the rapid spread of infectious disease to a large number of people inside and outside the ARMM.

Because the RG depends on national program funds, hence, it delivers services guided by national program goals. One RG official pointed out that the one-size-fits-all approach of national programs does not give much leeway to the RG in formulating and implementing service-delivery programs more responsive to the needs of communities that it serves.

# **Overlapping RG and LGU Powers and Responsibilities**

A major issue affecting the operations of the RG and its constituent LGUs is their overlapping assignments brought about by the NG's power under a unitary government setup to pass national laws defining not only the powers, functions, and responsibilities of the RG but also of its constituent LGUs. It also arises from the unclear policy of the State on the primary accountability of LGUs in the autonomous region to the RG.

Overlapping assignments are manifested in broad if not similar functional tasks assigned to the RG and its constituent LGUs. Table 6 provides examples of these RG-LGU overlapping assignments based on the provisions of RA 9054 and RA 7160, which are the two major laws governing regional and

local autonomy in the ARMM. For instance, the RG's power to enact a regional agrarian reform law suitable to the ARMM<sup>60</sup> is not distinct from the power of the Sangguniang Panlalawigan (SP) under RA 7160 to adopt measures to enhance the full implementation of the national agrarian reform program in the ARMM. 61 Because the RLGC only adopted this same provision in RA 7160,62 the RG and LGUs have overlapping responsibility to promote agrarian reform, but with ARMM-LGUs oriented towards the national rather than the regional program.

It is not easy to clearly delineate the powers of the RG and LGUs in granting investors' incentives, promoting tourism, <sup>57</sup> and maintaining peace and order. As a result, the RG ends up having responsibilities not only for devolved national and regional functions, but also of responsibilities assigned to LGUs (see Table 6).

Table 6 OVERLAPPING POWERS AND RESPONSIBILITIES OF THE RG AND LGUS

Policy Area	RG Powers (RA 9054)	LGU Powers (RA 7160)
Agrarian Reform	Regional agrarian reform law	Measures enhancing the full implementation of the national reform law
Investors' Incentives	Incentives for investors in businesses that contribute to the development of the ARMM	Incentives to entities engaged in community growth-enhancing industries
Tourism	Primary jurisdiction in the promotion of tourism within the region	Tourism development and promotion programs including the development of tourism facilities
Transport	Establishment of transportation facilities	Establishment, operation, and maintenance of ferries and wharves
Peace and Order	Maintenance and preservation of law and order to ensure the protection of life, liberty and property in the region	Maintenance of peace and order through measures that prevent lawlessness, disorder, riot, violence, rebellion and sedition

Sources: RA 9054 and RA 7160

In health, the RG has an expansive administrative control and supervision over all regional, provincial, city, municipal, district and barangay health units.<sup>58</sup> It operates 21 hospitals and pays for the salaries of 1.500 devolved health personnel including those devolved to LGUs under RA 7160.59 Its health-related assignment overlaps not only with the LGUs' functional responsibilities of health policy setting and food safety regulation, but also with their assigned service of health education and service-delivery input such as purchase of medicines<sup>60</sup> (see Table 7).

Table 7 OVERLAPPING RG-LGU ASSIGNMENTS IN HEALTH

Particulars	RG (EO 133)	LGUs (RA 7160)
Health Policy Formulation	<b>~</b>	✓
Food Safety Regulation	✓	✓
Prevention of Communicable Diseases	✓	✓
Health Education/Information	✓	✓
Health Facilities/Hospitals	✓	✓
Purchase of Medicine	✓	✓

Sources: RA 7160 and Executive Order No. 133 (issued on October 29, 1993)

The power to create barangays, assigned to the RG under the 1989 Organic Act and to the province under the 1991 LGC<sup>61</sup>, is another example of overlapping RG-LGU assignment. The 1995 RLGC (MMAA 25) addressed this overlap by assigning the power to create barangays only to the RG.<sup>62</sup> However, the 2001 Organic Act (RA 9054) provided that the existing LGU powers under RA 7160 shall not be reduced, thereby essentially reinstating the power of the province in the ARMM to create barangays. 63

The existence of two separate and uncoordinated national laws defining the powers of the RG and LGUs has created overlapping assignments between the RG and LGUs. It has created confused accountability and blame shifting both on the part of the RG and ARMM-LGUs. RG officials say that ARMM-LGUs are not using their Internal Revenue Allotment to finance local functions and responsibilities under RA 7160 and MMAA 25. On the other hand, LGU officials interviewed in this study say that the LGUs are the ones helping the RG to perform its devolved functions (i.e., agriculture and health).

The NG's power under a unitary government setup--to enact laws governing LGUs without substantially considering the assigned powers of the RG and the distinct status of ARMM-LGUs--has created overlapping RG-LGU assignments. It is not conducive to strong coordination between the RG and its constituent LGUs and to the development of cohesive regional governance.

The NG continues to have authority over LGUs under the unitary setup. Because of this, there are direct dealings between the NG and ARMM-LGUs with regard to the implementation of the National Assistance to Local Government Units (NALGU), Priority Development Assistance Fund (PDAF) and other NG-funded national programs that tend to orient the accountability of ARMM-LGUs more towards the NG rather than the RG. These direct dealings between the NG and ARMM-LGUs undermine development of more cohesive relations between the RG and its constituent LGUs.

# **Limited Autonomy in the Exercise of Assigned Powers**

The ARMM Organic Act has features that constrain regional autonomy. Because of a unitary government setup, it requires that regional laws must not conflict with national laws. Policymakers in the ARMM have raised concerns on the RG's limited autonomy to make regional laws in policy areas where the RG is given legislative powers. 64

For example, under RA 9054, the RG has the power to enact regional laws on ancestral domains. This assigned power of the RG creates expectations that the RLA has the autonomy to pass a regional law to protect the ancestral lands of indigenous cultural communities. 65 In reality, its exercise is subject to existing national laws particularly the Indigenous People's Rights Act (IPRA).

Similarly, the Organic Act makes it the legal obligation of the RG to adopt national standards as minimum regional standards governing the delivery of public services in the ARMM. In education, for instance, the RG is required to set regional education standards using national education standards as minimum. These standards, however, are unilaterally formulated by the NG and its agencies. Because the RG has no effective participation in their formulation, national standards do not differentiate the ARMM's special circumstances from other administrative regions.

Another issue pertains to the RG's flexibility to use its legislative power on administrative organization under the ARMM Organic Act. The various EOs operationalizing regional autonomy created a legal obligation on the part of the RG to integrate NG powers, functions, responsibilities, assets, and personnel in the design and organizational structures of its Regional Government Agencies (RGAs). However, designing an effective administrative organization may require rationalization of government functions, responsibilities, and services than mere transfer of NG powers, functions, and responsibilities to the RG.

The weak power of the RG to implement some laws that it enacts is another issue limiting ARMM autonomy. It creates problems in policy implementation. and even leads to non-implementation of regional laws. For example, pursuant to Section 2, Article XVI of RA 9054, the RG enacted a regional civil service law (MMAA 304) setting qualifications for non-elective positions in the RG.66

However, because the Philippine Constitution provides that the civil service shall be administered by the Civil Service Commission (CSC),<sup>67</sup> the RG cannot set up its own civil service office to implement MMAA 304. MMAA 304 mandates instead the regional office of CSC, with no legal accountability to the RG, to implement the regional service law. This arrangement is problematic 41 KEY ISSUES ON THE ASSIGNMENT OF POWERS

**END NOTES** 

because the CSC may not implement the regional law when it is not in accord with the national civil service law.

Another example is the RLA's creation of municipalities and barangays, which were declared by the DBM as ineligible to receive Internal Revenue Allotment (IRA) shares for failing to meet the requirements for creating LGUs under RA 7160. However, even when some of these LGUs created have met eventually the requirements under RA 7160, they are still not receiving their IRA shares. Note that under Section 19, Article VI of RA 9054, the RG must shoulder the financial requirements for the operations of LGUs created based on standards lower than prescribed under RA 7160.

RG's power to grant incentives to investors<sup>68</sup> is limited by the participation of NGAs in policy implementation. For example, the Regional Board of Investments (RBOI) cannot grant tax incentives to proponents of power-related projects unless they bring an endorsement from the Department of Energy. Implementation of the RG's tax incentives for the importation of capital equipment also requires the participation of the Bureau of Internal Revenue and the Bureau of Customs.

<sup>1</sup>Fr. Joaquin G. Bernas, S.J. 2006. "Charter Change: the Burning Issues." See also description and discussions of unitary government systems from https://www.britannica.com/topic/unitary-system.

CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 42

- <sup>2</sup> William Riker, 1964:11 cited in Gerring, John and Strom C. Thacker and Carla Moreno.2007. "Are Federal Systems Better than Unitary Systems?"; see also 2016 Hutchcroft, Paul. "Federalism in Context: Laying the Foundations for a Problem-Driven Process of Political Reform."
- <sup>3</sup> Section 17, Article X, 1987 Constitution.
- <sup>4</sup>Batas Pambansa Blg. 337 (February 10, 1983)
- <sup>5</sup>Boex (2015) explains that the assignment of function (e.g., health, education, and infrastructure) is exclusive when all functional responsibilities (i.e., policy setting and regulation, financing, provision and production) involved in the performance of this function are given only to the same level of government. A function is considered shared when functional responsibilities are distributed to different levels of government.
- <sup>6</sup>In performing its responsibility for service provision, a certain level of government is the one making decisions on the kinds and levels of services to be produced. (Boex, 2015).
- <sup>7</sup>These insights are primarily based on Boex (2015).
- <sup>8</sup> These separate national and regional laws and executive orders constituting the ARMM legal framework include the following: (1) Republic Act (RA) Nos. 6734 and 9054; (2) various Executive Orders (EOs) issued by the Philippine President to operationalize regional autonomy; (3) other national laws (e.g., 1991 Local Government Code); (4) regional laws enacted by the ARMM Regional Legislative Assembly (RLA) including the 1995 Regional Local Government Code, the 2011 Regional Administrative Code, and other Muslim Mindanao Autonomy Acts (MMAAs) creating and defining the powers and functions of various Regional Government Agencies (RGAs).
- <sup>9</sup> The ARMM Organic Act (RA 6734, RA 9054) gives the RG 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; and (8) preservation and development of the cultural heritage.
- <sup>10</sup> RA 9054 empowers the RG to exercise, within the ARMM, the NG's powers and responsibilities except in the following reserved NG functions: foreign affairs, national defense and security, postal service, coinage, and fiscal and monetary policies, administration of justice, quarantine, customs and tariff, citizenship, naturalization, immigration and deportation, general auditing, civil service, elections, foreign trade, maritime, land and air transportation and communications that affect areas outside the ARMM, and patents, trademarks, trade names, and copyrights.
- <sup>11</sup> Section 1 and 10, Article XII of RA 9054 gives the RG the power to exercise comprehensive and integrated regional development planning through the creation of the Regional Economic Development and Planning Board (REDPB), which is mandated to formulate a master plan for a systematic, progressive, and total development of the region, taking into account the development plans of the ARMM-LGUs (provinces, cities, municipalities and barangays).
- <sup>12</sup> The RG's powers on administrative organization is based on Section 2 (1), Article V of RA 6734; and in Section 1. Article IV. RA 9054.

- <sup>13</sup> Section 1, Article V. RA 9054: Section 1, Article VI and Section 18, Article VIII of RA 6734
- <sup>14</sup> Section 3. Article III of RA 6734
- 15 Section 526. Title III. Book IV. RA 7160
- <sup>16</sup> Supreme Court of the Philippines, G.R. No. 116850. In this decision, the SC said that the passage of RA 9054 means that the powers and functions of a Provincial Governor (PG) under the 1991 LGC are now enjoyed by a Provincial Governor in the ARMM. It said that the PG exercises supervision and control over the PHO because the ARMM LGC has classified him as a provincial government official. It also said that the RLA cannot amend the ARMM LGC to diminish the PG's devolved power, emanating from the 1991 LGU Code, which is a part of RA 9054 (p.19).
- <sup>17</sup> See Sections 15-21, Article X (Local Government) of the 1987 Constitution
- <sup>18</sup> Section 1. Article V. RA 9054
- <sup>19</sup> Section 29. Article III. Chapter III. Title I. Book I. RA 7160
- <sup>20</sup> Section 30, Article III, Chapter III, Title I, Book I, RA 7160
- <sup>21</sup> Section 56. Chapter III. Title II. Book I. RA 7160
- <sup>22</sup> Section 27. Article III. MMAA 25
- <sup>23</sup> Section 326-327, Article I, Chapter III, Title V, Book I, RA 7160
- <sup>24</sup> Section 322. MMAA 25
- <sup>25</sup> Section 475 (a) (5), Article V, Title V, Book I, RA 7160
- <sup>26</sup> En Banc Resolution of the Supreme Court on G.R. No. 177597 and G.R. No. 178628.
- <sup>27</sup> Section 19. Article VI of RA 9054
- <sup>28</sup> Section 1. Article XVII. RA 9054
- <sup>29</sup> Section 2, Article XVII, RA 9054 provides that the Regional Assembly shall have the power to initiate proposals for amendment to or revisions of this Organic Act by a vote of three-fourths (3/4) of all its Members or it may call for a Regional Consultative Commission to propose the amendment or revision. In any case, the amendment or revision shall require the approval of the Congress of the Philippines by a vote of two-thirds (2/3) of the Members of the House of Representatives and of the Senate voting separately.
- <sup>30</sup> Section 3. Article XVII. RA 9054 provides that any amendments to or revisions of this Organic Act shall become effective only when approved by a majority of the votes 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.
- <sup>31</sup> Supreme Court. En Banc Resolution on G.R. No. 196271 (Kida vs. Senate of the Philippines and House of Representatives), G.R. No. 196305 (Mapupuno vs. COMELEC): G.R. No. 197221 (Lagman vs. Executive Secretary Ochoa Jr and the COMELEC); G.R. No. 197280 (Tillah et al. and PDP-LABAN vs the COMELEC, Executive Secretary Ochoa Jr., and the Budget Secretary Abad);

- G.R. No. 197282 (Macalintal vs. the COMELEC, the Office of the President); G.R. No. 197392 (Biraogo vs the COMELEC and Executive Secretary Ochoa); G.R. No. 197454 (Paras vs Executive Secretary Ochoa and the COMELEC), February 28, 2012.
- 32 The SC also said: "The power of the legislature to make laws includes the power to amend and repeal these laws. Where the legislature, by its own act, attempts to limit its power to amend or repeal laws, the Court has the duty to strike down such act for interfering with the plenary powers of Congress." (Ibid.).
- 33 Section 526. Title III. Book IV of RA 7160
- <sup>34</sup> SEC. 18 of RA 7722 provides that personnel, properties, assets and liabilities, functions and responsibilities of the Bureau of Higher Education, including those for higher and tertiary education and degree-granting vocational and technical programs in the regional offices, under the Department of Education, Culture and Sports, and other government entities having functions similar to those of the Commission are hereby transferred to the Commission.
- 35 EO 315 says that the powers and functions pertaining to higher education of the DECS devolved to the ARMM under EO 459 (1991) have been repealed upon the enactment of RA 7722 creating the CHED as an independent and separate agency charged to administer, supervise, and promote higher education as well as degree-granting programs in all higher educational institutions in the country."
- <sup>36</sup> Section 20. Article VI of RA 9054 provides that funds for infrastructure in the ARMM allocated by the NG shall be appropriated through a Regional Assembly Public Works Act (RAPWA). Unless approved by the RLA, no public works funds allocated by the NG for the RG or allocated by the RG from its own revenues may be disbursed, distributed, realigned, or used in any manner.
- <sup>37</sup> The NG's exclusive functions under the 2001 ARMM Organic Act include the administration of justice; citizenship; coinage; fiscal and monetary policies; customs and tariff; foreign trade; foreign affairs; general auditing; maritime, land and air transportation and communications that affect areas outside the autonomous region: national defense and security: national elections: naturalization, immigration and deportation; patents, trademarks, trade names and copyrights; postal service: and quarantine.
- 38 The RG has a legal obligation to ensure that regional laws, policies and standards are essentially aligned or not in conflict with national laws, policies and standards.
- <sup>39</sup> Functional responsibilities refer to planning, policy setting, financing, provision, production, coordination and regulation of functions including the public goods and services constituting these functions.
- 40 Section 3. FO 426
- <sup>41</sup> Information for this analysis was based on the Philippine Constitution, the ARMM Organic Act, EO 459, and relevant regional laws such as the Regional Local Government Code (MMAA 25) and Regional Administrative Code (MMAA 287)
- <sup>42</sup> Section 1, Article XIV, 1987 Philippine Constitution; see also Section 1, EO 459
- <sup>43</sup> Section 2 (o) (3), Article XIV, RA 9054

- 44 Section 12, Chapter 1, Title III, MMAA 287
- <sup>45</sup> Section 1, Article XIV, 1987 Philippine Constitution; see also Section 1, FO 459
- <sup>46</sup> Except in the case of the Department of Education, Culture and Sports (DECS) where the DECS bureaus on elementary, secondary, vocational, technical, higher and non-formal education were devolved by the NG to the RG under EO 459.
- <sup>47</sup> Executive Order 292 (1987 Administrative Code of the Philippines)
- <sup>48</sup> Section 17 (f). Chapter II. Title I. Book I. RA 7160
- <sup>49</sup> Supreme Court of the Philippines, G.R. No. 149848, (Arsadi M. Disomangcop and Ramir Dimalotang vs DPWH Secretary Simeon Datumanong and Budget Secretary Emilia Boncodin)
- <sup>50</sup> Section 17 (f), Chapter II, Title I, Book I, RA 7160
- <sup>51</sup> Interview with Atty. Rasol Mitmug Jr.
- 52 The PAMANA (Payapa at Masaganang PamayaNAn) is the NG's convergence program extending development interventions to hard-to-reach and conflict-affected communities, ensuring that they are not left behind.
- 53 For instance, the special provisions governing the DPWH budget under the various General Appropriations Act (GAA) provide that the national DPWH decides the budget allocations for ARMM provinces.
- <sup>54</sup> Section 8. Article XI. RA 6734: Section 8. Section 10. RA 9054
- <sup>55</sup> Section 468 (a) (2) (viii), Article III, Title IV, Book 1, RA 7160
- <sup>56</sup> Section 462 (2) (viii), Article Three, Title IV, MMAA 25
- <sup>57</sup>Sec. 35. Art. XII. RA 9054
- <sup>58</sup> Section 2 (a), Executive Order No. 133
- <sup>59</sup> Based on the interview with the budget officer of the DOH-ARMM
- <sup>60</sup> Information on RG's assigned powers and responsibilities are based on EO 133 and RA 6734. The assigned powers and responsibilities of the LGU are based on RA 7160.
- 61 Section 385, Chapter 1, Title Four, Book III, RA 7160
- 62 Sec. 380, Ch. 1, Title I, Book III, MMA Act No. 25
- <sup>63</sup> Section 1, Article IV, RA 9054; Section 19, Article VI of RA 9054
- <sup>64</sup>Based on interviews with Atty. Anwar Malang, former DILG-ARMM Regional Secretary and current Regional Secretary of the DTI-ARMM, and Atty. Rasol Mitmug Jr., Chief of Staff of the Office of the Regional Governor.

- 65 Section 1. Article X. RA 9054
- 66 Section 2. Article XVI of RA 9054
- <sup>67</sup> Section 1 (1), Article IX, 1987 Philippine Constitution
- 68 Section 3. Article XII. RA 9054

#### REFERENCES

Benedikter, Thomas. (2009). The World's Modern Autonomy Systems: Concepts and Experiences of Regional Territorial Autonomy. Available online: http://webfolder.eurac.edu/eurac/publications.

Bernas, Joaquin. (2006). Charter Change: the Burning Issues. Available online: http://pcij.org/blog/ wp-docs/BernasChaChaSlides.pdf.

Boex, Jamie. (May 2015). The Vertical Assignment of Functions and Expenditure Responsibilities. LPSI Working Paper. May 2015. Available online: http://www.localpublicsector.net.

