



LEAGUE OF PROVINCES OF THE PHILIPPINES

OFFICIAL POSITION PAPER ON:

**STRONG OPPOSITION TO THE HOR PROPOSED MANDATORY ALLOCATION
"OF NOT LESS THAN 2% OF THE LGUS' ANNUAL BUDGET
TO FUND THE CREATION OF ADACS AND ADAOS"**

H.B. 7812

**"AN ACT CREATING ANTI-DRUG ABUSE COUNCILS (ADACS) IN ALL
PROVINCES, CITIES, MUNICIPALITIES, AND BARANGAYS THROUGHOUT
THE COUNTRY"**

(Introduced by Rep. Robert Ace S. Barbers et al)

and

H.B. 7814

**"AN ACT STRENGTHENING DRUG PREVENTION AND CONTROL, AMENDING
FOR THE PURPOSE REPUBLIC ACT NO. 9165, AS AMENDED, OTHERWISE
KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002"
(Committee Report No. 550, dated October 10, 2020)**

Sponsored by Rep. Robert Ace S. Barbers

At the outset, the League of Provinces of the Philippines would like to recognize the noble intent of the House of Representatives towards further strengthening the national policy and programs toward drug prevention and control.

While the national policy on drug prevention and control – which is the Dangerous Drugs Act of 2002 – has been regularly revisited and amended by Congress to ensure that its framework is able to effectively address the plague of illegal drugs, LGUs are at the forefront in implementing such policies.

No less than Pres. Rodrigo Roa-Duterte has initiated a strong campaign to put an end into a decades-old scourge that the greatly affected even the moral compass of society.

The efforts of the members of this 18th Congress, particularly in the House of Representatives, to bring down the country's anti-drug campaign to the local government units – from the provinces to the cities and municipalities to the barangays is very much laudable.

The League commends the initiative towards the creation of a functional anti-drug council (ADACs) at various levels of LGUs as well as the establishment of anti-drug abuse office (ADAOs) in all cities and municipalities to ensure institutionalization of the program as proposed in House Bill No. 7218.

Notwithstanding, the League of Provinces of the Philippines and its membership, however, is unanimous in expressing its **STRONG OPPOSITION to Section 17 of H.B. No. 7812 and Section 23 of H.B. No. 7814** which states that:

H.B. No. 7812

*"Section 17. Appropriations. The implementation of this Act shall be done through the concerned LGUs **appropriating not less than two percent (2%) of their annual budget** to fund the creations and operations of ADACS and ADAOS."
(underscoring supplied for emphasis)*

H.B. No. 7814

"Section 23. Section 51 of the same Act is hereby amended to read as follows:

Section 51. Local Government Units' PROGRAMS AND Assistance. – Local government units shall appropriate a substantial portion of NOT LESS THAN TWO PERCENT (2%) OF their respective annual budgets [to assist in or enhance the enforcement of this Act giving priority to preventive or educational programs and the rehabilitation or treatment of drug dependents] IN SUPPORT OF WELL-FUNCTIONIING ANTI-DRUG ABUSE COUNCILS (ADACS) AND ESTABLISHMENT OF ANTI-DRUG ABUSE OFFICES (ADAOS). X x x"

For Congress to require all LGUs at all levels, that is, provinces, cities, municipalities and barangays, to allocate a prescribed **amount of not less than 2% of their annual budget** in support of well-functioning ADACS and ADAOS and which even deleted its use for the actual programs and projects to enforce this Act is a direct encroachment upon the fiscal and local autonomy of LGUs contrary to the national policy in the 1987 Constitution as well as in the provisions of R.A. No. 7160, otherwise known as the 1991 Local Government Code. Hence, we strongly recommend the deletion of this phrase "NOT LESS THAN TWO PERCENT (2%) OF" from H.B. No. 7814 which is already the Committee Report No. 550 of the House Committee on Dangerous Drugs, sponsored by its chairman, Rep. Robert Ace S. Barbers.

While it is indeed logical to include a provision for LGUs to appropriate funds to ensure the functionality of both the council and the office, the League is of the position that prescribing a mandatory fixed percentage share of its local funds is not only another unfunded mandate, but is a direct affront to the provision of the 1987 Constitution which guarantees both political and fiscal autonomy of all LGUs.

This national policy is expressly stated categorically in the 1987 Constitution, to wit:

Article II. Declaration of Principles and State Policies

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

Article X. Local Governments.