Encyclopedia Britannica. Unitary System of Government. Available online: https://www.britannica. com/topic/unitary-system.

Ghai, Yash, (October 2016). Towards a Workable and Effective Structure of Autonomy and Federalism: Relations between Autonomous Regions/Federal States and Central Governments. Global Autonomy, Governance and Federalism Forum, Institute of Autonomy and Governance.

Hutchcroft, Paul. (September 2016). Federalism in Context: Laying the Foundations for a Problem-Driven Process of Political Reform. From Decentralization to Federalism: The Next Stage of Democracy. Manila International Conference.

Riker, W. (1964). Federalism: Origin. Operation. Significance. Cited in Gerring, John and Strom C. Thacker and Carla Moreno.2007. Are Federal Systems Better than Unitary Systems? Available online: http://www.bu.edu.

Shah, Anwar, (2007), Introduction: Principles of Fiscal Federalism. A Global Dialogue on Federalism. Volume 4: The Practice of Fiscal Federalism: Comparative Perspectives. Available online: http:// www.forumfed.org.

Supreme Court of the Philippines. (April 2002). G.R. No. 116850: Pandi and Macacua vs Court of Appeals and Saber. Available online: http://sc.judiciary.gov.ph/jurisprudence.

(July 2008). Consolidated En Banc Resolution on G.R. No. 177597 and G.R. No. 178628. Available online: http://sc.judiciary.gov.ph/jurisprudence.

(February 2012). En Banc Resolution on G.R. No. 196271, G.R. No. 196305, G.R. No. 197221, G.R. No. 197280, G.R. No. 197282, G.R. No. 197392, G.R. No. 197454. Available online: http://sc.judiciary.gov.ph/jurisprudence.

(November 2004). G.R. No. 149848: Disomangcop and Dimalotang vs Datumanong and Boncodin. Available online: http://sc.judicjarv.gov.ph/jurisprudence.

#### KEY ISSUES ON THE ASSIGNMENT OF POWERS

Autonomous Regional Government in Muslim Mindanao. <i>Muslim Mindanao Autonomy Act No. 25:</i> 1995 ARMM Local Government Code.
Muslim Mindanao Autonomy Act No. 287: 2011 ARMM Administrative Code.
Republic of the Philippines. Republic Act No. 7722: 1994 CHED Law.
Executive Order No. 292: 1987 Administrative Code of the Philippines. Available online: http://www.officialgazette.gov.ph
The Constitution of the Republic of the Philippines. Available online: http://www.officialgazette.gov.ph.
(February 1983). Batas Pambansa Blg. 337.
Republic Act No. 9054: 2001 ARMM Organic Act.
Republic Act No. 6734: 1989 ARMM Organic Act.
Various Executive Orders Operationalizing Regional Autonomy in the ARMM.
Republic Act No. 7160: 1991 Local Government Code of the Philippines





n autonomous regional government may be vested with the powers heeded to localize public service delivery and regulation, but it will need the financial resources to effectively carry them out. Fiscal arrangements between the national and regional governments can define the extent to which budgeting is exercised more independently, revenue powers are sufficiently expanded, and mandated shares are rightfully retained.

Republic Act 9054 (also known as the Organic Act of the Autonomous Region in Muslim Mindanao – ARMM) provides that the Regional Government shall enjoy fiscal autonomy in generating and budgeting its revenues (Section 2, Article IX). These revenues may be internally generated or may come in the form of internal revenue shares, block grants or subsidies. However, along with the autonomy granted in managing public finances within the autonomous territory are accountability mechanisms to ensure the wise and prudent use of government resources.

The power of the Autonomous Regional Government (ARG) to create sources of revenues is provided in Section 20 (2), Article X of the Philippine Constitution. This power is reiterated in the ARMM Organic Act (Section 1, Article IX) stating further that the Regional Government can levy taxes, fees, and charges subject to the provisions of the Constitution and the Organic Act. The Muslim Mindanao Autonomy Act No. 49 (known as the Revenue Code of the ARMM) details the different revenue impositions within the territorial jurisdiction, including the provisions defining the tax coverage and the time or manner of payment.

The succeeding discussions in this section tackle some of the fiscal issues highlighting deviations of practice from the provisions of the law, and how current fiscal policies and arrangements define the extent of autonomy that exists in the ARMM

#### **Dependence on Annual Appropriations**

The Autonomous Regional Government in Muslim Mindanao (ARG) relies heavily on national government (NG) transfers that are annually appropriated by Congress. It is treated like any other national line agency that is subject to

national budget regulations and issuances of the Department of Budget and Management (DBM). Such regulations would cover the yearly Budget Call (for budget preparation), the guidelines for budget execution, and reportorial requirements for budget accountability.

Like regular line agencies with imposed budget ceilings, the ARG prepares and submits its budget proposal to the DBM for review and incorporation into the National Expenditure Program (NEP). With the adoption of the Two-Tier Budgeting approach, the DBM issues the budget ceiling for ongoing programs and projects (Tier 1). For Tier 2, the agency proposes its "above the ceiling" budget to cover new projects that the DBM reviews and endorses to the Executive Review Board for inclusion in the national budget. The sum of the amounts for Tiers 1 and 2 becomes the proposed budget of the ARMM in the NEP.

The existing process through which the ARMM appropriations is finally determined goes through two stages of review—(1) at the level of the DBM where it has to justify especially a higher allocation to support the financing of new projects, and (2) where it has to defend in Congress the budget levels proposed in the NEP, and lobby for additional funds. Table 8 shows a comparison of the ARMM budget (from its original proposal to appropriation).

The budget for ARMM under the General Appropriations Act (GAA) includes the regional government's share in national internal revenues collected within the autonomous region. This is lodged with the Office of the Regional Treasurer under the ARMM appropriations. For FY 2016, the appropriation of P29.4 billion for ARMM includes P800 million in internal revenue share. Note that in case the actual collection for the year exceeds the appropriated share that is built in the ARMM budget, the difference will be covered by the Unprogrammed Fund. In 2016, about P765.1 million was released to ARG in addition to the amount originally appropriated—thus, total internal revenue share released to ARG amounted to P1,565.1 million. To accurately account for budgetary increments coming from the national government, it is important to net out the shares that are mandated by law to be remitted to the autonomous region.

Article IX, Section 8 (e) of RA 9054 identifies "appropriations, shares in internal revenue taxes, block grants, and other budgetary allocations" from NG as sources of revenues for the Regional Government. However, there was no prescribed formula for determining the appropriations or block grant. RA 9054 did not also specify that the budgetary allocations are automatically appropriated—hence, it has always formed part of the new appropriations that is enacted by Congress every year.

Table 8 PROPOSED VS. APPROVED BUDGET FOR ARMM 2010-2017 (IN MILLION PESOS)

Year	ARG Proposal*	NEP**	GAA**
2010	12,839.2	9,827.3	9,848.6
2011	14,221.4	11,852.8	11,852.8
2012	13,919.0	12,468.6	12,468.6
2013	15,638.3	13,998.4	14,059.9
2014	20,165.1	20,525.9	20,525.9
2015	37,045.9	25,229.3	25,229.3
2016	59,178.8	29,413.0	29,413.0
2017	56,224.3	41,782.0	33,469.9

<sup>\*</sup> Culled out from the FY 2010-2014 Comparison of Budget Ceiling for ARMM. ARG Proposed Budget, and Appropriations

Sources: NEP, GAA, BESF (2010-2017) and ARMM-ORG

Since there is no clear provision determining the appropriations for ARMM, the budget levels may depend on the appreciation and generosity of the Executive and/or the ability of ARG officials to lobby for a bigger budget share to support its programmed spending for the year. The Regional Government could spend great effort and resources to follow up on its budget in national offices—only to be able to get additional resources for the autonomous region. It was only in recent years that appropriations for ARMM significantly increased (as a result of considerable hikes for infrastructure).

Table 9 SOURCES OF BUDGETARY CUTS IN THE ARMM BUDGET (2017)

Particulars	Amount (in Million Pesos)				
i ai liculais	GAA	NEP	Variance		
Buildings and Other Structure	314.3	314.3	-		
Flood Control and Drainage	294.0	471.0	(177.0)		
Non-Road Transport Infrastructure	949.5	1,323.6	(374.1)		
Roads and Bridges	8,131.0	15,547.5	(7,416.5)		
Water Management	644.7	994.2	(349.5)		
Governance	4,070.3	4,070.3	-		
Establishment of Negosyo Center	5.0	-	5.0		
TOTAL, Locally-Funded Projects	14,408.8	22,720.9	(8,312.1)		

Sources of basic data: NEP and GAA (2017)

The case of the 2017 GAA illustrates that the dynamics within the budgeting process can result in a sizeable cut in the ARMM budget. The 2017 appropriations for ARMM (P33.5 billion) turned out to be P8.3 billion less than originally proposed under the NEP. Even the NEP level of about P41.8 billion was already about P14.4 billion less than the ARG's proposal to DBM. Budget cuts were made in different locally funded projects, mostly for infrastructure development in the autonomous region (see Table 9). The amount of P8.3 billion was initially transferred to the DPWH Central Office for projects in the ARMM, but P8 billion was finally appropriated to the Commission on Higher Education (CHED) for free tuition in state universities and colleges (SUCs) under the Higher Education Support Fund (HESF), and PO.3 billion to SUCs offering medical degrees.

# **Financial Accountability to the Center**

Financial accountability of sub-national governments is directed towards the "center" that wields power and control over the bulk of revenues and its use. Like any line agency that receives appropriation through the GAA, the Regional Government is subject to accountability rules set by the Commission

<sup>\*\*</sup> Includes Automatic Appropriations

on Audit (as the supreme audit authority) and the National Government through the DBM.

RA 9054 (Section 2, Article IX) states that the utilization of the ARMM share in the internal revenue taxes and block grants or subsidies from NG shall be subject to semi-annual and annual audits by COA. The failure of accountable regional government officers to furnish COA the documents necessary to complete the audit shall empower the President or the Secretary of Finance to reduce, suspend or cancel the release of funds to the extent of the unaccounted amount.

To date, COA-DBM Joint Circular No. 2014-1 (issued July 1, 2014) provides the list of Budget and Financial Accountability Reports<sup>1</sup> (BFARs) that all government agencies should submit to DBM or post and regularly update in their respective websites under the Transparency Seal facility. The ARG maintains its own Transparency Seal but compliance to prescribed reporting formats and timely publication has yet to be improved.

It may be noted that RA 9054 (Section 3, Article III) assures that there shall be no reduction in the shares of local government units (LGUs) in the national internal revenue taxes as provided under the Local Government Code of 1991 (LGC). The Regional Assembly is prohibited from passing any law that will in any way diminish the LGU shares and its taxing powers. Essentially, this makes the LGUs within the ARMM fiscally independent of the Regional Government because of the Internal Revenue Allotment (IRA)—i.e., the automatically appropriated share of local governments in the national internal revenues. The IRA is a block transfer over which the recipient LGU has the power to decide its use (with some limitations in terms of PS spending, and the mandatory allocation of 20% for Development Fund).<sup>2</sup>

Table 10 shows the aggregated IRA that was automatically appropriated for LGUs in the ARMM. Since the IRA (for all LGUs) is fixed at 40% of the internal revenues of the third preceding year (after deducting other mandated shares of LGUs<sup>3</sup>), the yearly increments in the IRA are predictable following the growth of the economy and improvements in tax collection.

Table 10 APPROPRIATIONS FOR ARMM AND IRA OF ARMM-LGUS (IN BILLION PESOS)

Year	Appropriations for ARMM *	IRA	Total
2010	9.85	13.80	23.64
2011	11.85	14.54	26.40
2012	12.47	14.12	26.59
2013	14.06	13.93	27.99
2014	20.53	15.78	36.31
2015	25.23	18.05	43.28
2016	29.41	19.85	49.27
2017	33.47	23.71	57.18

Note: 2017 IRA figure is based on LBM 74-A.

Sources of basic data: BESF and GAA (2010-2017)

It can be gleaned from Table 10 that more funds have been invested in the autonomous region through the IRA of the ARMM-LGUs until 2012. It was only recently (2013 onwards) that the bigger share of the aggregated funds that accrued to ARMM (as a geographic composite) is accounted for by the Regional Government as its appropriations grew significantly.

The IRA is based on a formula that takes into account population (50%), land area (25%), and equal sharing (25%), hence, it is no longer subject to budget cuts and renegotiations with the Executive or political actors in the budgeting process. It can only be withheld in case the national government declares an unmanageable deficit [Section 284 (c), LGC]. When the President withheld the IRA in 1998 by putting it under Unprogrammed Fund, the Supreme Court decided in favor of the LGUs and ordered the release of the withheld amounts.

With the IRA as the major source of income of LGUs, it naturally requires local governments to coordinate more closely with the NG (as fund source) than the regional government that relies as well on NG for most of its expenditure requirements. Table 11 shows that the aggregated IRA of

<sup>\*</sup> Includes Automatic Appropriations

Table 11 **INCOME SOURCES OF ARMM-LGUS** 2011-2015 (In Million Pesos)

Particulars	2011	2012	2013	2014	2015
Local Sources	219.7	284.9	349.2	278.2	337.7
Tax Revenue	111.4	136.7	157.0	107.8	195.3
Non-Tax Revenue	108.3	148.2	192.3	170.4	142.5
External Sources	12,105.6	11,712.5	11,685.1	13,271.0	15,348.6
of which: IRA	11,784.6	11,481.2	11,375.5	12,977.8	14,972.2
Total Current Operating Income	12,325.3	11,997.4	12,034.3	13,549.2	15,686.4
RATIO: IRA-to-Current Operating Income (%)	95.6	95.7	94.5	95.8	95.4

Source of basic data: Bureau of Local Government Finance

ARMM-LGUs accounts for about 95% of its yearly current operating income. Since the release and disbursement of the IRA are subject to national budget guidelines, financial accountability of the LGUs is geared towards NG through the DBM. The ARG is often not privy to financial reports that its component LGUs submit to NG (e.g., the Bureau of Local Government Finance), hence, a comprehensive picture of the fiscal conditions of the ARMM (to include the ARG and the LGUs) remains unclear.

# **Limited Expansion of the Revenue Base**

Republic Act 9054 provides the ARMM with taxing powers to create its own revenues to support its operations. However, the Act enumerates many exceptions ("negative list") from taxes that shall continue to be imposed by NG through the Bureau of Internal Revenue (BIR). According to Section 7, Article IX of RA 9054, the taxing power of the autonomous regional government and of its component LGUs shall not extend to the following: income tax (except on banks and other financial institutions), customs duties, VAT, excise taxes on petroleum products and on goods enumerated in the National Internal Revenue Code (NIRC), and estate and donors taxes, among others (see Box 5 for complete listing).

Section 8, Article IX of RA 9054 identifies the sources of revenues for the regional government, as follows: (1) regional taxes, except on income<sup>4</sup>; (2) fees and charges imposed by the ARG for the registration of motor vehicles and issuance of driving licenses or permits, except for tricycles which are registered with the city or municipality where they operate; (3) shares and

#### Box 5 TAXES RETAINED BY THE NATIONAL GOVERNMENT

- Income tax except when levied on banks and other financial institutions;
- Documentary stamp tax;
- Taxes on estate, inheritance, gifts, legacies and other acquisitions mortis
- Customs duties, registration fees of vessels and wharfage on wharves, tonnage dues, except vessels which are registered with the Regional Government and wharves constructed and maintained by the Regional Government;
- Taxes, fees or charges upon goods carried into or out of, or passing through the territorial jurisdictions of the LGUs of the autonomous regions;
- Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fisherfolk:
- Taxes on business enterprises certified by the Board of Investment or by the Regional Assembly as pioneer or non-pioneer for a period of six and four years, respectively, from the date of registration;
- Excise taxes on articles enumerated under the NIRC, and taxes/fees on petroleum products;
- Percentage or VAT on sales, barters or exchanges or similar transactions on goods or services:
- Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passenger or freight by hire and common carriers by air, land or water;
- Taxes on premiums paid by way of reinsurance or retrocession;
- Taxes, fees or other charges on Philippine products exported;
- Taxes, fees or charges on countryside, barangay business enterprises and cooperatives: and
- Taxes, fees or charges of any kind on the central government, its agencies and instrumentalities, and LGUs except on GOCCs or entities primarily organized to do business.

Source: Section 7 (a) to (n), Article IX of RA 9054

revenues generated from the operation of public utilities within the ARMM: (4) budgetary allocations from NG (e.g., appropriations, block grant, and shares in internal revenue taxes); and (5) donations, endowments, foreign assistance, and block grants from economic agreements entered into by the ARG.

Under a setup where the assignment of taxing powers has been more clearly assigned between the national and local governments, the revenue powers of the ARMM are usually shared with either NG or LGUs. At the LGU level, real property tax (RPT) and business taxes have been the two major sources of revenues. Taxes imposed under the ARMM Revenue Code are mostly addons to levies already imposed by the LGUs (see Table 12). This potentially places relatively greater tax burden on ARMM taxpayers because of the unique status of the ARMM as the only regional government with the power to impose additional levies.

A comparison of Republic Act 7160 (LGC) and MMAA 49 (Revenue Code of the ARMM) would show that except for Travel Tax and Barter Trade Tax, practically all the taxes enumerated in MMAA 49 are also imposed by the LGUs. Based on MMAA 49, the following taxes are also imposed in addition to those levied by NG and/or LGUs: affluent consumption tax, social amelioration tax, and concession tax. On the other hand, MMAA 49 does not cover idle land tax and community tax which are levied by LGUs. However, taxes that are not currently imposed by LGUs and the ARG (other than those listed as reserved for NG) can at any time be given legal basis by way of local legislation or amendments to the Regional Revenue Code.

Aside from the regional taxes that are usually levied in addition to those imposed by the LGUs, the ARG also generates revenues through fees and charges from the following: (1) permits and services; (2) sealing and licensing of weight and measure; (3) rental of facilities and equipment; and (4) other services. It may be noted, however, that while the ARMM Revenue Code has enumerated a list of add-on taxes to those imposed by the LGUs, these levies are not implemented in full absent a collection mechanism or arrangement between the ARG and the BIR and/or LGUs.

Table 12 TAX IMPOSITIONS BY GOVERNMENT LEVEL BASED ON RA 7160 AND THE MMAA 49

Particulars	Regions	Cities	Province	Muni's	Brgys	
On Real Property	✓	✓	✓	a/	ab/	
On Transfer of Real Property Ownership	✓	✓	✓			
On Business of Printing/Publication	✓	✓	✓			
On Franchise	✓	✓	✓			
On Sand, Gravel and Other Quarry Resources	✓	✓	✓	a/	a/	
On Amusement Places	✓	✓	✓	a/		
On Professionals	✓	✓	✓			
On Peddlers	✓	✓		✓		
On Delivery Vans & Trucks	✓	✓	✓			
On Idle Lands		✓	✓			
On Businesses	c/	✓		✓	✓	
Community Tax		✓		✓	b/	
On Fishery and Aquatic Resources	✓	✓		✓		
On Lease of Fishpond Areas	✓	✓		✓		
On Agricultural Products	✓	✓		✓		
On Natural Wealth Utilization and Development	✓	c/	c/	c/	c/	
On Contractor	✓	✓		✓		
On Banks and Other Financial Institutions	✓	✓		✓		
On Barter Trade	✓					
On Travel	✓					
On Affluent Consumption	✓					
On Concession	✓					
Social Amelioration Tax	✓					

a/ Share in collection of provinces

Table 13 shows the breakdown of ARG income from three sources: (1) share on internal revenues collected by the BIR within the ARMM; (2) regional taxes, fees, and charges (TFC); and (3) appropriations from the national government. Actual receipts from regionally imposed taxes, fees and charges amounted to P52.9 million or 8.1% of the total internally generated revenues in 2013. This significantly grew five-fold to P267.8 million in 2014 due to two factors, namely: (1) higher collection after the natural wealth tax was increased from ½ of 1% to 5% of gross sales, and (2) higher revenues

b/ Share in collection of cities or municipalities

c/ Share in collection of NG

CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 62

from contractor's tax following the hefty increase in appropriations for infrastructure. 5 Regional TFC now accounts for about 30% of total internally generated revenues (2014-2015).

In 2015, total internally generated revenues amounted to P988.5 million. Effectively, this is the amount of revenues that the Regional Treasury can disburse to finance the Local Budget that is enacted by the Regional Legislative Assembly. However, taking into account the appropriations from NG, internally generated revenues would account for less than 5% of the total revenues. In fact, its share has steadily declined to 3.9% in 2015 as appropriations for ARG significantly grew.

Table 13 REVENUE SOURCES OF THE REGIONAL GOVERNMENT 2013-2015 (IN MILLION PESOS)

<u> </u>			
Particulars	2013	2014	2015
Share in Internal Revenues a/	600.6	590.0	700.0
Regional Taxes, Fees and Charges (TFC)	52.9	267.8	288.5
Tax Revenues	33.6	237.9	252.8
Non-Tax Revenues	19.3	29.9	35.7
SUB-TOTAL, Internally generated revenues	653.5	857.8	988.5
ADD: Appropriations (net of built-in shares) b/	13,597.9	20,063.9	24,629.3
TOTAL Revenues	14,251.4	20,921.7	25,617.8
Ratio: Regional TFC to Sub-Total Receipts (%)	8.1	31.2	29.2
Regional TFC to Total Receipts (%)	0.4	1.3	1.1
Internally-generated to Total Receipts (%)	4.6	4.1	3.9

a/ Figures represent half of the 70% share of ARMM on internal revenues which is retained by the Regional Government. The other half is disbursed by the Regional Treasury to ARMM-LGUs based on their mandated 35% share per RA 9054.

b/ Includes automatic appropriations

Sources: ARMM-Office of the Regional Treasury, GAA and DBM

Meanwhile, Republic Act 9054 provides the Regional Government with the power to borrow money to support its operations. The Governor may contract foreign and domestic loans in accordance with the provisions of the Constitution and upon the authority given by the Regional Assembly

(Section 14, Article IX). Moreover, the Regional Government may issue Treasury Bills, bonds and other debt papers pursuant to law enacted by the Regional Assembly (Section 10, Article IX). This is a similar power granted under the 1991 LGC, whereby, LGUs could borrow from government financial institutions (GFIs) or float bonds with the obligation to pay (with interest) at a future date.

However, borrowing as a financing option has not been resorted to by the ARG. It may be difficult for ARG to establish its capacity to pay absent a steady source of income (whether locally generated, as budgetary support, or in terms of automatically appropriated shares like the IRA). In the case of GFIs, the IRA serves as collateral against which the GFI (or depository bank of a borrowing LGU) can automatically withhold for payments.

## Non-full Implementation of RG Share in Internal Revenues

While tax collection remains highly centralized, the ARMM is entitled to shares in revenues generated within its territorial jurisdiction. Such shares are subsequently distributed between the Regional Government and the LGUs where the revenues originated. According to RA 9054, the ARMM is entitled to the following:

- 50% of revenues from the utilization and development of strategic minerals in the ARMM, subject to sharing between RG and LGUs (Section 1, Article X);
- 70% of the collections from internal revenue taxes, fees and charges (including taxes imposed on natural resources), of which 35% is due to RG and the other 35% to the province or city, subject to sharing among LGUs within the province/city (Section 9, Article IX); and
- 50% of the NG share<sup>6</sup> of the yearly incremental revenue from VAT, subject to sharing between RG and LGUs (Section 15, Article IX)

The ARMM Organic Act provides that LGUs shall collect taxes, retain its share of the income, and remit the corresponding shares of the ARG and NG. However, LGUs have never been authorized to collect national taxes i.e., the BIR administers and collects them. In practice, the release of the ARMM shares in the national internal revenue collection is governed by Joint Circular No. 2004-1.7 This joint issuance discontinued the practice of deducting the share of the ARMM pursuant to Revenue Regulation 4-98 and 5-2003 wherein the revenue collecting officers (RCOs) within the ARMM remit only the NG share to the Bureau of the Treasury (BTr) through accredited government depository bank (AGDB).8

Under RR 4-98, the BIR and other national collecting officers remit through the Provincial Treasurer the 30% share of the province where the revenues were generated. Another 30% due the Regional Government was remitted through the Regional Treasurer, and the remaining 40% share for NG goes to the BTr through the nearest AGDB branch. This practice was supplanted by RR 5-2003 wherein remittance of the aggregated 60% share (now 70%) of the ARMM is made through the Regional Treasurer.

The current practice as governed by Joint Circular No. 2004-1 requires that all collections within the ARMM should be deposited to the BTr through the nearest AGDB for subsequent downloading to the Regional Government by the DBM upon BIR certification of the ARMM share. The corresponding shares of the LGUs is remitted by the Regional Treasurer through the issuance of a credit advice to concerned AGDB of LGUs and a Notice of Fund Transfer to the LGUs copy furnished their AGDBs (JC No. 2004-1).

However, the ARMM apparently is not able to receive the full amount as mandated under RA 9054. Joint Circular No. 2004-1 only covers withholding taxes collected by NGAs (through Tax Remittance Advice or TRA) and cash collections of RCOs within the ARMM. Withholding tax of government offices would include payroll taxes for compensation, VAT for public contractors, and documentary stamp tax, among others. Meanwhile, since collections of RCOs are limited to cash tax payments, determination of ARMM shares fails to take into account payments made through banks which are remitted to their respective head offices for centralized remittance to the BTr.

The computed share of the ARMM also fails to include the collections of the BIR-Large Taxpayers Service (LTS) from companies operating in the autonomous region. Although RA 9054 provides that corporations or firms operating in the ARMM shall pay their income taxes corresponding to the income realized from their business activities in the autonomous region to the city/municipality where the branch offices are located, the ARG cannot compel the corporations to do so. By BIR regulation, corporate large taxpayers are expected to file a consolidated tax return and pay their income tax dues through the Electronic Filing and Payment System (EFPS) in venues as may be designated by the BIR Commissioner. Income tax returns of separate units of a corporation are forwarded to the head office (mostly located in Metro Manila) that files the consolidated return.

The difficulty of ascertaining the breakdown of income origins of these large taxpayers limits the BIR from determining the amounts that should rightfully accrue to the ARMM. It may be noted that revenues from large taxpayers nationwide amounted to P881.5 billion or about 62.8% of total BIR collections in 2015. An inventory of potential large taxpayers within the ARMM could be undertaken to start an exercise of approximating the incomes generated within the territory.

Table 14 shows the BIR certified ARMM shares representing 70% of the collections through TRAs (for withheld taxes) and revenue operating receipts (ROR) for cash payments to RCOs. Aside from the 70% share from internal revenues, RA 9054 specifically stipulates a separate sharing of the proceeds from the utilization of strategic minerals (i.e., 50%-50% between NG and ARMM), and of the 50% of NG share in incremental VAT revenue which is subsequently distributed between the regional government (80%) and the city/municipality (20%). However, the ARG receives no share from the latter two (strategic minerals and incremental VAT) in the absence of an IRR that will implement such provisions of the Organic Act. On the other hand, ARMM-LGUs receive shares based on the 1991 LGC.

Table 14 BIR-CERTIFIED ARMM SHARES BY PAYMENT MODE 2010-2016 (IN MILLION PESOS)

	70% ARMM	Total	Payment Mode			
Year Certified	Share	Collection	Tax Remittance Advice	ROR for Cash		
2010	529.24	756.05	530.39	225.66		
2011	699.37	999.10	714.31	284.79		
2012	850.16	1,214.52	885.75	328.77		
2013	1,238.02	1,768.60	1,310.35	458.24		
2014	1,150.36	1,643.37	1,045.78	597.59		
2015	1,568.02	2,240.03	1,512.37	727.66		
2016	1,415.05	2,021.51	1,397.22	624.28		
TOTAL	7,450.22	10,643.18	7,396.18	3,246.99		

Notes: Reported collections cover the period November (of preceding year) to October (of current year). Total collection for certain years include prior years' collection that has not yet been released by DBM: 2010 (P8.15 M), 2012 (P47.67 M), and for 2012 (a total of P52.70 M).

Source: Bureau of Internal Revenue

The shares of the ARMM are released as part of its annual appropriations under the GAA. For the period 2011-2014, a fixed amount of P462 million is annually incorporated in the budget of the Office of the Regional Treasurer (ORT) to cover the releases for the ensuing fiscal year. The builtin appropriation to cover the regional share on internal revenues was raised to P600 million in 2015 and to P800 million in 2016 (see Table 15). Generally, the release of shares by the DBM is on monthly basis depending on the issuance of the BIR certification. When actual collections exceed the amount appropriated in the ARG budget, the difference is funded out of the Unprogrammed Fund.

From the total regional shares released to the ARMM, half of it is subsequently released by the ORT to concerned LGUs<sup>9</sup> in accordance with the BIR certification. Note that since ARMM-LGUs continue to receive their IRA (under the LGC and as guaranteed by RA 9054), these LGUs in effect receive more fiscal transfers from NG than other LGUs elsewhere in the country because, aside from the IRA, it also gets 35% (out of the

Table 15 APPROPRIATED ARMM SHARES 2011-2016 (IN MILLION PESOS)

Year	Built-in Appropriations		
2011	462.0	256.0	718.0
2012	462.0	354.8	816.8
2013	462.0	739.1	1,201.1
2014	462.0	717.9	1,179.9
2015	600.0	800.0	1,400.0
2016	800.0	765.1	1,565.1

Note: Total regional shares refer to the 70% share in internal revenues (35% for ARG, and the other 35% for concerned LGUs in the ARMM).

Source: DBM

70% for ARMM) under RA 9054. However, the ARG has no influence over the additional internal revenue share that it releases to the LGUs—but practically serves only as conduit for such fund releases.

# **Limited Program Funds**

The ARG claims it spends most of its appropriated budget (from GAA) on personal services (PS), and maintenance and other operating expenses (MOOE). It has limited funds left for capital expenditures. Table 16 shows that in 2010, allocation for PS accounted for 69% while 21% was spent for MOOE. Only 9.9% of the total appropriations for ARG went to capital outlay (CO).

However, the distribution of the ARMM budget by allotment class has changed especially starting in 2014 when the share of personal services (primarily for salaries and benefits) was reduced in favor of higher capital outlay. In 2016, PS and CO accounted for 38.2% and 46%, respectively. The dramatic increase in capital outlay, however, is concentrated primarily with the DPWH (and with the Regional Governor's Office) with no significant change in the other line agencies.

Table 16 ARMM BUDGET BY ALLOTMENT CLASS **BASED ON THE GAA 2007-2016** 

Year	Total Amount	Share to Total (%)					
rear	(In Million Pesos)	PS	MOOE	СО			
2007	8,644.3	58.7	24.9	16.4			
2008	8,331.5	61.8	26.0	12.3			
2009	9,449.0	65.3	22.2	12.5			
2010	9,285.1	69.0	21.0	9.9			
2011	11,179.6	66.9	19.9	13.2			
2012	11,717.7	69.9	18.4	11.7			
2013	13,172.0	72.1	16.0	11.9			
2014	19,615.0	49.7	21.8	28.6			
2015	24,299.8	40.9	12.8	46.3			
2016	28,492.0	38.2	15.8	46.0			

Source of basic data: GAA (2007-2016)

According to the ARG, it relies on national government agencies (NGAs) for program funds to implement related programs/projects of their counterpart agencies in the autonomous regional government. Table 17 presents the budgetary adjustments to ARMM and the appropriations of select ARMM line agencies. These adjustments are made within the fiscal year (during budget execution) when NGAs transfer funds to the ARG for the implementation of related programs.

In 2014, an amount of P448.4 million from DA-OSEC was transferred to ARMM primarily to fund projects under the Bottom-Up Budgeting (BUB). The figure is shown alongside the appropriations for Regional Department of Agriculture and Fisheries-RDAF (as possible recipient of funds for agriculture). The budgetary adjustment from DA-OSEC (P575.9 million) in 2015 was even higher than the appropriation for RDAF in the same year. Meanwhile, transfers from DPWH-OSEC amounting to about P1.4 billion in 2015 were mainly for roads and bridges in the ARMM.

Some funds released to the ARG for national programs implemented within the ARMM are treated as cash advances. Such allotment type requires liquidation before another cash advance can be availed. Releases close to the end of the year have resulted in unused funds. It was proposed that funds intended for programs in the ARMM be introduced, instead, as line items in the GAA in order for these to be readily downloadable.

The GAA provides that NGAs must prepare the regional allocation of their respective budget. In the case of ARMM, the agencies need to prepare allocations by province, and the ARG should report the utilization of such funds from the NGAs. However, requiring the NGAs to determine the allocation (by province) does not give the ARG the flexibility to spend the funds for programs and services that it considers more responsive to the unique needs of its component LGUs. On the other hand, program funds (e.g., Health, Education, Livelihood, Peace and Order, and Synergy-HELPS) that are not tied to NGAs and their respective sectoral programs provide the ARG with greater leeway to allocate and utilize based on regionally determined priorities.

Table 17 APPROPRIATIONS AND BUDGETARY ADJUSTMENTS FOR ARMM 2013-2015 (IN MILLION PESOS)

ARMM Agency	Appr	opriations (C	GAA)	Budgetary Adjustments to ARMM from NGAs-OSEC			
rigelicy	2013	2013 2014 2015			2014	2015	
RDAF a/	513.3	1,356.1	336.0	262.2	448.4	575.9	
BFAR	-	34.8	34.8	63.5	-	92.1	
RDEPED b/	7,560.8	7,805.1	8,110.0	1,078.2	80.0	161.6	
RDENR	255.3	266.5	256.3	49.4	-	-	
RDILG	131.0	602.1	127.7	407.0	-	-	
RDPWH	1,966.8	5,518.2	10,641.7	1,474.6	640.8	1,398.5	
RDSWD	111.4	238.3	714.9	712.6	445.3	376.5	

a/Budgetary adjustments from DA-OSEC in 2013-2015 are shown alongside the appropriations for RDAF. The 2013 appropriations for RDAF includes that of RDAR for Agrarian Reform Services.

b/Budgetary adjustments for RDEPED in 2013 and 2015 include fund transfers amounting to P114.6 million and P25.1 million, respectively, from the DEPED School Building Program. Sources: NEP (2015-2017) and GAA (2013-2015)

# Weak exercise of appropriations power

The legislature has the power of the purse. Through an appropriations law. it effectively authorizes the release of funds from the treasury. However, in the case of the ARMM, the exercise of the Regional Legislative Assembly's (RLA) power to appropriate has been limited in scope. Its power over the budget only extends to about 5.6% (2013-2016) of the total regional budget, representing the Local Budget Fund (LBF) which is funded out of the regional government share on internal revenues, and collections from its own levies and charges (see Table 18). The bigger portion of the ARMM budget coming from NG is prepared primarily by the ARG for submission to the DBM. The RLA prepares its own budget proposal which is combined with the one prepared by the ARG (Executive) in order to come up with a consolidated proposal for the ARMM.

Table 18 ARMM LOCAL BUDGET FUND VS. APPROPRIATIONS 2005-2016 (IN MILLION PESOS)

Year	Local Budget Fund	GAA (Net of Internal Revenue Share)	Total	LBF Share (%)
2005	424.0	6,793.0	7,217.0	5.9
2006	490.0	6,799.0	7,289.0	6.7
2007	555.6	8,715.5	9,271.1	6.0
2008	565.0	8,143.3	8,708.3	6.5
2009	565.0	9,341.3	9,906.3	5.7
2010	565.0	9,188.6	9,753.6	5.8
2011	565.0	11,390.8	11,955.8	4.7
2012	585.0	12,006.6	12,591.6	4.6
2013	748.6	13,597.9	14,346.5	5.2
2014	1,295.8	20,063.9	21,359.8	6.1
2015	1,420.7	24,629.3	26,050.0	5.5
2016	1,622.5	28,613.0	30,235.5	5.4

Note: Figures for 2005 and 2006 LBF include supplemental appropriations of P69 million and P35 million, respectively. For 2011 and 2012 (plus P20M supplemental), the amount of P565 million was based on a re-enacted budget. Meanwhile, figures under GAA are net of the ARMM share on internal revenues which is lodged in the Office of the Regional Treasurer.

Sources: RLA website, RBMO-ARMM, GAA and BESF.

Table 19 APPROPRIATIONS FOR ARMM INFRASTRUCTURE PROJECTS 2011-2016 (IN MILLION PESOS)

Particulars	2011	2012	2013	2014	2015	2016
Infrastructure Projects for the Implementation of RDPWH-ARMM	1,000.0	1,000.0	1,510.2	-	-	-
Flood Control & Drainage Flood Control Structures/ Facilities (RDPWH) Drainage/ Protection Works (RDPWH)	-	-	-	68.2 45.1 23.2	561.6 10.0 551.6	256.5 122.5 134.0
Non-Road Transport Infrastructure: Ports, Lighthouses & Harbors (RDPWH)	-	-	-	288.5	670.0	856.7
Roads and Bridges (RDPWH) National Roads Local Roads Local Bridges	- - -	- - - -	- - -	2,345.2 447.1 1,806.7 91.3	8,106.4 - 7,688.2 418.2	8,461.1 - 7,574.8 886.3
Water Management- Water Supply (RDPWH)	-	-	-	269.1	765.8	529.5
TOTAL	1,000.0	1,000.0	1,510.2	2,971.0	10,103.8	10,103.8

Note: Infrastructure fund for 2013 was presented by project per province/district, and does not match the presentation by project category (e.g., roads and bridges) in the succeeding years--hence, only the total amount is shown in the table. For 2014, the breakdown of the infrastructure fund was only by project category. However, in 2015 and 2016, appropriation for infrastructure was more detailed to include specific projects under each project category. Source: GAA, 2011-2016

Like any other agency that receives appropriations through the national GAA. the ARG is governed by DBM regulations and other financial accountability requirements (e.g., BFARs). Any oversight by the RLA practically extends over a much smaller budget (i.e., the LBF) that is used to supplement the regional agency budgets, especially of the regionally created offices. With most of the revenues of the Regional Government coming from the national government (either through shares in internal revenue taxes or appropriations), it is fiscally accountable to NG that releases the funds.

Only the public works component of the approved ARMM budget in the GAA is submitted to the RLA for budget authorization via the Regional Assembly Public Works Act (RAPWA). Per RA 9054 (Section 20, Article VI), funds for infrastructure in the autonomous region that are allocated by NG shall be appropriated through a RAPWA. No infrastructure funds (whether funded out of NG or by the ARMM own-source revenues) shall be disbursed without a Public Works Act.

Funds for infrastructure projects in the ARMM used to be appropriated as a lump sum amount (see Table 19). However, starting 2013, the GAA already provides the breakdown of the appropriations for infrastructre with varying levels of detail. The 2015 and 2016 GAAs already present the specific projects by project category (e.g., roads and bridges). As a result, the RLA is bound to pass a RAPWA that simply follows the items already provided in the GAA. On the other hand, the passage of a RAPWA prior to the enactment of the GAA could potentially subject the regional law to amendment by the national legislature—thus, practically abrogating the appropriations power of the RLA.

It may be noted that following the 2010 commitments of the Philippines to the Open Government initiatives, the national government has undertaken reforms towards greater transparency in the budget. Moreover, there have been calls to minimize or avoid the use of lump sum funds as these are perceived to be prone to abuse and executive discretion. The itemization of the infrastructure projects under the GAA reinforces budget transparency and accountability, but it has apparently undermined the RLA's power to independently appropriate.