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

*SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. **Such taxes, fees, and charges shall accrue exclusively to the local governments.***

SECTION 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

For Congress to peg a fixed and uniform minimum amount of not less than 2% as a mandatory allocation in the annual budget of all LGUs for the same, not to mention that these LGUs have varying income classification levels, does not conform to this Constitutional mandate. More importantly, the LGUs under the BARMM even has an increased level of autonomy in that they can chart their own destiny with minimal

intervention from the national government. Congress is part of the national government. The intention of the framers of the Constitution is that through decentralization and devolution, **"it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns."**

Hence, even existing mandatory fixed allocations passed by Congress for the LGUs' programs on Gender and Development (GAD), SK Fund, Disaster Risk Management, and other uniform allocations has not only negated the principle of local and fiscal autonomy as it left no flexibility for LGUs to manage its own affairs as it deems fit, but these have also been proven to be an ineffective policy through the years since their enactment.

Each LGU has its own unique circumstances and priorities that for the Congress to allocate the local funds for and in behalf of the LGUs is a blatant disregard of the mandated role and function of the LGUs' local Sanggunians who are the ones empowered to effectively budget and allocate the LGUs' local budgets in accordance to their own needs, priorities, and demands of its constituents. The fiduciary role of Congress, having the power of the purse, is to approve the allocation of national funds with the imprimatur of the President. Similarly, the fiduciary role of local Sanggunians is to pass and approve its respective local Budget Ordinances with the approval of the Local Chief Executive. Such tasks are clearly delineated by existing national laws.

That the automatic release of the IRA was precisely intended to guarantee and promote local autonomy can be gleaned from the discussion below between Messrs. *Jose N. Nollado* and *Regalado M. Maambong*, then members of the 1986 Constitutional Commission, to wit:

"MR. MAAMBONG. Unfortunately, under Section 198 of the Local Government Code, the existence of sub-provinces is still acknowledged by the law, but the statement of the Gentleman on this point will have to be taken up probably by the Committee on Legislation. A second point, Mr. Presiding Officer, is that under Article 2, Section 10 of the 1973 Constitution, we have a provision which states:

"The State shall guarantee and promote the autonomy of local government units, especially the barrio, to insure their fullest development as self-reliant communities."

This provision no longer appears in the present configuration; does this mean that the concept of giving local autonomy to local governments is no longer adopted as far as this Article is concerned?

MR. NOLLEDO. No. In the report of the Committee on Preamble, National Territory, and Declaration of Principles, that concept is included and widened upon the initiative of Commissioner *Bennagen*.

MR. MAAMBONG. Thank you for that. With regard to Section 6, sources of revenue, the creation of sources as provided by previous law was subject to limitations as may be provided by law, but now, we are using the term subject to such guidelines as may be fixed by law. In Section 7, mention is made about the unique, distinct and exclusive charges and contributions, and in Section 8, we talk about exclusivity of local taxes and the share in the national wealth. Incidentally, I was one of the authors of this provision, and I am very thankful. Does this indicate ***local autonomy***, or was the wording of the law changed to give more autonomy to the local government units?

MR. NOLLEDO. Yes. In effect, **those words indicate also decentralization** because local political units can collect taxes, fees and charges subject merely to guidelines, **as recommended by the league of governors and city mayors**, with whom I had a dialogue for almost two hours. **They told me that limitations may be questionable in the sense that Congress may limit and in effect deny the right later on.**

MR. MAAMBONG. Also, **this provision on automatic release of national tax share points to more local autonomy. Is this the intention?**

MR. NOLLEDO. ***Yes, the Commissioner is perfectly right.*** The concept of local autonomy was explained in ***Ganzon v. Court of Appeals*** in this wise:

As the Constitution itself declares, local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. ***The Constitution, as we observed, does nothing more than to break up the monopoly of the national government over the affairs of local governments and as put by political adherents, to liberate the local governments from the imperialism of Manila.*** Autonomy, however, is not meant to end the relation of partnership and interdependence between the central administration and local government units, or otherwise, to usher in a regime of federalism. The Charter has not taken such a radical step. Local governments, under the Constitution, ***are subject to regulation***, however limited, and for no other purpose than precisely, albeit paradoxically, ***to enhance self-government.***

As we observed in one case, decentralization means devolution of national administration but not power to the local levels.

Thus: Now, autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments more responsive and accountable and ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress. At the same time, ***it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns.*** The President exercises general supervision over them, but only to ensure that local affairs are administered according to law. He has no control over their acts in the sense that he can substitute their judgments with his own.

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

In ***Pimentel v. Aguirre***¹, the Supreme Court defined what local autonomy is, to wit:

X x x

“Under existing law, ***local government units***, in addition to having administrative autonomy in the exercise of their functions, ***enjoy fiscal autonomy*** as well. ***Fiscal autonomy means*** that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, ***as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments,*** whether they are relevant to local needs and resources or not. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national

¹ G.R. NO. 132988, 19 July 2000

officials, who in any case are partners in the attainment of national goals.