#### **END NOTES**

- <sup>1</sup> The usefulness of the different types of reports (BFARs) required under COA-DBM Joint Circular No. 2014-1 are explained in the Legislator's Guide in Analyzing the National Budget, 3rd edition (Chapter: Agency Transparency Seal), published by the CPBRD on August 2016.
- <sup>2</sup> Section 287 of the LGC provides that each LGU shall appropriate in its annual budget no less than 20% of its annual IRA for development projects. Meanwhile, Section 325 provides a limit on expenditures for personal services of LGUs—i.e., 45% for 1st to 3rd class LGUs, and 55% in the case of 4th class or lower.
- <sup>3</sup> These include shares of specific LGUs from the following: (1) proceeds from the utilization and development of national wealth, (2) excise taxes on tobacco, (3) mining taxes, and (4) VAT, among others.
- <sup>4</sup> While Section 7 (a), Article IX of RA 9054 specifically states that the taxing power of the regional government and of the component LGUs shall not extend to income tax (except when levied on banks and other financial institutions), Section 8 (a) vaguely introduces the sources of regional government revenues to include regionally imposed taxes (except income taxes) without reference to Section 7 (a).
- <sup>5</sup> Appropriation for ARMM infrastructure projects increased from P1.5 billion to about P3 billion. In, addition, P2.1 billion was also appropriated to RDPWH under the PAMANA Program.
- <sup>6</sup> Section 2 of RA 7643 states that 50% of the VAT collection (in excess of the increase in collection for the immediately preceding year) shall be distributed as follows: 20% to the city or municipality where such taxes are collected, and 80% to the National Government.
- <sup>7</sup> Joint Circular No. 2004-1 was issued last 26 February 2004 by the ARMM, DOF, and the DBM.
- <sup>8</sup> Based on interview, ARMM used to retain its revenue share but due to problems of reconciling BTR and BIR records, all collections are now remitted to the BTr.
- <sup>9</sup> Following the distribution formula stipulated in RA 9054 (Section 9, Article IX), half of the 70% regional share on internal revenues collected within the ARMM shall go to the province or city from where the collection was made.

#### REFERENCES

Alamia, Laisa. (August 2016). Fiscal Autonomy in the ARMM. Presentation during the CPBRD-IAG Lecture Series on Federalism, House of Representatives, Quezon City, Philippines.

Republic of the Philippines. Budget of Expenditures and Sources of Financing (BESF) for Fiscal Years 2010-2017.

 . General Appropriations Act (GAA) for Fiscal Years 2005-2016.
 . National Expenditure Program (NEP) for Fiscal Years 2010-2017.
 . Republic Act No. 7160: 1991 Local Government Code of the Philippines
 . Republic Act No. 9054: 2001 ARMM Organic Act.

#### **73** FISCAL AUTONOMY ISSUES IN THE ARMM

online: www.blgf.gov.ph.

. Republic Act No. 7643: Requiring the monthly payment of value-added taxes and allowing LGUs to share in VAT revenues. Autonomous Regional Government in Muslim Mindanao, Department of Finance, and Department of Budget and Management. Joint Circular No. 2004-1: Guidelines on the release of the share of the ARMM and concerned LGUs in national internal revenue collections. Autonomous Regional Government in Muslim Mindanao. Muslim Mindanao Autonomy Act No. 49: 1996 Revenue Code of the ARMM. . Muslim Mindanao Autonomy Act (MMAA) on the Local Budget Fund for Fiscal Years 2005-2016. Available online: www.armm.gov.ph. Bureau of Internal Revenue. Revenue Regulations No. 5-2003: Implementation of ARMM's share in internal revenue taxes including withholding taxes and the yearly incremental revenue from Value-Added Taxes collected within the autonomous region. . Revenue Regulations No. 17-2010: Implementation of RA 7646 authorizing the Commissioner of Internal Revenue to prescribe the place for payment of internal revenue taxes by large taxpayers. ARMM-Office of the Regional Treasurer (ORT). Data on ARMM Sources of Receipts, 2013-2015. ARMM-Regional Budget Management Office (RBMO). Data on ARMM Budget. Bureau of Internal Revenue. Data on BIR-Certified ARMM Shares by Payment Mode, 2010-2016.

Bureau of Local Government Finance. Statement of Receipts and Expenditures, 2011-2015. Available

Department of Budget and Management. Data on Appropriated ARMM Shares, 2011-2016.

# CHAPTER 4 Key Issues on Intergovernmental Relations

s a unitary state, the Philippines has adopted a policy of decentralization And regional and local autonomy to promote responsive and accountable governance. The central government has devolved certain powers and functions to the Autonomous Regional Government of Muslim Mindanao and the provinces, cities, municipalities and barangays of the country.

As local authorities are closer to the people, they are presumed more knowledgeable and can respond better to their constituents' specific needs and concerns. Accountability is more direct as voters can choose not to re-elect government officials who are not responsive to their needs. And local politicians, who have more direct interaction with local bureaucracy, can also better monitor the performance of local agencies, thus improving bureaucratic accountability as well. In this regard, the Autonomous Regional Government and the different local government units in the country are supposed to enjoy some degree of local autonomy or self-rule. They should be able to make decisions on their own and be accountable to their constituents, and not to the central government authorities, especially concerning functions devolved to them.

The assignment of powers and functions to the different levels of government is thereby critical to the establishment of local autonomy or self-rule. It defines the policy areas over which a level of government has final jurisdiction. Moreover, to make regional and local autonomy real and meaningful, the devolution of functions should be matched with corresponding resources. As often mentioned, there can be no genuine autonomy without fiscal autonomy.

Regional or local autonomy, however, is merely one side of the coin. As the experiences of matured democratic countries that have multilevel government systems demonstrate, intergovernmental relations among the various levels of government are equally important. Given the complexity of government services, autonomous government units operating on their own are likely to have conflicts that can result in over- or under-provision of critical public services. It is therefore important for the national government and the regional and local governments to be able to work jointly and effectively in making decisions, minimizing service duplication,

undertaking planning and development, ensuring fair resource allocation, and resolving disputes and deadlocks.

The following discussion highlights three key intergovernmental relation issues in the ARMM context: (1) weak regional representation mechanisms in national policymaking, (2) imbalanced and fragmented NG-RG relations, and (3) fragmented RG-LGU relations. These critical issues undermine effective governance and need to be addressed in designing the Philippine federal setup.

# **Weak Mechanisms for RG Representation** in National Level Policymaking

The IGR-related provisions of the 1989 ARMM Organic Act (RA 6734) largely pertained only to two aspects: (i) the President's power to exercise general supervision over the RG and ARMM-LGUs, to ensure that national and regional laws are faithfully executed, and (ii) the RG's mandate to maintain close coordination with the NG for the orderly management of the special courts within the ARMM. The 2001 ARMM Organic Act (RA 9054) addressed the insufficiency of IGR mechanisms by providing that the ARMM be represented in the Philippine Congress<sup>1</sup>; the President's Cabinet<sup>2</sup>; NG offices that implement policies, programs and projects in the region<sup>3</sup>; constitutional bodies<sup>4</sup>; National Security Council<sup>5</sup>; and GOCCs with operations in the ARMM<sup>6</sup>. These representation mechanisms are based on the 1996 Peace Agreement between the NG and the Moro National Liberation Front (MNLF).

Regional Representation in Congress. Section 4, Article V of RA 9054 provides for the "election of legislators to represent the autonomous region in the Philippine Congress." To be carried out pursuant to the rules of the Commission on Elections, the election of legislators to represent the region is not clearly different from the election of representatives of congressional districts provided in the 1987 Constitution. Note that the 1996 Peace Agreement between the NG and the MNLF provided that

"it shall be the policy of the National Government that the Regional Autonomous Government shall have one (1) representative in Congress as a Sectoral Representative." Pursuant to this peace agreement, this sectoral representative for the Regional Government is aside from the elected representatives from ARMM congressional districts.

In the crafting or amendment of the ARMM Organic Act, the autonomous region and its RG essentially have no effective representation in Congress. The presence of the eight (8) District Representatives from the ARMM does not ensure effective representation because of their small number (i.e., the current House of Representatives has a total of 294 members) and because their primary accountability is more towards their district constituencies than to the RG or the region-wide constituencies. Similarly, the members of the Senate who are elected nationally are not in the best position to actively represent and defend the interest of the ARMM because their main accountability is towards broader nationwide, rather than geographicallybased regional, constituencies.

The ARMM is the only region in the country with its own RG. Thus, protecting regional autonomy may not be a widely embraced legislative advocacy by members of Congress who come from administrative regions that do not have their own RGs. The absence of other RGs throughout the country means that there is no broad national constituency defending the cause of regional autonomy. The current representation in Congress is weak in the formulation of policies that protect and promote regional autonomy.

Oversight Committee for Organic Act Implementation. IGR between the NG and RG started with the creation of an Oversight Committee, which is mandated to supervise the transfer of NG powers and functions to the RG as vested under the Organic Act.<sup>7</sup> Reflecting its intergovernmental nature, the committee has five (5) members from the NG (i.e., the President's Executive Secretary, DBM Secretary, NEDA Director-General, two Senators designated by the Senate President) and four (4) from the ARMM (i.e., the Regional Governor, the RLA Speaker, two District Representatives from the

ARMM designated by the House Speaker). RA 9054, which amended RA 6734, excluded the NEDA Director-General as member. It also specified the chairpersons of the Senate and House committees on local governments as members.

The Oversight Committee has an important role in operationalizing the RG's powers and functions under the Organic Act. Its reports and recommendations served as the bases of various Presidential Executive Orders (EOs) that defined in more details the powers, responsibilities and services of the RG in education, infrastructure, health and other functions. However, despite the critical policy-setting role of the committee, the Organic Act did not provide for operating principles (e.g., subsidiarity, equity, fiscal equivalence) to guide the committee's work in operationalizing the assigned powers and responsibilities of the RG and NG by function.

As the main IGR platform for regional participation in operationally defining the powers, functions, responsibilities and services of the RG, the Oversight Committee had no mandates under the Organic Act to convene with regularity. In fact, one of the sentiments of ARMM officials is that the Oversight Committee under the 2001 ARMM Organic Act was not convened to address regional autonomy issues including the non-implementation of Organic Act provisions on regional representation in NG policymaking.

Representation in Executive and Judicial Policymaking. A key approach to IGR under RA 9054 is to ensure regional representation in the NG's executive and judicial policymaking bodies. Section 6, Article V of RA 9054 provides that the Regional Governor is an ex officio member of the National Security Council on matters concerning the ARMM.8 The Regional Governor shall also be represented in the board of directors of government-owned-andcontrolled corporations (GOCCs) with business operations in the ARMM. The apparent intent of these IGR-related provisions is to protect regional autonomy and to ensure regional participation in NG policies, projects and other activities that affect the ARMM.

Meanwhile, regional representation in NG policymaking may be done by appointment of ARMM inhabitants to NG positions. ARMM inhabitants to be appointed in NG positions are subject to the Regional Governor's recommendations, which he is supposed to issue after consulting the RLA and the concerned sectors in the ARMM. Examples of this regional representation mechanism are the following: (1) the appointment of an ARMM inhabitant as a member of the President's Cabinet with a rank of a department Secretary (Ibid.); and (i) the appointment in confidential, highly technical, or policy-determining positions in each national executive department and constitutional bodies, of at least one (1) qualified ARMM inhabitant.<sup>10</sup>

In the administration of justice, at least one (1) justice in the Supreme Court and two (2) justices in the Court of Appeals shall come from qualified jurists of the ARMM.<sup>11</sup> These SC and CA justices will be selected from the list of qualified persons to be submitted by the Regional Governor to the Judicial and Bar Council (JBC). In addition, the President is required under RA 9054 to appoint a JBC Consultant, also recommended by the Regional Governor after getting confirmation by the RLA. Once appointed, the Consultant shall be consulted by the JBC on appointments to judicial positions in the ARMM. The Chief Justice of the Supreme Court is also mandated to appoint a Deputy Court Administrator (DCA) for the ARMM who will be selected from the list of persons recommended by the Regional Governor.<sup>12</sup>

Unfortunately, these mechanisms for regional representation in nationallevel policymaking have not been operationalized by the NG, partly, because regional representation mechanisms appear to be non-mandatory: Section 5, Art. IV of RA 9054 only provides that, as far as practicable, the RG will be represented in NG departments, offices, agencies, and bureaus that implement policies, programs and projects of the NG in the ARMM. In addition, operationalizing these regional representation mechanisms in national-level policymaking for the lone autonomous region under a unitary setup is problematic because this would be perceived as unfair by stakeholders from administrative regions that may also want to have seats in NG's policymaking bodies.

# **Imbalanced and Fragmented NG-RG Relations**

Imbalanced IGR. The relationship between the NG and RG under a unitary government context is highly imbalanced, with the NG possessing strong powers not only to exercise general supervision, but also to control the RG. Under RA 9054, the President has the power of general supervision over the Regional Governor.<sup>13</sup> RA 9054 also gives substantial powers to the President to discipline the RG. The President can suspend or remove the Regional Governor for willful violation of the Constitution or any existing laws that apply to the ARMM and for committing treason, graft and corruption, and other high crimes. The President can also suspend, reduce, or cancel NG's financial assistance to the ARMM when the RG fails to account for the funds and financial assistance released by the NG, and when the RG does not implement or violate the measures for the protection and enhancement of the civil, human, political or religious rights of the lumads, Christians and other minorities in the ARMM.14

The ARMM legal framework, supplemented by budgeting and other fiscal arrangements, orients the RG's legal, fiscal and performance accountability towards the NG than to its regional stakeholders. It imposes an obligation of the RG to comply with national laws, policies, and standards which are unilaterally formulated by the NG in the absence of effective regional representation in NG policymaking. Existing governance arrangements under the ARMM Organic Act approximates an accountability relationship where the NG is the principal and the RG is its agent accountable to it.

Based on interviews with ARMM civil servants, in terms of administrative directives, national government agencies (NGAs) deal with Regional Government Agencies (RGAs) like they are still within their administrative supervision and control. They cited instances when the NGAs issued memoranda orders to Regional Secretaries as if they were Regional Directors of NGAs. For instance, some national DepEd memoranda orders were directly addressed to the Regional Education Secretary as if he was still part of the national education bureaucracy. Consequently, memoranda orders of NGAs directed to ARMM Regional Secretaries create the related issue of the NG bypassing the Regional Governor who heads the autonomous regional government.

Fragmented NG-RG Relations. Interviews with ARMM civil servants also revealed, ironically, that, in terms of service delivery, NGAs treat RGAs more as separate rather than integral parts of the national system for delivering public services. A common concern expressed by ARMM civil servants is the exclusion of RGAs from the strategic planning and budgeting activities of NGAs. For instance, the DOH-ARMM is not invited by the national DOH in its technical budget hearings. Thus, it would seem that RGAs are being treated as integral to NGAs when it comes to administrative directives but separate when it comes to delivering national services and budget allocation

There is a widespread sentiment among RG officials and civil servants that ARMM is increasingly being marginalized from NG funding opportunities. RG officials and civil servants interviewed in this study believe that ARMM does not get its fair and equitable share of funds for national programs intended for nationwide implementation. For example, the ARMM has no allocation under the National Greening Program, 15 hence, the RG cannot implement such program around Lake Lanao that powers half of Mindanao. In 2016, as pointed out by the Regional Trade Secretary, the ARMM had no allocation under the "Negosyo Centers" program of the Department of Trade and Industry (DTI).

A major concern not given due attention by the NG is the upgrading of the RG's skeletal organizational structure inherited since the establishment of the ARMM in 1989. The RG has requested the DBM, which has retained the authority to create additional regular positions, to address this problem but not much has been done about it through the years. As a result, RGAs are reportedly understaffed especially in their provincial offices that serve as frontlines for the delivery of RG services. Most new hires of the RG are employed on contractual status.

A key reason for increasing marginalization of the ARMM is its autonomous status, which engenders a view that the RG should generate its own resources and not rely on the NG for financial support. Some NGA personnel consulted in this study believe that RGAs should no longer receive their share of national program funds because their respective allocations are already included in the budget for the Autonomous Regional Government in Muslim Mindanao (ARGMM) under the annual national budget.

Most IGR mechanisms under the Organic Act focus on the objectives of ensuring regional representation in NG policymaking and ensuring RG's compliance to national policies and standards. 16 However, except for the Oversight Committee to manage the implementation of the Organic Act, there appears to be no other formal IGR mechanisms designed to foster coordination and collaboration between the NG and RG in performing many shared functions (e.g., grant of incentives to investors, barter trade regulation) under the Organic Act. The insufficiency of formal IGR mechanisms for NG-RG coordination and collaboration contributes to the fragmented NG-RG relations.

# **Fragmented RG-LGU Relations**

A key issue in the ARMM is the lack of cohesive relations between the RG and its constituent LGUs. This is manifested in the RG's difficulty to secure LGU compliance to RG directives and in the sentiments of some local government officers that the RG is a redundant level of government that hinders the access of LGUs to NG financial assistance.

The weak authority of the RG over its constituent LGUs contributes to the lack of cohesive RG-LGU relations. While the RG has the power of general supervision over ARMM-LGUs<sup>17</sup>, this power is only an extension of the President's constitutional power of general supervision over LGUs. 18 Reflecting the weak RG authority over its constituent LGUs under a unitary government context, the RG exercises general supervision over its constituent LGUs essentially as the delegated agent of the President but not as the principal of LGUs.

In addition, despite the establishment of the RG in the ARMM in 1989, the existing legal framework for the ARMM under a unitary government context does not exclude ARMM-LGUs from the coverage of NG's power over LGUs. National laws applicable to LGUs also apply to ARMM-LGUs. For example, the 1991 Local Government Code, which requires LGUs to submit fiscal accountability reports to the DBM, orients the accountability of ARMM-LGUs toward the NG than to the RG.

The direct access of the NG to ARMM-LGUs and vice versa further weakens the RG's authority over its constituent LGUs. To augment local provisions of devolved public services as authorized under the 1991 Local Government Code, the NG implements national programs such as the Local Government Support Fund (LGSF) to finance projects of provinces, cities and municipalities on local access roads, road repairs, local bridges, potable water systems, and health facilities, among others.

The weak financial capacity of the RG weakens its authority over its constituent LGUs. Some LGU officers believe that the RG does not have the capacity to address LGU concerns (e.g., dilapidated classrooms). In comparison, the NG has more influence over ARMM-LGUs because it is the source of their annual Internal Revenue Allotment (IRA) and it has national program funds which the LGUs can tap to finance local projects.

Within the ARMM, there is a break in supervisory chain pertaining to the power of review over ordinances of component LGUs. Higher-level LGUs (i.e., the province) are given authority under the 1991 LGC to review the ordinances of their component cities and municipalities. In comparison, under the Organic Act and the Regional LGC, the RG does not have such power of review over provincial ordinances. 19 The RG's power covers only the review of executive orders issued by Provincial Governors. More specifically, in line with the 1991 LGC and the Regional LGC, the DBM rather than the RG is the one who has the power of review of the annual budget ordinances of ARMM provincial governments.<sup>20</sup>

Weaknesses and insufficiency of formal IGR bodies for RG-LGU coordination contribute to fragmented RG-LGU relations in the ARMM. The Organic Act mandates the establishment of a Regional Economic Planning and Development Board (REDPB) composed of the Regional Governor as chair, and the Provincial Governors and City Mayors as members. However, the REDPB mainly tackles infrastructure concerns of LGUs.

Meanwhile, the Regional Local Government Code and Regional Administrative Code (RAC) have not prioritized the establishment of formal IGR bodies for RG-LGU coordination in service delivery. Regional bodies such as the ARMM Peace and Order Council<sup>21</sup> and Disaster Risk Reduction and Management Council<sup>22</sup> do not include LGU officials as members. Note, however, that the RG has also established RG-LGU partnerships through Memoranda of Agreement (MOAs) with LGUs on selected programs, activities and projects (PAPs) of the RG (Alamia, 2016). Bottom-up planning is also increasingly being used to identify LGU priorities for REDPB consideration.

Another factor is the quality of RG coordination which needs improvement. LGU officers interviewed in this study said that the RGAs coordinate with LGUs by simply informing them about the RG's programs.<sup>23</sup> In addition, provincial health and agriculture officers, appointed and paid by the RG, report to and coordinate more with the RG than with provincial governments (PG) which supposedly have the power of supervision and control over these officers since they are mandatory PG officials under the 1991 I GC.

#### **END NOTES**

- <sup>1</sup> Section 4, Article V, RA 9054
- <sup>2</sup> Section 2, Article V, RA 9054
- <sup>3</sup> Section 5, Article IV, RA 9054
- <sup>4</sup> Section 5, Article V, RA 9054
- <sup>5</sup> Section 6, Article V, RA 9054
- <sup>6</sup> Section 7, Article V, RA 9054
- <sup>7</sup> Section 3, Article XIX of RA 6734
- <sup>8</sup> Sec. 7, Art. V of RA 9054,
- <sup>9</sup> Section 4, Article V of RA 9054
- <sup>10</sup> Section 5, Article V, RA 9054
- 11 Sec. 2, Art. VIII of RA 9054
- <sup>12</sup> Sec. 4, Art. VIII, RA 9054
- <sup>13</sup> Section 1, Article V, RA 9054
- <sup>14</sup> Sec. 5, Art. V, RA 9054
- <sup>15</sup> Interview with Atty. Rasol Mitmug Jr., 17 March 2017
- <sup>16</sup> Sec. 4, Art. XIV, RA 9054
- <sup>17</sup> Sec. 1, Art. V of RA 9054
- <sup>18</sup> Section 1, Article V of RA 9054 provides that: "The power of supervision of the President over the provincial governors and the mayors of the highly urbanized cities shall be exercised through the Regional Governor; over the mayors of the component cities and municipalities, through the provincial governor, and over the punong barangay, through the city or municipal mayor."
- <sup>19</sup> Section 27, Article III, MMAA 25
- <sup>20</sup> Section 322, MMAA 25
- <sup>21</sup> Section 8, Chapter 3, Title V, MMAA 287
- <sup>22</sup> Section 11, Chapter 4, Title V, MMAA 287
- <sup>23</sup> Interview with appointed LGU officials

#### **REFERENCES**

Autonomous Regional Government in Muslim Mindanao. <i>Muslim Mindanao Autonomy Act No. 25:</i> 1995 ARMM Local Government Code.
. Muslim Mindanao Autonomy Act No. 287: 2011 ARMM Administrative Code.
Republic of the Philippines. 1996 Peace Agreement with the Moro National Liberation Front, Available online: http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/phil16.pdf
. Republic Act No. 9054: 2001 ARMM Organic Act.
Republic Act No. 6734: 1989 ARMM Organic Act



major distinction between unitary and federal systems is the presence in the latter of an intermediate government level often referred to as states. In unitary systems, there are two main government levels: central and local. In federal systems, on the other hand, there are three distinct government levels: federal, states, and local. The states in federal systems share sovereignty with the federal government. Apart from fiscal autonomy, they have full complement of legislative, executive, and judicial powers, and have final jurisdiction over a broad range of policy areas that are defined in the constitution (Bognetti, et al 2016).

The states in federal system provide a check or counterbalance to the central government tendency to enlarge its jurisdiction. In unitary system, the central government can deal directly with all local government levels that usually result in central government domination over the smaller local governments. In federal system, intergovernmental relations are usually carried out at the federal-state levels or at the state-local levels. The federal government can only deal with the state governments and cannot directly address itself to the local governments. In the same manner, the local governments cannot bypass state authorities and deal directly with the federal government. This system of intergovernmental relations helps ensure the autonomy of the states and its constituent local governments.

The states are also instrumental towards the exercise of self-rule and shared-rule that is the hallmark of federal system. States in federations are autonomous units that exercise self-rule or decision-making powers within the limits set by the constitution. Concurrently, they have vested rights to shared rule; they can participate in the decision-making process at the national level. The exercise of self-rule and shared rule provides stability to federations. It allows unity amidst diversity and encourages coordination and cooperation among the constituent states and the federation (Villiers 2012).

The creation of states or regional governments is therefore a very critical component of the proposed reform agenda to change the country's form

of government from unitary to federal. This case study of the ARMM, which is the only regional government in the Philippines, analyzes the issues and challenges that have hindered its effectiveness and provides lessons on how they can be addressed under the proposed federal system. These lessons are grouped under three important areas that are critical to the design of federal system, namely: (1) assignment of powers, (2) fiscal arrangements, and (3) intergovernmental relations.

# **Key Lessons on the Assignment of Powers**

The problem tackled in this case study is how to design effective and accountable regional governments (RGs) under a federal setup. Arising largely from the unitary government setup, three major issues affect the operations of the only existing regional government in the country: (1) the coherence and stability of the legal framework, (2) the clarity of the delineation and scope of the assigned powers of the RG; and (3) the autonomy and accountability of the RG to perform its functions and responsibilities. The following are the key lessons to guide the design of RGs under a federal government setup for the Philippines:

# **Primacy of the National Constitution** in the Assignment of Powers

The issue of contending and unstable legal framework for the autonomous region arises because the powers of the RG under a unitary government setup are not enshrined in the Philippine Constitution. The powers, functions, and responsibilities of the RG are defined by the Organic Act, which is a national law whose provisions can be declared unconstitutional by the SC and can be amended by other national laws. Issued by the NG, the EOs operationalizing the powers, functions, and responsibilities of the RG can also be easily amended. The ARMM legal framework thus consists of uncoordinated and separate national laws, EOs, administrative guidelines, and SC jurisprudence that define a confusing set of powers, functions, and responsibilities of the RG vis-à-vis the NG and its constituent LGUs.

A clear constitutional basis—not subject to the amendatory effects of national laws, EOs, SC rulings, and administrative guidelines—will ensure the clarity, certainty and stability of the assigned powers of regional governments. Enshrining the assigned powers of the RGs in the national Constitution will ensure that they are not subordinate to those of the NG in all policy areas. It will give the RGs not only clearer policy jurisdictions but also well-defined autonomy to make certain laws and provide and deliver various public services responsive to the regional context.

Constitutional enshrinement of the powers, functions, and responsibilities of the RGs will also clarify the national policy on establishing more effective and accountable regional governments. It will clarify the power relations between the NG and RGs under a federal setup especially with regard to the supervision over LGUs. It will strengthen the powers of RGs to design more cohesive regional and local governance systems more suitable for their respective regional contexts.

Making the national Constitution rather than national laws (e.g., the Organic Act) as the primary legal framework will stabilize the powers, functions, responsibilities of the RGs under a federal setup. Constitutional enshrinement will prevent the emergence of SC rulings that will void the assigned powers of RGs. However, being the arbiter of the constitutionality of the acts of the various levels of government, the SC can issue such rulings when the NG and RGs exceed their respective policy jurisdictions.

A key issue that needs to be addressed in the design of the federal setup is the autonomy of the RGs in performing their assigned powers, functions, and responsibilities. One option to address this issue is to clearly define in the national constitution the scope of essential 'national' and 'regional' functions, responsibilities, and public services. Essential national functions, responsibilities, and services may require compliance by the RGs to national laws, policies, and standards. However, for certain functions, responsibilities, and services defined as regional in nature by the Constitution, the RGs may be given a wide scope of autonomy from the NG to make regional laws and to provide and deliver various kinds of services. Compliance with national laws, policies, and standards may not be defined

as an obligation of RGs especially in functions, responsibilities, and services which are regional in nature. RGs may be given sufficient autonomy to make regional laws, policies and service standards when they perform essentially 'regional' responsibilities and services.

Constitutional enshrinement will give more stability to the assigned powers, functions, and responsibilities of the RGs. Unlike in a unitary government setup, the constitutionally-assigned powers and functions of the RGs cannot be easily taken by the NG. In addition, constitutional enshrinement will address constitutional restrictions (e.g., civil service to be administered by the national CSC) that fragment the powers of the RG to make laws and to implement them.

#### Clear Delineation of NG and RG Roles Within Functions

Establishing effective and accountable regional governments under a federal setup requires clear delineation of the assigned responsibilities and services of the NG and RG within complex government functions. Clear delineation of NG-RG responsibilities and services remains important in shared functions not only to leverage the resources and other strengths of the NG and RG, but also to establish clear accountability in the financing, provision, production, and regulation of various public goods and services.

Shared functions are prevalent in the ARMM legal framework, which does not clearly delineate the scope of the powers, responsibilities and assigned task of the NG and RG within education, health, infrastructure and other shared functions.

The ARMM case illustrates not only the extensive but also largely undefined scope of NG's powers and responsibilities across functions. Owing to a unitary government setup, the NG continues to have lawmaking and other powers over functions and responsibilities assigned to the RG. These extensive powers of the NG outside the autonomous region may not be tenable under a federal setup because there will be other RGs throughout the country. The design of the federal setup thus needs to clarify the scope

and delineation of the powers, functions, and responsibilities assigned to the RG/NG, to avoid frequent conflicts in geographic and policy jurisdictions throughout the country.

The unclear assignment of powers, functions, and responsibilities to the NG and RG in the ARMM context is due to the vague if not wide scope of the NG's involvement in the RG's geographic and policy jurisdictions. The expansive scope of the NG's powers, including the power to pass laws governing LGUs, has also resulted in overlapping powers, functions, and responsibilities of the RG and its constituent LGUs in the ARMM.

The clear, rational and empowering assignment of responsibilities and services to the RGs within education, health, and other government functions, provides strong impetus for policy and service-delivery initiatives of RGs to address the development challenges facing the regions. It minimizes conflicts of policy jurisdictions between and among the NG and RG and between the RG and its constituent LGUs. In addition, it leverages the competencies and capacities of various levels of government in addressing key development challenges within various government functions.

Clearer delineation of assignment within functions requires rational assignment of responsibilities and tasks within these responsibilities. It needs to be based on systematic assessments of the subsidiarity, fiscal equivalence, spill-overs, economies of scale, and equity implications of various government functions, functional responsibilities, and component public services. These assessments will help policymakers to determine which functional responsibilities, component services and even servicedelivery inputs within functions are 'national', 'regional', or 'local' in nature and which can be subjected to joint assignments to two or three levels of government.

The assignment of powers, including the reserved powers of government, may need to consider the nature of the responsibilities and public services constituting government functions. For instance, breaking the complex education function by component responsibilities, services and even service-delivery inputs may reveal insights useful in making more informed and rational decisions as to which level or levels of government may be given responsibilities for carrying them out.

# **Greater Autonomy in Designing Regional** and Local Governance Systems

The issue of overlapping assignment between the RG and its constituent LGUs highlights the need to harmonize and rationalize the powers, functions, and responsibilities across all levels of government. Such harmonization may be achieved not only by making the federal constitution as the primary legal framework to define the powers of the RG vis-à-vis the NG and LGUs, but also constitutionally vesting the RG with an exclusive power to formulate laws governing their constituent LGUs.

As demonstrated in this case study, the NG's power to make laws and applying them to LGUs in the autonomous region weakens the power of the RG to supervise and govern its constituent LGUs. In addition, the flexibility of the RG to define the mandates of its various Regional Government Agencies is constrained by the EOs issued by the NG defining the functions and responsibilities of the RG. Moreover, NG statutes and EOs create legal obligations on the part of the RG to integrate in toto the functions and responsibilities transferred by the NG.

Implementing rules and regulations (IRRs) operationalizing the establishment of RGs may need to specify only the essential responsibilities and public services that RGs need to perform. Outside these 'minimum essentials', the RGs need to be given more flexibility in defining the mandates of their respective RGAs. This setup will ensure that RGs are not bound by a legal obligation to integrate some transferred NG responsibilities and services which may not all be relevant to the regions.

The national constitution and IRRs need to give RGs the flexibility to rationalize and design regional and local governance systems that are responsive to the demands of the regional context. They also need to recognize that the RGs, rather than the NG, are the principals of their constituent LGUs.

To create strong and effective regional governments under a federal setup, there is a need to grant the RGs the exclusive power to define the powers, functions, and responsibilities of their constituent LGUs. Giving the RGs such power will enable them to promote more cohesive regional governance by rationally applying the principles of subsidiarity, fiscal efficiency, scale economies, spill-over effects, and equity in the design of regional and local governance systems, thereby making them more responsive to the regional and local development contexts.

# **Key Lessons on Fiscal Arrangements**

Regional governments need to have sufficient financial resources and organizational capacities to efficiently and effectively perform their assigned functions and responsibilities. Valuable lessons from the ARMM experience can be considered in designing fiscal arrangements under a federal setup.

## **Ensure Independence in Regional Budgeting**

The budget can be instrumental to regional development. It could reflect the priority programs for the region, the sectors and population groups to which these programs can be targeted, and the institutions and mechanisms for public service delivery. However, the ability of regional governments to exercise budget independence largely depends on the nature of its funding i.e., whether they are budgetary support subject to compliance with nationally set budget regulations, or block grants that are automatically appropriated, or internally generated revenues subject to regional budget rules.

The case of the ARMM shows that despite its autonomous status, the regional government continues to rely heavily on the NG to finance the operations of its government. The ARMM budget forms part of the annual appropriations for NG, and it needs to submit its budget proposal for review by the Executive Department, and for approval by Congress. In such setup, the Regional Legislative Assembly practically has no role in the review and approval of the budget for the region.

The national government treats the ARG like a line agency, and does not distinguish it from other public entities that need to conform to national budget regulations. Even well-meaning reforms by NG need to consider the different context of an autonomous entity to ensure that processes are made to work within a legal framework specifically designed to promote autonomy. The itemization of previously lump sum funds in the GAA may have promoted greater budget transparency but it undermined the appropriations power of the Regional Legislative Assembly with regard to the infrastructure fund.

The ARMM experience underscores the need for regional governments to have their own budget separate from that of the national government. This means providing regional governments with greater flexibility to determine the preparation, allocation, approval, and utilization of their respective budgets (without need for frequent follow-up or facilitation of fund releases from national offices). However, this would also require regional governments to develop budget policies and institutions that seek to promote key budget goals and principles of fiscal discipline, strategic allocation, operational efficiency, transparency, and accountability.

Even fund transfers specifically intended to support NG-led programs should provide some degree of flexibility in determining intra-regional allocation. Sub-national governments have greater access to local information that puts them in a better position to profile communities and target beneficiaries for programs implemented within their jurisdiction.

**99** LESSONS IN CREATING REGIONAL GOVERNMENTS

CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 100

A block grant that is formula-based should be able to free regional allocations from being negotiated or subject to political biases. It can help ensure that financial resources for the region are predictable and stable—hence, easier for regional governments to plan and budget for priority development programs of the region. With the block grant, the Regional Assembly that wields the power to appropriate public funds can also exercise budget oversight and demand agencies to perform according to agreed targets and commitments.

# **Strengthen Financial Accountability Through Universal Standards**

With greater fiscal autonomy given to regional governments, accountability mechanisms need to be established and strengthened to ensure the wise and prudent use of taxpayers' money. Accountability standards and guidelines for nationwide application should be developed to harmonize the accounting practice, reportorial requirements, and transparency mechanisms. This could help ensure reliable financial reporting and disclosures, and enable systematic reviews and evaluation of performance. Such guidelines can be subject to intergovernmental relations (IGR) processes to ensure that they are acceptable for adoption by all regional governments.

The presence of national standards for accountability does not necessarily mean that it will be the federal government that shall exact accountability and impose appropriate sanctions. Accountability mechanisms can be developed within the regions, and a more empowered Regional Legislative Assembly can exercise budget oversight along with its appropriations power. Also, transparency mechanisms that shall make financial reports accessible to the public can empower the latter to create legitimate demands for accountability.

The role of the Commission on Audit (COA) in ensuring accountability in all transactions and use of public money is important. While regional governments can set up its own internal audit system, the COA as an independent Constitutional body with the required expertise should remain the supreme audit authority that has jurisdiction over all government entities nationwide, including regional governments.

## **Expand Revenue Sources for the Region**

The ARMM case demonstrates the limited revenue-generating capacity of the regional government. Aside from relatively slow economic activity in the region, its revenue base is limited by the extensive scope of NG's reserved taxing powers (including taxes on personal and corporate income, VAT, and excise tax, among others). Most of the regional taxes are simply add-ons to local taxes, and these are hardly imposed in the absence of an institutional setup for collection between the ARG and the LGUs/BIR.

Taxing powers involving the determination of the tax base, the setting of tax rates, and actual tax collection do not necessarily have to be assigned to one particular level of government. Expanding the revenue sources for the region can consider allowing the regional government to "piggy back" or impose a supplemental tax on a federal base. A shared tax would require deciding on an overall tax rate ceiling to minimize tax competition, and determining the tax rate that NG can impose in order to provide room for a regional supplemental tax.

For administrative ease, especially with the lack of local technical capacity, collection of taxes can be centralized through an independent revenue body that will have greater flexibility in recruiting and compensating its personnel based on merit and fitness. Such body will be headed by a chief executive officer (CEO) who shall enter into a performance contract with the Board that may include representatives from the national and regional governments. It will collect revenues for both the national and regional government, and could be funded out of its own collection. A fixed percentage of actual collection for the revenue collecting agency could provide the incentive to collect taxes more efficiently and ensure taxpayer compliance.

**101** LESSONS IN CREATING REGIONAL GOVERNMENTS

The revenue sharing scheme that considers the income origin can create the incentive for regions to develop themselves in order to broaden the tax base, and subsequently generate additional revenues. This is more efficient than the IRA that is taken out of a nationwide pool of resources without any link to local production or collection performance. Meanwhile, the automatic appropriation of regional government shares from national internal revenues needs to be considered. This will shield the individual regional shares from uncertainties in the budget process.

However, there should be a systematic and more transparent way of determining the rightful share of the regions from taxes generated within its jurisdiction. The revenue collecting agency should be able to trace the geographic origin of its collections. The consolidated filing of tax returns for Large Taxpayers may prove efficient for tax collection, but it has to be redesigned in a way that allows for the disaggregation of incomes of the separate units of a corporation. As an alternative, proxy indicators (e.g., employee distribution by area of operation) may be used to approximate the incomes originating from each region.

The fiscal capacities of regions naturally vary from one to another because of resource endowments and presence of businesses, among other factors. Equalization transfers (separate from the shares derived from collections in the region) have to be designed to determine fiscal transfers that take into account disparities in expenditure needs and revenue capacities. This eventually requires improving the regional/local databases that can help appropriately profile the regions to determine their just and equitable shares. In other federal systems, an independent technical body (like a Grants Commission in Australia) is formed to regularly review the formula and make corresponding adjustments in the regional or state shares.

#### Reformulate the Internal Revenue Allotment

The existing fiscal transfer system (involving the IRA) entitles individual LGUs to shares in the national internal revenues without clear consideration towards regional development. Instead, the IRA is distributed by level of

government (i.e., province, city, and municipality), and subsequently among LGUs within each level.

Reformulating the IRA will have to consider the inequities and inefficiencies brought about by the current sharing scheme. The distribution by level of government fails to consider differences in development conditions of the region (as a geographic unit consisting of LGUs). Fiscal capacity factors that differentiate the ability of sub-national governments to generate own source revenues were not considered.

Meanwhile, the current formula that allocates 25% of the total IRA based on equal sharing (i.e., a quarter of the entire IRA is simply divided by the number of LGUs at each level of government) encourages fragmentation. In such case, regions that have more LGUs would tend to have a bigger IRA (when aggregated for the region).

The regional government, with its power to create LGUs, should be able to internalize the adjustments in shares of the IRA. However, this is difficult to do when the IRA is shared across levels of government. Such criterion can prove disadvantageous when regional governments are vested with the power to create LGUs but the subsequent increase in IRA that accrues to the region results in a reduction in the shares of LGUs elsewhere. An intraregional IRA may be considered after determining the regional shares.

Under a federal setup, the IRA can be redesigned to become an effective tool towards equalizing opportunities for growth and development of the regions. Transfers can be used to correct fiscal capacity differences of regional governments to enable them to provide a "minimum bundle" of public services to their constituents. However, it is important to note that when equalizing fiscal capacity, transfers have to be based on measures of potential revenue-raising capacity—not on actual collections which may prove to be a disincentive to revenue effort.