Local fiscal autonomy does not however rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. Significantly, the President, by constitutional fiat, is the head of the economic and planning agency of the government, primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs for the entire country. **However, under the Constitution, the formulation and the implementation of such policies and programs are subject to "consultations with the appropriate public agencies, various private sectors, and local government units." The President cannot do so unilaterally.**

X x x

A basic feature of local fiscal autonomy is the automatic release of the shares of LGUs in the national internal revenue. This is mandated by no less than the Constitution.^[28] The Local Government Code^[29] specifies further that the release shall be made directly to the LGU concerned within five (5) days after every quarter of the year and "*shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.*"^[30] As a rule, the term "shall" is a word of command that must be given a compulsory meaning.^[31] The provision is, therefore, imperative.

As it is, LGUs are already limited by its minimal share of the national budget inasmuch as the Supreme Court had already ruled with finality in the *Mandanas v. Ochoa*² and *Garcia v. Ochoa*³ cases that the "just share" of LGUs being given since 1991 up to the present falls short of the LGUs' mandated fiscal space

Considering that Republic Act No. 7160, or the Local Government Code, and a number of subsequent laws passed after it, at least 77% to 80% of the LGU's budget has already been mandated for specific purposes, namely:

Mandatory Allocations for LGUs:

1. 45% cap for Personal Services (PS)
2. at least 20% for Development Fund (LGCode provision, Sec. 287)
3. at least 5% for LDRRMF (Section 21 of R.A. No. 10121)
4. 5% for Gender and Development (GAD)
5. 1% for Children/Youth (Juvenile)
6. 1% for Senior Citizens/PWD

Given this, LGUs are left with a measly 20% to 23% of their discretion in the annual budget for defrayment for the cost of basic services devolved to LGUs under Section 17 of R.A. No. 7160, the implementation of national programs, projects and activities (PPAs) for local nutrition action plans, rehabilitation or treatment of drug dependents and establishment of drug education centers, strengthening of the criminal justice system, management of jails, hospitals, medical centers, and quarantine facilities, and others that do not fall into the mandatory allocations in order to fulfill its mandates under those prescribed in the Department of Budget and Management (DBM) Local Budget Memorandum.

² G.R. NO. 199802, 18 July 2019

³ G.R. NO. 208488, 18 July 2019

This has even become more glaring now that LGUs are taking the lead in the mitigation of the Covid-19 pandemic and the unexpected support for a blended and online learning in education, passage of the Universal Health Care law, and other new laws passed that equally need the LGUs' funding support. To prioritize this allocation of 2% of the LGUs' annual budget merely for the creation of ADACs and ADAOs instead of economic recovery and mitigation of covid-19 at this time, is uncalled for. Therefore, it would be best to leave these budget allocations to the LGUs themselves as they would know best how to handle their own areas of jurisdiction.

While the creation of a multi-sectoral body and office whose main functions and responsibilities are to plan, initiate, implement, oversee, monitor and evaluate PPAs on the prevention of drug abuse, having a baseline study is necessary to determine the need for the creation of a new local special body. Due consideration must be given to the fact that drug abuse prevention is one of the mandates and functions of LGUs at all levels under Sec. 17 of the LGC.

Moreover, since specific programs on drug abuse prevention, like community rehabilitation and treatment, can be part of the LGUs' development initiatives, funds for the same may be sourced from the mandatory 20% Development Fund of provinces, cities, municipalities and barangays.

However, the League reiterates its reservations to the creation of an Anti-Drug Abuse Office, on account of its fiscal implications on the LGU budget.

The creation of a new office will necessarily entail the appointment of full-time staff, which will impact into an LGU's compliance with paragraph (a) of Sec. 325 of the LGC that sets the limitation for personal services to 45% for first to third class LGUs and 55% for fourth to sixth class LGUs.

Moreover, the creation of a new office shall also entail the allocation of funds, apart from the PS, for maintenance and other operating expenses, and the necessary capital outlay for the same.

WE, THEREFORE, REITERATE OUR OFFICIAL STAND ON THE FOLLOWING:

1. OUR STRONG OPPOSITION TO THE INCLUSION OF THE PHRASE **"OF NOT LESS THAN 2% OF THE LGUS' ANNUAL BUDGET TO FUND THE CREATION OF ADACS AND ADAOS"** which was inserted in the H.B. No. 7814 in House Committee Report No. 550, sponsored by Rep. Robert Ace S. Barbers. We propose that such provision be DELETED. It is sufficient to say that LGUs shall allocate funds for this purpose; AND
2. **Instead of the creation of a Local Anti-Drug Abuse Council, we propose for the strengthening of the Local Provincial Peace and Order Council** in order to take on the additional functions embodied in both H.B Nos. 7812 and 7814 and authorizing the allocation of funds for its functionality from the regular budget of the LPOC.

For your consideration.

Thank you.



GOV. PRESBITERO J. VELASCO, JR.
National President