## **Key Lessons on Intergovernmental Relations**

Under a unitary government context which gives the NG substantial powers to determine and define the RG's powers through national laws and executive orders, regional autonomy is limited because regional representation mechanisms in national-level policymaking are not institutionalized. Thus, the NG can unilaterally impose its policy preferences upon the RG in the ARMM that has a legal obligation to comply with national policies.

By giving the NG very strong powers to define the powers and functions of the autonomous region, to operationalize regional representation mechanisms in NG policymaking, and to exercise supervision not only over the autonomous region but also its constituent LGUs, the unitary government setup has contributed to highly imbalanced and fragmented intergovernmental relations between the NG and the RG.

Shifting from a unitary to a federal system of government can potentially improve the prospects for autonomous regions. As a technique of constitutional organization, federalism provides constitutional guarantees of regional powers, functions, and rights. Operating based on the principles of self-rule and shared rule, federalism can ensure autonomous action by constituent units of government for purposes distinct to them and promote joint intergovernmental action to achieve common purposes (Watts, 2002).

A federal setup can improve the prospects for the ARMM because it will pave the way for the creation of other regional governments with vested rights to participate in national-level policymaking. The creation of other regional governments will help to mainstream the concerns of the ARMM that are not being addressed by the non-functional mechanisms for regional representation in national-level policymaking under the Organic Act. Moreover, regions under a federal setup are generally involved in policymaking while autonomous regions under a unitary government setup

have no special vested rights regarding the exercise of central government power and, in general, have no special level of representation in the central government (Benedicter, 2009:15).

A federal setup can facilitate the establishment and institutionalization of necessary IGR mechanisms that will help (1) clarify constitutional and statutory powers of regions (2) ensure effective regional representation and participation in national policymaking, and (3) facilitate resolution of conflicts in policy jurisdictions between the NG and RGs that constitute the federation.

Owing to their critical roles in facilitating regional representation and participation in national-level policymaking and in fostering NG-RG and RG-LGU intergovernmental collaboration, IGR mechanisms are critical to the effective functioning of a Philippine federal setup. As shown in this case study, weaknesses in IGR mechanisms undermine regional autonomy, intergovernmental collaboration, and good governance. Weaknesses in IGR mechanisms need to be addressed in designing the Philippine federal setup.

# Representation in Operationalizing the Assignment of Powers

The powers and functions of the RG vis-à-vis the NG under the Organic Act are not well defined. However, making them clearly detailed may also not be practical because performing complex functions often requires flexible governance arrangements. Detailed and rigid assignment of powers and functions in law may not be compatible with the requirements of actual service provision when the national, regional and local dimensions of complex, often-shared government functions are truly sorted out. Indeed, IGR mechanisms are very important because they operationalize and mediate the vague constitutional and statutory assignment of powers during policy implementation. In the case of the ARMM, an intergovernmental NG-RG Oversight Committee was established to define in detail the powers, responsibilities, and services of the RG vis-à-vis the NG.

Shifting from a unitary to a federal form of government will establish more autonomous regions with their own regional governments (RGs) throughout the country. However, operationalizing the powers of regions and their RGs under a federal setup may require IGR mechanisms other than the Oversight Committee created under the ARMM Organic Act. A federal government setup will pave the way for constitutionally-enshrined powers of regions and their stronger vested rights and interests to demand for greater regional autonomy and shared governance with the NG. It will make regional representation a critical requirement in the formulation and approval of national laws that will govern the establishment and operations of regions.

In designing the Philippine federal setup, a key issue that needs to be addressed is the sequencing of IGR mechanisms that will operationalize, define, and mediate the constitutional and statutory powers and functions of the RGs. In this regard, it is important that a bicameral Congress, assuring effective regional representation in national lawmaking, be constituted early on as part of the transition phase towards a full-blown federal setup. This will address the lack of effective regional representation in the formulation and approval of national laws defining the nature, powers, functions, responsibilities and rights of political regions with their own elected RGs.

Effective regional representation in the bicameral Congress will minimize unilateral NG imposition of its policy preferences on RGs and thus protect and promote the vested rights of regions for regional autonomy and shared rule with the NG. It will also foster national consensus on minimum national standards for public services that all RGs need to observe, in line with key guiding federal principles of equity and solidarity.

The practices of existing federal countries may be considered as inputs for discussions on how to design effective regional representation mechanisms in national lawmaking under the Philippine federal setup. For instance, Germany has institutionalized regional representation by making the second chamber (the Bundesrat) of its national parliament as the platform for state

government representation and participation in national lawmaking. The Bundesrat is composed of appointed rather than elected representatives of the 16 Lander (state/regions) governments. The votes of these representatives on various legislative proposals reflect the preferences and positions of Lander governments.

The Bundesrat is powerful enough to block legislative proposals that adversely affect the interests of state governments. All legislative proposals of the German federal government have to be presented to the Bundesrat before they can be passed to the Bundestag, the other chamber of the national parliament composed of directly elected representatives. Consistent with constitutional provisions, the Bundesrat must approve all legislation affecting policy areas where the Landers have concurrent powers and for which they must administer federal regulations. Moreover, since constitutional changes require two-thirds of all votes in Bundestag and Bundesrat, this IGR mechanism for state government representation can exercise absolute veto against constitutional changes that adversely affect the interests of the various Landers.

In the United States Senate, each of the 50 federal states (region) is represented by two Senators who are directly elected by the voters of the respective states. Equal rather than proportional Senate representation is devised to ensure that large states do not dominate the small states. Note that before the ratification of the 17th constitutional amendment in 1913, US Senators were not elected directly by state voters but chosen by their respective state legislatures.<sup>1</sup>

Switzerland's Federal Assembly consists of the National Council and the Council of States. Both chambers have the same powers but they meet separately.<sup>2</sup> Representing the people, the National Council has 200 seats allotted to the 26 cantons (states) in proportion to each canton's percentage share in the national population. Big cantons like Zurich and Geneva have 35 and 11 seats, respectively, while small cantons such as Nidwalden, Uri and Glarus have one (1) seat each.

National Council members are elected using the open-list proportional election system<sup>3</sup> rather than by geographically-based legislative districts. In this election system, political parties participating in the elections for National Council seats (e.g., Zurich's 35 seats) prepare their respective lists of candidates.<sup>4</sup> Canton voters can choose a political party that will represent them in the National Council. In addition, they can vote for their preferred candidates by cancelling the names of any candidates that they do not like on the party's list of candidates, and/or replace them with candidates within the same party (i.e., each candidate can receive a maximum of two votes within the same ballot) or from other political parties. The seats allocated to political parties depend on the number of votes they get during the cantonal election for National Council members.

Similar to the US Senate, the Council of States in Switzerland represents the cantons (states) and has 46 seats. While seat allocation in the National Council is based on proportional representation (i.e., based on percentage share of cantons to the national population), the allocation of seats in the Council of States is based on equal representation almost similar to that of the US Senate. Full cantons are entitled to have two seats each in the Council of States while so-called half-cantons are allocated one seat each.<sup>5</sup>

Forty two (42) Council of States members are elected directly by canton voters through a plurality vote (i.e., the candidate with the most votes will win).<sup>6</sup> Four members from the cantons of Neuchâtel and Jura are elected through open-list proportional representation system. Council of States members represent their respective cantons but are not bound by any instructions or positions of their respective cantonal governments.

An option that may be pursued by the framers of the federal Constitution to ensure effective regional representation in national lawmaking is to convert the Senate as the legislative platform where regional representatives deliberate and vote on constitutional amendments and national laws, which may include a Regional Government Code (RGC) serving as the general legislative framework for the operations of regions and their RGs, and the respective regional Constitutions or Organic Acts.

Subsequently, an administrative NG-RG Oversight Committee, similar to that under the ARMM Organic Act but with expanded membership to include RG representatives, may also need to be established and institutionalized to manage and oversee implementation of key national laws (e.g., the RGC, regional Organic Acts) governing regions.

Aside from regional representation in national lawmaking, regions and their RGs need to have adequate representation and participation in the formulation of national policies formulated by the executive branch of the federal government. To promote equity, solidarity and national cohesion under a federal setup, the observance by RGs of minimum national standards in education, environment and other functions remains a necessity. However, without giving the RGs the platform to participate in the formulation of minimum national standards and guidelines on fiscal accountability, for instance, the NG will still be able to impose its policy preferences on regions, undermining the principles of regional self-rule and shared rule that give stability to federations.

The regional representation mechanisms in NG policymaking including the appointment of regional inhabitants in the President's Cabinet and in policy-determining positions in national executive departments under the Organic Act have not been implemented. These special representation mechanisms for the ARMM are not easy to operationalize under a unitary government setup because they may undermine the power of the executive and judicial departments of the central government to appoint personnel.

Moreover, they may be perceived as unfair by non-ARMM stakeholders who may also clamor for same representation. Because they are not easy to implement, they contribute further to the marginalization of the concerns of the ARMM. Understandably, however, the non-implementation of various Organic Act provisions designed to protect the ARMM's "right of representation and participation in the National Government and in all Organs of the State" has fueled frustrations and mistrust of the NG's sincerity to honor its commitments under the peace agreements with Muslim rebel groups.

The special representation mechanisms under the ARMM Organic Act may no longer be tenable under a federal setup with the presence of other RGs. A possible option, similar to what other federal countries are doing, is to establish and strengthen IGR platforms where the NG and RG representatives can meet to discuss and address the concerns of regions, and collaborate on national concerns (see related discussion in the next section).

It is important to note that the complex, extensive and vague scope of NG and RG powers and functions makes conflicts in their policy jurisdictions inevitable under a federal setup. While some conflicts may be resolved by intergovernmental negotiations, some conflicts in policy jurisdictions between the NG and RGs may have to be resolved through a legal process by a superior judicial authority (Agabin, 2016).

In Germany, there is a Federal Constitutional Court (FCC) created by the federal Constitution. It has two separate panels of eight (8) judges.<sup>8</sup> Each panel has jurisdiction over distinct areas of constitutional laws. The membership of the FCC reflects its intergovernmental nature. By a two-thirds vote of all its members, the Bundesrat elects half of the FCC's members. The other half of the FCC's members is elected by the special committee formed by the Bundestag. The FCC has the power to declare any federal or state legislation as unconstitutional, and can rule on jurisdictional disputes between different levels of government (Agabin, 2016).

#### **IGR Mechanisms for Coordination and Collaboration**

The unitary government context constrains regional autonomy and creates highly imbalanced and fragmented NG-RG relations. The assignment of powers and fiscal-support arrangements for the ARMM make the NG a very powerful and dominant actor in intergovernmental relations, possessing substantial discretion in establishing and convening IGR mechanisms for regional representation and NG-RG collaboration.

A federal government setup will improve the prospects for regions because it will make the issue of imbalanced and fragmented NG-RG relations more salient under a new constitutional framework where regions have stronger and clearer vested powers and rights for self-rule and shared rule with the NG. However, much of the expected gains for regions under federalism will depend on the quality of IGR mechanisms to be established and institutionalized through constitutional and statutory provisions as well as through formal and informal governance practices.

Mechanisms for intergovernmental coordination and collaboration are important in a federation. Government functions such as health, infrastructure and education are complex, comprising various functional dimensions (i.e., policy setting, financing, provision, production and regulation), public services, and other wide scope of activities. IGR mechanisms help governments to wade through the complexity of government functions by clarifying and operationalizing the actual assignment especially of shared constitutional and statutory powers of various levels of government.

By facilitating intergovernmental coordination and collaboration, IGR mechanisms reduce overlaps and duplications in the services of various levels of government (Business Council of Australia, 2006:2). By enabling the representation and participation of various levels of government in national policymaking, they help to foster national consensus on minimum national standards for service delivery, minimizing wide variability in the availability and quality of public services in various regions. Overall, their critical importance under a federal setup rests on their contributions in facilitating coordinated and collaborative action by autonomous governments constituting the federation.

Several options may be pursued to address the problem of imbalanced and fragmented NG-RG relations which is expected to persist under a federal setup if IGR mechanisms remain weak. One of these options is to establish mandatory and formal IGR mechanisms for coordination and collaboration under the Constitution. Mandatory IGR mechanisms established by the Constitution have the advantage of certainty because their operationalization will not depend so much on the NG's discretion. However, they may not be as flexible as ad hoc bodies, consultations and other informal IGR mechanisms.

111 LESSONS IN CREATING REGIONAL GOVERNMENTS

Another option is to allow the NG to legislate, establish and change IGR mechanisms, subject to constitutional provisions, to help balance the goals of certainty and flexibility of these mechanisms. Some federal countries recognize the importance of IGR mechanisms and have passed laws to institutionalize a system of summitry (e.g., Council of Australian Governments, First Ministers Conference in Canada) (BCA,2006:15).

Young federations such as South Africa have learned from the experiences of old federations by mandating the establishment and operationalization of IGR mechanisms, which have evolved over a long period in older federations (e.g., Germany and Canada) (Villiers, 2012). South Africa has an IGR Act that formalizes IGR institutions, forums, and processes to foster improved NG-RG coordination and collaboration (see Box 6). The country's IGR law also gives space for the use of informal meetings, consultations and other informal processes whose strengths in fostering coordination and collaboration lay in their flexibility.

One of the IGR bodies in South Africa is the President's Coordinating Council (PCC), which addresses the regional representation problem by giving provincial (or state) governments the opportunity to make inputs on national policies. As an intergovernmental forum, it also facilitates cooperation and dispute resolution between the NG and provincial governments. The PCC is composed of the President (as chair) and the national Minister for Provincial and Local Governments and the Premiers of the country's nine (9) provinces (as members). It meets twice a year to discuss concerns that affect all levels of government.

Canada's First Ministers' Conferences (FMC) serves as the annual forum where the federal Prime Minister meets with the premiers of Canadian provinces and territories. Addressing the issue of imbalanced NG-RG relations, the FMC provides a forum for provincial and territorial premiers to present a common position on various issues to the federal government. It also gives opportunities to the provinces and territories to lobby and secure for more financial support from the federal government.

In Australia, there is a Council of Australian Governments (COAG) that promotes consensus on policy reforms that need coordinated action by all

#### Box 6

# SOUTH AFRICA'S IGR MECHANISMS UNDER THE 2015 IGR ACT

- President's Coordinating Council (PCC): Meetings of the national President, provincial (or state) Premiers, and a representative of LGUs to discuss national concerns. These meetings must occur at least twice a year. As the peak IGR body, the PCC discusses matters that affect all spheres of government. It is the center of the budgeting process and the most important policy-coordinating mechanism.
- MINMECs: Meetings of national and provincial line function ministries and LGU representative discussing matters relevant to the particular line function, e. g. health, education or agriculture. MINMECs are required to meet at least every quarter.
- Clusters of Ministries: Meetings of horizontal groupings of ministries at national and provincial levels to coordinate and integrate the policies and activities of national and/or provincial spheres. The following clusters have been established at the national level: infrastructure development; economic sectors and employment; human development; social protection and community development; governance and administration; international cooperation, trade and security; and justice, crime prevention and security.
- Technical Forums: Meetings of senior officials of government departments at national and provincial spheres. These meetings are held in preparation of meetings of political functionaries and also for close cooperation between civil servants in the implementation of joint programs.

Source: Villiers, 2012

levels of government. Its members include the Australian Prime Minister, state and territory Premiers and Chief Ministers, and the President of the Australian Local Government Association. It meets as needed, but usually twice a year. Key decisions made during COAG meetings are embodied in national partnership agreements.

Various ministerial-level COAG Councils (composed of Commonwealth and state and territory ministers for a particular policy field) facilitate federal-provincial government collaboration in various policy areas. Eight COAG

Councils handle the following policy areas: federal financial relations, disability reform, transport and infrastructure, energy, industry and skills, law, crime and community safety, education, and health. These councils are vital in policy reform and implementation because they are the source of more doable policy reforms and they oversee the implementation of policy reforms agreed to by the COAG as the peak intergovernmental body in the country.

Similarly, Canada's institutionalized Ministerial Councils operate in policy areas such as transportation, education and the environment (Business Council of Australia, 2006:17). They work to improve the relations between the NG and various provincial (or regional) governments in delivering essential public services. They formulate, and facilitate compliance to, national policies and standards governing the environment, education and other policy areas.

Certainty and secretariat support in convening and operationalizing the IGR mechanisms are important. In South Africa, the MINMECS are required under the IGR Act to hold quarterly meetings of national and provincial line-function ministries in health, education, agriculture and other policy areas. Similarly, senior officials of government departments at national and provincial spheres meet in Technical Forums to prepare for meetings of their political principals. These forums also build cooperation among civil servants which is beneficial for joint undertakings.

Another key option is to ensure competent staff support which is one of the keys to stronger IGR bodies. In Canada, there is an Intergovernmental Conference Secretariat (ICS) which provides organizational and secretariat support to many intergovernmental meetings including those of the FMC. While considered a federal department, the ICS is in fact an intergovernmental body funded and staffed by both federal and provincial governments. Its accountability is also both to the federal and provincial governments.

A culture of intergovernmental coordination and collaboration will help ensure a more functional and effective federal system. Informal coordinative processes such as intergovernmental meetings and consultations will help build such culture. However, a culture of intergovernmental cooperation vital to effective governance will be institutionalized faster by establishing more formal IGR bodies with constitutional and statutory mandates pertaining to their purposes, membership, frequency or certainty of meetings, secretariat support, and accountability.

#### **Cohesive RG-LGU Relations**

A key issue in the ARMM is the lack of cohesive relations between the RG and its constituent LGUs. It is partly brought about by the legal framework and fiscal arrangements under a unitary government context that perpetuates direct dealings between the NG and ARMM-LGUs even with the existence of a regional government. It is also caused by weak RG-LGU mechanisms for intergovernmental relations.

Under a unitary government setup, the NG continues to have authority over LGUs including those in the ARMM which are supposed to be the RG's constituent units. Through national programs, the NG continues to provide direct financial assistance to LGUs to augment local resources for carrying out devolved NG functions. In addition, ARMM-LGUs can also bypass the RG and directly ask for assistance from the NG.

The RG's authority over its constituent LGUs is undermined by direct dealings between the NG and ARMM-LGUs that appear to be normal transactions under a unitary government context. These dealings have weakened the authority of the RG over its constituent LGUs, thus reducing its legitimacy to govern its constituencies in the region.

Issues arising from direct dealings between the NG and ARMM-LGUs need to be addressed in designing the Philippine federal setup. To address the problem of fragmented RG-LGU relations caused in part by these direct NG-LGU dealings, the option of giving RGs the exclusive power over their constituent LGUs may be pursued. In old and more stable federations, LGUs are creations of state government and thus they only largely deal with their respective state governments. NG's direct dealings with constituent LGUs and vice versa are limited. In Switzerland, the federal government deals only with the LGU leagues, not to individual LGUs. This assignment of power not only ensures orderly intergovernmental relations but also enhances the authority and legitimacy of regional governments to govern their regions. Without

115 LESSONS IN CREATING REGIONAL GOVERNMENTS

CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 116

addressing the problem of direct dealings between the NG and LGUs, the RGs will just be perceived as a redundant level of government under a federal setup.

Weak RG-LGU mechanisms for IGR also account for the lack of cohesive RG-LGU relations. Strengthening RG-LGU mechanisms for coordination and collaboration may be pursued as one of the policy objectives that will inform the design of the federal Constitution and other relevant national laws, possibly including a Regional Government Code (RGC) that will shape the structure, operations, and powers of regions.

The Regional Economic Development and Planning Board (REDPB), chaired by the Regional Governor and with the Provincial Governors and City Mayors as members, under the ARMM Organic Act may be mainstreamed as an RG-LGU IGR mechanism under the federal government setup. In addition, RG-LGU IGR mechanisms in existing federal systems may also be considered. For example, in State of Connecticut, an Advisory Commission on Intergovernmental Relations (ACIR) was created in 1985 to serve as a forum for consultation between state and local government officials. The members of ACIR represent state legislative and executive branches, municipalities and other local interests, and the general public. Permanent officers and staff support the ACIR's work.

In South Africa, provinces (or states) have MINMECS where members of the provincial executive council meet with LGU representatives to tackle issues affecting both the province and its constituent LGUs (Villiers, 2012). The country's IGR law also mandates the creation of a Premier's Forum where the provincial Premier and LGU representatives within the province meet on matters that affect the two spheres of government (Ibid.).

The federal Constitution and the Organic acts creating regions need to promote the policy of strengthening intergovernmental relations within the region through IGR platforms that will improve RG-LGU coordination and collaboration in performing shared functions such as health, agriculture, infrastructure, and disaster-risk reduction. The sustained operations of these IGR bodies need to be addressed as well by specifying RG-LGU intergovernmental secretariat and organizational support.

#### **END NOTES**

- <sup>1</sup> https://www.whitehouse.gov/1600/legislative-branch
- https://www.eda.admin.ch/aboutswitzerland/en/home/politik/uebersicht/bundesversammlung.html
- <sup>3</sup> http://www.electionguide.org/elections/id/2732/
- <sup>4</sup> http://www.democracy-building.info/particularities-switzerlands-proportionalelection-system.html
- <sup>5</sup> http://swiss-government-politics.all-about-switzerland.info/
- <sup>6</sup> http://www.electionguide.org/elections/id/2867/
- <sup>7</sup> 1996 Peace Agreement with the Moro National Liberation Front
- 8 https://www.britannica.com/topic/Federal-Constitutional-Court

#### REFERENCES

ARMM Local Government Code.
Muslim Mindanao Autonomy Act No. 287: 2011 ARMM Administrative Code.
Republic of the Philippines. 1996 Peace Agreement with the Moro National Liberation Front, Available online: http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/phil16.pdf
Republic Act No. 9054: 2001 ARMM Organic Act.
Republic Act No. 6734: 1989 ARMM Organic Act.

Autonomous Pagional Covernment in Muclim Mindanae, Muclim Mindanae, Autonomy Act No. 25: 1005

Agabin, Pacifico. (August 2016). Intergovernmental Relations in Justice Administration in Federal Systems: Framework, Practices, Experiences, and Issues. Presentation during the CPBRD-IAG *Lecture Series on Federalism*, House of Representatives, Quezon City, Philippines.

Benedikter, Thomas. (2009). *The World's Modern Autonomy Systems: Concepts and Experiences of Regional Territorial Autonomy*. Available online: http://webfolder.eurac.edu/eurac/publications.

Bognetti, G., Tate, N., et al. (July 2016). *Constitutional Law. Encyclopaedia Britannica*. Available online: https://www.britannica.com/topic/constitutional-law/Unitary- and-federal systems.

Business Council of Australia. (2006). Intergovernmental Relations in Federal Systems. *Reshaping Australia's Federation: A New Contract for Federal-State Relations*. Available online: http://www.bca.com.au/publications.

Encyclopedia Britannica. (n.d.). *The German Federal Constitutional Court*. Available online: https://www.britannica.com.

Election Guide. (October 2015). Available online: http://www.electionguide.org.

#### **117** LESSONS IN CREATING REGIONAL GOVERNMENTS

*Switzerland's Refined Proportional Representation System.* (n.d.). Available online: http://www.democracy-building.info/particularities- switzerlands-proportional- election-system.html.

Switzerland's Constitution and Federalism. (n.d.). Available online: http://swiss-government-politics.all-about- switzerland.info.

The Whitehouse. (n.d.). *The Legislative Branch*. Available online: https://www.whitehouse.gov/1600/legislative-branch.

The Federal Assembly. (n.d.). Available online: https://www.eda.admin.ch/aboutswitzerland/en/home/politik/uebersicht/bundesversammlung.html.

Villiers, B. (2012). Codification of "Intergovernmental Relations" by Way of Legislation: The Experiences of South Africa and Potential Lessons for Young Multitiered Systems. The University of Western Australia. Retrieved from: http://www.zaoerv.de/72 2012/72 2012 4 a 671 694.pdf

Watts, Ronald. (August 2002). The Relevance Today of Federal Idea. International Conference on Federalism, Switzerland. Available online: http://www.forumfed.org/libdocs.

Autonomous Regional Government in Muslim Mindanao. Muslim Mindanao Autonomy Act No. 25: 1995 ARMM Local Government Code.



# Annex 1 Key Powers and Functions of the RG Under RA 9054

#### A. Plannina

- 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 (Sec. 1, Art. XI);
- Create a Regional Economic and Development Planning Board (REDPB) to be chaired by the Regional Governor (Sec. 10, Art. XII). The REDPB shall be composed of all the provincial governors and the city mayors of the provinces and cities within the autonomous region; the Speaker and two other members of the Regional Legislative Assembly (RLA) appointed by the Speaker: five (5) representatives elected by the private sector as prescribed by the RLA:

The following are the functions of the REDPB:

- 1. Serve as the planning, monitoring, and coordinating agency for all development plans, projects, intended for the autonomous region;
- 2. Evaluate and recommend for approval by the RLA, the annual work programs and comprehensive development plans of the region;
- 3. Formulate a master plan for a systematic, progressive, and total development of the region. The master plan shall take into account the development of the province, city, municipality, and barangay concerned as mandated by RA 7160].
- Provide equitable development opportunities for its constituent LGUs and strengthen their existing planning bodies to ensure wider public participation (Sec. 3, Art. XI);
- Initiate, formulate, and implement special development programs for indigenous cultural communities (Sec. 2, Art. XI);
- Adopt and implement a comprehensive urban land reform and land and water use program, to ensure the just utilization of lands and waters within its jurisdiction (Sec. 4, Art. XI).

#### **B.** Policy/Program Mandates

**Agriculture and Agrarian Reform:** regional agrarian reform law; aquatic and fisheries code; creation of the Bureau of Agriculture and Fisheries; protection of the rights and welfare of farmers, farm-workers, fisher folk, fishworkers, and cooperatives and associations of farmers and fish-workers; promotion of agricultural productivity and diversified and organic farming; conservation and development of soil and water resources for agricultural purposes (Sections 21-24, Art. XII);

**Ancestral Domains:** authorization to dispose lands of the ancestral domains to non-members of indigenous cultural communities (ICCs); protection of the ancestral domains and ancestral lands of ICCs; respect titles and rights over lands vested under the Torrens System and existing laws; safeguards to ensure ecological balance; (Sections 1,2, 5, 6, Art. X);

**Banking:** Confirmation of the members of the board of directors of the Islamic Bank; measures to encourage the establishment of a) banks and financial institutions and their branches; and b) off-shore banking units of foreign banks (Sections, 28, 29, Art. XII);

**Disaster-risk Reduction and Management:** rehabilitation program for victims of calamities (Sec. 4, Art. XV); maintenance of disaster-preparedness units (Sec. 11, Art. III); proclamation of state of calamity (Sec. 12, Art. XII);

#### **Economy and Patrimony:**

Economic Agreements: Development of a system of economic agreements and trade compacts to generate block grants for regional investments and improvements of regional economic structures (Sec. 11, Art. IX);

Natural Resources Utilization: exploration, development and utilization of surface and subsurface rights, inland and coastal waters, renewable and non-renewable resources, mines and minerals, and other natural resources except for strategic minerals such as uranium, petroleum, and other fossil fuels, mineral oils, all sources of potential energy, as well as national reserves and aquatic parks, forest and watershed reservations (Sections 5, 8, Art. III); franchises, concessions, permits and licenses over agricultural, forest and mineral lands within the autonomous region (Sec. 5 (e), Art. XII); regulation of natural resources utilization (Sec. 8, Art. XII); regulation of small-scale mining (Sec. 9, Art. XII);

*Investments*: incentives and tax rebates and holidays for investors (Sec. 17, Art. XII); support for the establishment of economic zones, industrial centers, ports in strategic areas, and growth centers to attract local and foreign investments and business enterprises (Sec. 2, Art. XII); authority over foreign investments in the region subject to the provisions of the Philippine Constitution (Sec. 34, Art. XII);

*Power:* in the delivery of power services, give priority to provinces and cities in the region which need but do not have direct access to such services (Sec. 19, Art. XII);

Public enterprises and utilities: establishment of pioneering firms and businesses to boost the region's economic development (Sec. 20, Art. XII); establishment of pioneering public utilities and firms; safeguards during RG's temporary take-over of privately owned public utilities (Sec. 11-12, Art. XII):

*Tourism:* primary jurisdiction in the promotion of tourism within the region; creation of a regional tourism office (Sec. 35, Art. XII);

Trade and industry: support building up of building entrepreneurial capability in the autonomous region (Sec. 26, Art. XII); promotion and protection of cooperatives, cottage industries; regulation of barter trade and counter-trade with Indonesia, Malaysia, or Brunei; consumer education and protection; promotion of preferential use of local labor and locally produced goods and materials by adopting measures to increase their competitiveness (Sections 26, 27 and 32-33, Art. XII);

Transport and communication facilities: establishment of transportation and communication facilities to expedite the economic development of the autonomous region (Section 18, Art. XII):

**Education:** creation of a regional education department (Sec. 5, Art. XIV); tribal university system (Sec. 10, Art. XIV); development and strengthening of Madrasah education (Sec. 12, Art XIV); creation of its own education structures while following the basic structure of the NG's education system (Sec. 7, Art XIV); integrated system of quality, relevant and responsive education; perpetuation of Filipino and Islamic values in the regional education system (RES);

123 ANNEXES CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 124

integration of Islamic values in the curriculum of the RES; scholarships; preparation of textbooks and provision of learning aids and instructional materials; appointment of teaching and non-teaching personnel; (Sec. 2, Art. XIV); development of the regional educational curricula (Sec. 3, Art. XIV); management, control and supervision of the RES (Sec. 4, Art. XIV); supervision and regulation of private schools (Sec. 6a, Art. XIV); conduct of periodic competitive qualifying examinations of Madaris teachers:

**Elections:** enactment of a law to govern the election of marginalized and under-represented sectors (Sec. 12, Art. XVIII);

**Environmental protection:** enact standards not lower than required by the national government, for the protection, conservation, and enhancement of the natural resources; (Sec. 1, Art. XII); reforestation (Section 14, Art. XII); upland development; prohibition of deposit or dumping of toxic substances within the region; (Section 15, Art. XII); programs to ensure the sustainable development and ecological balance of forests, coastal and marine resources; measures to deal and prepare for environmental changes (Section 17, Art. XIV);

**Health:** food and drug regulatory system, to promote the rational use of drugs through an essential drugs list and the use of generic medicines or drugs, as well as the use of herbal medicines and indigenous health resources (Section 2b, Art. XIV);

**Justice:** Shari'ah legal system; Shari'ah courts and their functions, jurisdictions and composition (Sec. 5, Art. VIII); organization of the office of jurisconsult in Islamic law (Sec. 20, Art. VIII); establishment of the Shari'ah Public Assistance Office (Sec. 6, Art. VIII); creation of a Shari'ah Appellate Court (Sec. 7, Art. VIII); codification of indigenous laws and compilation of customary laws of the Muslims and the indigenous cultural communities in the region (Sec. 21, Art. XVIII); creation of a system of tribal courts, including a Tribal Appellate Court (Sec. 19, Art. VIII);

**Peace, Public Order and Security**: re-integration programs responsive to the needs of former rebels (Sec. 4, Art. XV); program for the surrender of firearms with payment of compensation provided by the RG and supported from the funds of the Philippine National Police (PNP) (Sec. 2, Art. XIV); settlement of conflicts by peaceful means (Sec. 2, Art. III); maintenance and preservation of law and order (Section 1, Art. XIII); operational control and general supervision and disciplinary powers over the Regional Police Force under the PNP (Sec. 8, Art. XIII);

**Protection of Minorities:** measures to ensure mutual respect for and protection of minority inhabitants; development, protection and well-being of indigenous tribal communities (Sec. 5, Art. III); creation of the Bureau of Cultural Heritage; consultations with cultural communities before permits for the utilization of resources are issued;

**Social Justice:** creation of the Office of Youth Affairs; creation of social, political and economic opportunities based on freedom of initiative, resourcefulness, and self-reliance (Sec. 1, Art. XV); improved welfare of the marginalized, deprived, underprivileged, disabled, and the elderly (Sec. 7, Art. III); protection of the preferential rights of inhabitants over the region's natural resources (Sec. 7, Art. XII); protection of the rights of workers (Sec. 9, Art. III); strengthening of the family as the nation's foundation (Sec. 5, Art. XV); broadening the base of ownership of business enterprises (Sec. 16, Art. XII); adequate and low-cost housing especially for the underprivileged (Sec. 3, Art. XV); protection of the rights of women and children (Sec. 10, Art. III);

**Science and Technology:** enactment of laws to promote science, research, inventions, technology, education; investors' incentives to participate in basic and applied scientific researches; regulate transfer of technology; protect the exclusive rights of scientists, inventors, scholars, writers, artists and other gifted citizens to their intellectual properties (Sec. 16, Art. XIV):

**Social Welfare and Protection:** health and development, support of the physically challenged and disadvantaged persons; registration of births, marriages and deaths (Sec. 2, Art. XIV); social benefit and welfare of inhabitants affected by the harnessing of natural and mineral resources in the region; delivery of basic and responsive health programs, quality education, appropriate services, livelihood opportunities, affordable and progressive housing projects, and water resource development (Sec. 11, Art. III); protection of communities hosting mining operations (Sec. 13, Art. XII); measures to employ the people who may be displaced by the cancellation or revocation of timber concessions licenses, contracts or agreements (Section 14, Art. XII);

#### C. Governance of LGUs

- Devolution of regional powers to LGUs particularly in areas of education, health, human resource, science and technology and people empowerment (Sec. 1, Art. IV); enactment of a regional Local Government Code (Sec. 1, Art. IV); financial assistance to LGUs in their requirements for counterpart funds for foreign-assisted projects (Sec. 11, Art. IX);
- The RLA may not pass any law to diminish, lessen, or reduce the powers, functions, and shares in the internal revenue taxes of the said LGUs as provided by RA 7160;
- Creation, division, merging, abolition of provinces, cities, municipalities or barangay in accordance with the criteria laid down by the LGC of 1991, subject to the approval of majority of the votes cast in a plebiscite in the political units directly affected; prescription of lower standards in the creation, division, merging or abolition of LGUs; provision of funds to LGUs created, divided, merged that do not meet the requirements of the LGC of 1991 (Sec. 19, Art. VI);

#### D. Government Accountability

- Initiation of moves by the RLA to remove the Regional Governor or Vice Governor by a majority vote of all its members (Sec. 13, Art. VIII);
- Regional Governor's primary disciplinary authority over RG officials and employees, applying the NG's civil service law, rules and regulations until the Regional Assembly shall have enacted a Regional Civil Service Law (Section 2, Art. XVI);
- Enactment of a law to define and promote the people's right to initiatives, referenda, recall and plebiscite (Sec. 14, Art. III);

125 ANNEXES CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 126

# Annex 2 ASSIGNMENT OF GOVERNMENT POWERS, FUNCTIONS AND RESPONSIBILITIES IN THE ARMM<sup>1</sup>

Functions	Functional Responsibilities							
	Planning	Policy	Financing	Provision	Production	Coordination	Regulation	

#### **Exclusive to the National Government (N)**

Justice (except on Shari'ah matters); citizenship; coinage and fiscal and monetary policies; customs and tariff; foreign trade; foreign affairs; general auditing; maritime, land and air transportation and communications that affect areas outside the ARMM; national defense and security; national elections; naturalization; immigration and deportation; patents, trademarks, trade names, copyrights; postal service; quarantine.

Economic Affairs						
Agriculture, forestry, fishing and hunting		R		R,L	R,L	
Banking		N		N,R	N,R	
Fuel, energy					R	
Foreign investments		N,R		N,R	N,R	N,R
Labor affairs				R	R	
Mining		N,R		N,R	N,R	R
Public enterprise and utilities		R		R	R	
Science and technology	R	R		R	R	R
Tourism			N,R	R	R	
Transport				R	R	
Trade and industry		N,R		R	R	N,R
Education	R	N,R	N,R	N,R	N,R	N,R
Madrasah Education		R	R	R	R	N,R

LEGEND:  $\mathbf{R}$  = Regional Government;  $\mathbf{N}$  = National Government;  $\mathbf{L}$ = Local Government Units

	Functional Responsibilities						
Functions	Planning	Policy	Financing	Provision	Production	Coordination	Regulation
Elections		N,R		N	N		N
<b>Environmental Protection</b>		N,R		R	R		
Health		R		R	R		R
Housing and Community Amenities				R	R		
Local Governments	R	N,R	R	N,R	R	R	R
Natural Resources		N,R		R	R		R
Peace, Public Order and Safety		R		N,R	N,R		
Disaster-risk reduction and management		N,R		N,R	R		
Law courts/justice		N,R		N,R	R	N,R	R
Police services	R	N,R		N,R	N,R		
Reintegration program for rebels		R	N,R	R	R		
Public Administration/ Civil Service		N,R		N,R	N		
Public Works			N,R	N,R			
Regional, Urban and Rural Development	R,L	R,L		R,L	R,L	R,L	
Public Accountability		N,R		N,R	N,R		
Cultural Services		R		R	R	R	
Social Justice/Protection				R	R		
Ancestral domains		N,R	R,L	R	R		R
Agrarian reform		N,R		R			
Mining communities		R		R	R		R
Protection and development of minorities	R	R		N,R	R		R
Women		R		R	R		

<sup>&</sup>lt;sup>1</sup>Information on the assignment of governmental powers was based on the 2001 ARMM Organic Act (RA 9054).

# Annex 3 ASSIGNMENT OF POWERS IN BASIC EDUCATION

Component Service/	Functional Responsibilities							
Service Delivery Inputs	Planning	Policy	Provision	Production/ Delivery	Coordination	Regulation		
Basic Education in General	<b>N</b> 1.1	<b>N</b> 2.4, 2.5, 2.6, 2.7, 2.8	<b>N</b> 3.12, 3.15, 3.17					
	<b>R</b> 1.2, 1.3, 1.4	R 2.1, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.12, 2.13	<b>R</b> 3.12, 3.17			<b>R</b> 6.4, 6.5		
Functionaries (e.g, Staff, Personnel)			<b>N</b> 3.35, 3.37, 3.38, 3.40, 3.41					
	<b>R</b> 1.5		<b>R</b> 3.35, 3.36, 3.37, 3.38, 3.39, 3.40, 3.41	<b>R</b> 4.18, 4.19, 4.20, 4.21, 4.22	<b>R</b> 5.1			
Operations and Maintenance		N 2.10, 2.14, 2.15, 2.20, 2.21, 2.22, 2.26	<b>N</b> 3.7, 3.8, 3.21, 3.22, 3.24, 3.27		<b>N</b> 5.4	<b>N</b> 6.1, 6.2, 6.3		
	<b>R</b> 1.4	R 2.11, 2.14, 2.15, 2.16, 2.17, 2.18, 2.19, 2.21, 2.23, 2.24, 2.25, 2.26, 2.27, 2.28, 2.29	R 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.9, 3.10, 3.11, 3.13, 3.14, 3.16, 3.18, 3.19, 3.20, 3.21, 3.22, 3.24, 3.25, 3.26, 3.27, 3.28, 3.29, 3.30, 3.31, 3.32, 3.33, 3.34	<b>R</b> 4.11, 4.12, 4.13, 4.14	<b>R</b> 5.2, 5.3, 5.4, 5.5	<b>R</b> 6.1, 6.2, 6.3		
			<b>L</b> 3.11, 3.23	<b>L</b> 4.15, 4.16, 4.17				
Supplies (e.g., textbooks)		<b>N</b> 4.6		<b>N</b> 4.1, 4.5, 4.8				
				<b>R</b> 4.1, 4.2, 4.3, 4.4, 4.7, 4.8, 4.9, 4.10				
Facilities (e.g., classrooms)			<b>R</b> 3.42,3.43, 3.44					

LEGEND:  $\mathbf{R}$  = Regional Government;  $\mathbf{N}$  = National Government;  $\mathbf{L}$  = Local Government Units See Annex 3 notes describing the numerical codes.

#### **ANNEX 3 NOTES**

- 1. The letter "R" refers to the assigned powers and responsibilities of the Regional Government. "N" of the National Government, and "L" of the Local Government Units.
- 2. Refer to the notes below on the details behind the numerical codes.
- 3. The following six dimensions (i.e., responsibilities) of the education function were used to categorize and code the assigned powers and functions of the National Government (N), Regional Government (R), and Local Government Units (L).
  - 1. Planning
  - 2. Policy
  - 3. Provision
  - 4. Production
  - 5. Coordination
  - 6. Regulation

#### 1. Planning

- 1.1 (NG) Take into account regional and sectoral needs and conditions; encourage local planning in the dev't. of educational policies and programs (Sec. 5 (1) Art. XIV, 1987 Constitution).
- 1.2 (RG) Plan education policies, plans, programs and programs and projects in elementary and secondary education in the ARMM (EO 459; Section 14, Chapter 1, Title III, MMAA No. 287).
- 1.3 (RG) Adopt educational plans based on the regional education framework (Section 16, Chapter 2, Title III, MMAA No. 287).
- 1.4 (RG) Create the Bureau of Research and Planning Services under DepEd-ARMM (Sec. 31, Chap. 3, Title III, MMAA 287).
- 1.5 (RG, NG) Appoint Director and staff of the Bureau of Research and Planning Services in accordance with pertinent Civil Service rules and regulations.

#### 2. Policy

#### Policymaking powers

- 2.1 (RG) Legislative powers over education policies (Sec. 20, Article X, 1987 Constitution).
- 2.2 (RG) Formulate policies on various aspects of elementary and secondary education (EO 459).
- 2.3 (RG) Formulate general basic education objectives and policies based on the regional educational framework (Section 16, Chapter 2, Title III, MMAA No. 287).

#### Education policies

- 2.4 (NG) Protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all (Section 1, Article XIV, 1987 Constitution).
- 2.5 (RG, NG) Participate in policymaking activities of their NG counterparts in matters that affect the Regional Education System (RES) (Section 4, Art. XIV, RA 9054).
- 2.6 (RG, NG) Adopt NG's education policy as embodied in Chap. 1, Title VI, 1987 Admin. Code of the Philippines (Sec. 1, EO 459).

#### **Education standards**

- 2.7 (NG, RG) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society (Sec. 2, Article XIV, 1987 Constitution; RA 9054).
- 2.8 (RG, NG) Protect and promote the right of all citizens to quality education at all levels; make education accessible to all (Sec. 1, Chap. 1, Title VI, 1987 Admin. Code of the Philippines: EO 459).
- 2.9 (RG, NG) Formulate regional education standards which recognize national standards as minimum standards (Sec. 10, EO 459).
- 2.10 (NG) Provide DECS circulars on standards to the RG for information and consideration in drafting future regional education standards (Sec. 10, EO 459).
- 2.11 (RG) Furnish the DECS with all circulars issues prescribing regional educational standards (Sec. 10, EO 459).
- 2.12 (RG) Provide a system of basic education committed to the total spiritual, intellectual, social, cultural, scientific, and physical dev't. of the youth (Sec. 1, Chap. 1, Title III, MMAA No. 287).
- 2.13 (RG) Formulate, develop and evaluate educational standards for elementary and secondary education (Sec. 7, EO 459).

#### Values education

- 2.14 (NG, RG) All educational institutions shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency (Section 3 (1), Article XIV, 1987 Constitution; Sec. 2, Art. XIV, RA 9054).
- 2.15 (NG, RG) Give priority to education to foster patriotism and nationalism, accelerate social progress (Sec. 17, Art. II, 1987 Philippine Constitution; RA 9054). (NG, RG) Incorporate Filipino and Islamic values in the social studies subjects or their equivalent in appropriate grade levels and subject to agreed norms, academic freedom, and legal limitations (Sec. 2, Art. XIV, RA 9054).
- 2.16 (RG) Integrate Islamic values in the RES curriculum over a period of six years from the approval of the Organic Act (Sec. 2, Art. XIV, RA 9054).
- 2.17 (RG) Perpetuate Filipino and Islamic values and ideals and the just aspirations of the Bangsa Moro with due respect to the beliefs, customs, traditions, and religions of the other non-Muslim inhabitants of the region (Sec. 6, Art. III, RA 9054; Section 11, Chapter 1, Title III, MMAA No. 287).
- 2.18 (RG) Promote students' commitment to the peaceful settlement of disputes and grievances and the avoidance of the use of lawless violence (Sec. 2, Art. XIV, RA 9054).
- 2.19 (RG) Promote and enhance unity in diversity, and into the pupils the values, patriotism and nationalism, appreciation of the role of national and regional heroes in the historical development of the country and region (Sec. 1, Chapter 1, Title III, MMAA No. 287).

#### Language

- 2.20 (NG) Take steps to initiate and sustain the use of Filipino as a medium of official communication and as language of instruction in the educational system (Section 6, Article XIV, 1987 Constitution).
- 2.21 (NG, RG) The regional languages are the auxiliary official languages in the regions and shall serve as auxiliary media of instruction therein (Section 6, Article XIV, 1987 Constitution: RA 9054).
- 2.22 (NG) Spanish and Arabic shall be promoted on a voluntary and optional basis (Section 6, Article XIV, 1987 Constitution).
- 2.23 (RG) Filipino and English shall be the media of instruction in all schools in the autonomous region.
- 2.24 (RG) Arabic shall be an auxiliary medium of instruction. It shall be taught as a subject in all grade levels as required for Muslims under existing laws and optional, for non-Muslims (RA 9054).
- 2.25 (RG) Arabic instruction shall be made available to all pupils/students in all schools (Section 10, Chapter 1, Title III, MMAA No. 287).

#### Madrasah/religious education

- 2.26 (RG, NG) Provide optional religious instruction in public schools, without additional costs to the government (Section 3 (3), Article XIV, 1987 Constitution; Sec. 2, Art. XIV, RA 9054).
- 2.27 (RG) Promote and strengthen the Madrasah system as an integral part of the regional education system (Sec. 1, Chapter 1, Title III, MMAA No. 287).
- 2.28 (RG) Establish a system of education in accordance with Muflihun (a philosophy of total development of man through the pursuit of acquisition of Divine and revealed knowledge and the study of physical and natural sciences (Sec. 1, Chapter 1, Title III, MMAA No. 287).
- 2.29 (RG) Religious instruction shall be made available and accessible to Muslim and non-Muslim students (Sec. 3, Chapter 1, Title III, MMAA No. 287).

#### 3. Provision

#### Regional education department

- 3.1 (RG) Have legislative powers over administrative organization (Section 20, Article X, 1987 Constitution).
- 3.2 (RG) Have control and supervision of NG's education offices in the ARMM including their policy powers and responsibilities (EO 459).
- 3.3 (RG) Functions and powers of the DECS Bureaus (including bureaus of elementary and secondary education) under the 1987 Administrative Code are transferred to the RG (Sec. 7, EO 459).
- 3.4 (RG) Create, support and maintain a regional department of education (Sec. 5, Art. XIV, RA 9054).
- 3.5 (RG) Create the Bureau on Madrasah education.
- 3.6 (RG) The Regional Office of the Department shall consist of the Office of the Regional Secretary; Office of the Undersecretary for Madaris and the bureaus under it, Assistant

Regional Secretary for Support Services; Office of the Assistant Regional Secretary for Programs and Field Operations; Office of the Bureau Directors for Elementary, Secondary, Alternative Learning System, Physical Education and Sports Development, Research and Planning Services, Administrative and Finance Management including other divisions and sections/units therein. The Division Field Offices shall consist of schools divisions, districts and schools therein (Section , 19 Chapter 2, Title III, MMAA No. 287).

#### Support institutions

- 3.7 (NG) Control and supervise DECS attached agencies and councils: (1) National Museum; (2) National Library; (3) National Historical Institute; (4) Institute of Philippine Languages; (5) Instructional Materials Corporation; (6) Instructional Materials Council; (7) Educational Development Projects Implementing Task Force; (8) Educational Assistance Policy Council; (Girl Scouts of the Philippines9) National Youth and Sports Development Board; (10) National Social Action Council; (11) National Board of Teachers; (12) Boy Scouts of the Philippines; (13); (14) Records Management and Archives Office; (15) Health and Nutrition Center; and (16) National Education Testing and Research Center (Sec. 15, EO 459, 17 May 1991; Sec.20 and 21, Chapter 8, Title VI, 1987 Administrative Code);
- 3.8 (NG) Extend maximum assistance to the ARG and Regional DECS in carrying their programs and projects (Sec. 15, EO 459, 17 May 1991).
- 3.9 (RG) Monitor and evaluate the performance and compliance with DepEd-ARMM standards of those bodies to which it has delegated powers, functions or responsibilities (Section 16, Chapter 2, Title III, MMAA No. 287).
- 3.10 (RG) Ensure the high standards of all basic educational institutions in the region (Section 16, Chapter 2, Title III, MMAA No. 287).
- 3.11 (RG, LGUs) Devolve RG powers on education to LGUs (Sec. 3, Art. III, RA 9054)

#### Mandates

- 3.12 (NG, RG) The RES is a subsystem of the national educational system (Sec. 1, Art XIV, RA 9054).
- 3.13 (RG) May create its own RES structure (Sec. 7, Art. XIV, RA 9054)
- 3.14 (RG) Manage, control and supervise the Regional Education System (RES) (Sec. 4, Art. XIV, RA 9054).
- 3.15 (NG) Ensure access to, promote equity in, and improve the quality of, basic education (Section 1, Chapter 1, RA 9155).
- 3.16 (RG) Propose and recommend measures on basic education for enactment into laws (Section 16, Chapter 2, Title III, MMAA No. 287).
- 3.17 (RG, NG) Follow the basic structure of the NG's education system in structuring the Regional Education System (RES) (Sec. 7, Art. XIV, RA 9054).
- 3.18 (RG) Promulgate and issue educational guidelines, policies, instructions, administrative orders, circulars (Section , 22 Chapter 2, Title III, MMAA No. 287).

#### Programs

- 3.19(RG) Formulate and implement programs and projects on various aspects of elementary and secondary education (Sec. 2, Sec. 7, EO 459).
- 3.20 (RG) Undertake special educational programs for the underprivileged, unemployed, underemployed, disadvantaged, displaced, and differently abled (Sec. 1, Chapter 1, Title III, MMAA No. 287).

CONGRESSIONAL POLICY AND BUDGET RESEARCH DEPARTMENT 132

- 3.21 (NG, RG) Scholarship programs (RA 9054; Sec. 2, Article XIV, 1987 Constitution).
- 3.22 (RG, NG) Free public education in the elementary and high school levels (Sec. 2, Art. XIV, 1987 Consti.; Sec. 1, Chapter 1, Title VI, of the 1987 Admin. Code of the Philippines; Sec. 17. EO 459).
- 3.23 (LGU) Provide support for basic education (Section 14.6, Chapter I, Title One, Book I, Muslim Mindanao Autonomy Act No. 25).

#### Curriculum

- 3.24 (RG, NG) The DepEd-ARMM shall have the same curricular years as that of the national educational system, provided that it shall have the power to adopt a 2-year childhood pre-school education or addition of one year grade level as the case may be (Sec. 7, Art. XIV, RA 9054; Section 14, Chapter 1, Title III, MMAA No. 287).
- 3.25 (RG) The Basic Education Structure in ARMM shall involve the formal elementary and secondary education, including early childhood education, public and private madaris, alternative learning system, and informal education. (Section 17, Chapter 2, Title III, MMAA No. 287).
- 3.26 (RG) Undertake studies necessary for the preparation of prototype curricular designs in elementary and secondary education (EO 459).
- 3.27 (RG, NG) Develop curricular materials with reference to regional history subject to the approval of the NG's Instructional Material Council (Sec. 18, EO 459).
- 3.28 (RG) Develop education curricula that are relevant to the economic, social, political, cultural, moral, and spiritual needs of the people in the ARMM (Section 3, Article XIV, RA 9054).
- 3.29 (RG) Create a Curriculum and Textbook Development Services and its support machinery known as the Materials Development Center (Section 12, Chapter 1, Title III, MMAA No. 287).
- 3.30 (RG) Develop curricular designs to upgrade the quality of the teaching and non-teaching staff (Sec. 7, FO 459).

#### Operations and maintenance

- 3.31 (RG) Budget preparation in consultation with Division field offices and LGUs and in coordination with the REDPB.
- 3.32 (RG) Fiscal control, accounting and auditing of expenditures (RG).
- 3.33 (RG) Negotiations of contracts for services (RG).
- 3.34 (RG, NG) Receive, allocate, and disburse funds for basic education.

#### **Functionaries**

- 3.35 (RG, NG) Appoint the regional education personnel subject to Civil Service laws, rules and regulations (Section , 22 Chapter 2, Title III, MMAA No. 287).
- 3.36 (RG) Provide personnel/staff support.
- 3.37 (RG, NG) Specify qualifications of, and appoint, regional education officials, subject to appropriate civil service rules (Section , 20 Chapter 2, Title III, MMAA No. 287).
- 3.38 (RG, NG) Impose its regionally defined standards for the employment of teaching and nonteaching personnel. Such standards shall not be lower than the minimum requirements and standards of the national DECS (Sec. 2, Art. XIV, RA 9054).

- 3.39 (RG) Act on matters concerning appointment, promotion and transfer; hiring of casual employees, resignation, filling-up of positions.
- 3.40 (RG, NG) Appoint the Director and Subject Area Supervisors of the Bureau of Elementary/ Secondary Education (BEE) of DepEd-ARMM, subject to pertinent civil service rules (Sec. 27, Chapter 3, Title III, MMAA 287).
- 3.41 (RG, NG) The RG's position and classification plan shall conform to national standards classification/categories (Sec. 12, EO 459).

#### **Facilities**

- 3.42 (RG) Formulate guidelines to improve elementary and secondary school physical plans and equipment (Section 7, EO 459).
- 3.43 (RG) Properties of DECS within the ARMM; assets and equipment including public elementary and secondary schools already existing, being utilized or programmed for use in the four (4) provinces covered by the ARMM shall be turned over to the ARG: (Sec. 11, EO 459).
- 3.44 (RG) Office buildings including the land where these edifices are built, within the provinces of ARMM shall immediately be transferred to the ARG in compliance with R.A. No. 6734 (Sec. 11, EO 459).

#### 4. Production

#### Supplies

- 4.1 (RG, NG) Develop instructional materials, accept donations; supply and records management.
- 4.2 (RG) Develop quality textbooks and teaching materials (Section 16, Chapter 2, Title III, MMAA No. 287).
- 4.3 (RG) Undertake studies necessary for the preparation of prototype instructional materials (Sec. 7, EO 459).
- 4.4 (RG) Prepare instructional materials at the elementary and secondary levels (Sec. 7, EO 459).
- 4.5 (NG) The Instructional Material Council of the NG shall be primarily responsible for the formulation of policies and for the selection and adoption of textbooks, supplementary and reference books for use in public and private elementary and secondary education schools in the ARMM (Sec. 18, EO 459).
- 4.6 (NG) Policies for the selection and adoption of textbooks, supplementary and reference books for use in public elementary and secondary schools in the ARMM
- 4.7 (RG) The RG may develop curricular materials with reference to regional history subject to the approval of the Instructional Material Council of the NG (Section 18, EO 459).
- 4.8 (NG, RG) The preparation, writing, revision, and printing of textbooks for the use of the schools in the autonomous region shall be the joint responsibility of the NG and RG (Sec. 2 (o) (3), Art. XIV, RA 9054).
- 4.9 (RG) The dev't. of textbooks and other instructional materials for the use of schools in the ARMM shall be the RG's responsibility (Section 12, Chapter 1, Title III, MMAA 287).
- 4.10 (RG) Create a Curriculum and Textbook Development Services and its support machinery known as the Materials Development Center (Section 12, Chapter 1, Title III, MMAA No. 287).

#### Service-delivery institutions

- 4.11 (RG) Determine the organizational components and approve staffing patterns of the divisions, districts and schools (Section 16, Chapter 2, Title III, MMAA No. 287).
- 4.12 (RG) Approve and support the establishment and operation of public and private elementary and high schools and learning centers (Section 16, Chapter 2, Title III, MMAA No. 287).
- 4.13 (RG) Delegate to Divisions such powers, functions and responsibilities as are appropriate including powers of selection, recruitment, appointment, and promotion of teaching and non-teaching personnel (Section 16, Chapter 2, Title III, MMAA No. 287).
- 4.14 (RG) Conduct periodic supervision and inspection of elementary and secondary educational institutions to ensure that educational standards are met and complied with (Sec. 27. Chapter 3, Title III. MMAA 287).
- 4.15 (LGU) Establish a local school board (LSB) in every province, city, or municipality (Sec. 98 (a), Title IV, Book I, RA 7160; Sec. 94 (a), Title Four, MMAA 25).
- 4.16 (LGU) Give priority to the establishment and maintenance of extension classes where necessary (Sec. 100 (c) (2), Title IV, Book I, RA 7160).
- 4.17 (LGU) Sangguniang Barangay has the power to initiate the establishment of a Barangay High School (Sec. 391 (12) (i), Chapter 4, Title 1, RA 7160).

#### **Functionaries**

- 4.18 (RG) Select, recruit, appoint, and promote teaching and non-teaching personnel of the RES (Sec. 2 (o) (7a), Art. XIV, RA 9054; Section, 22 Chapter 2, Title III, MMAA No. 287).
- 4.19 (RG) Evaluate all schools division superintendents and assistant division superintendents in the region (Section 16, Chapter 2, Title III, MMAA No. 287).
- 4.20 (RG) Undertake studies necessary for the preparation of teacher training programs (Section 7, EO 459; Sec. 27, Chapter 3, Title III, MMAA 287).
- 4.21 (RG) Perform teaching supervision (Sec. 4 B.2, EO 459).
- 4.22 (RG) Create a Regional Professional Development Center in the DepEd-ARMM which shall serve as a hub of academic professional training for leadership, managerial, and staff development of regional and field education managers, school administrators, school heads, and teachers" skills enhancement (Section 46, Chapter 2, Title III, MMAA No. 287).

#### 5. Coordination

- 5.1 (RG) Establish linkages with institutions with track record of excellence to provide training for teachers and non-teaching staff (Section 16, Chapter 2, Title III, MMAA No. 287).
- 5.2 (RG) Establish, promote and foster linkages and conduits with national as well as international academic, research, and Islamic-oriented educational and cultural institutions whose objectives are consistent with this Act; (Section 16, Chapter 2, Title III, MMAA No. 287).
- 5.3 (RG) Consult and coordinate with the Local Government Units.
- 5.4 (RG, NG) Advise the national DedEd on matters relating to education in the region by continued participation in relevant national DepEd policy and decision-making activities, bodies and committees (RA 9054).

5.5 (RG) Coordinate policies, plans, programs and projects and various aspects of elementary education (Sec. 2, EO 459).

#### 6. Regulation

- 6.1 (NG, RG) Exercise reasonable supervision and regulation of public and private educational institutions (Section 4 (1) Article XIV, 1987 Constitution; EO 459).
- 6.2 (NG, RG) Monitor the compliance by the RES with national educational policies, standards, and regulations (Sec. 4, Art. XIV, RA 9054).
- 6.3 (NG, RG) Supervise and review the Madaris education system in the ARMM (Section 11, Art. XIV, RA 9054).
- 6.4 (RG) Promulgate rules and regulations or such guidelines as may be required for efficient and effective administration, control and supervision and regulation of basic educational institutions including the Madaris (Section 16, Chapter 2, Title III, MMAA No. 287).
- 6.5 (RG) Exercise devolved regulatory powers of NG's education offices in the ARMM (EO 459).



A publication of the Congressional Policy and Budget Research Department House of Representatives, Batasan Hills, Quezon City, Philippines

> Tel. (DL) 931-6032 (Fax) 931-6519 www.cpbrd.congress.gov.ph





The printing of this handbook is made possible by the generous support of the Institute for Autonomy and Governance (IAG) and the Pro Politics for Peace Project.