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BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 138

FULL DEVOLUTION OF CERTAIN FUNCTIONS OF THE EXECUTIVE BRANCH TO LOCAL GOVERNMENTS, CREATION OF A COMMITTEE ON DEVOLUTION, AND FOR OTHER PURPOSES

WHEREAS, Section 6, Article X of the Constitution provides that local government units (LGUs) shall have a just share, as determined by law, in the national taxes which shall be automatically released to them;

WHEREAS, in *Mandanas, et al. v. Executive Secretary, et al. (G.R. Nos. 199802 and 208488) ("Mandanas")*, the Supreme Court held that all collections of national taxes, except those accruing to special purpose funds and special allotments for the utilization and development of the national wealth, should be included in the computation of the base of the just share of LGUs;

WHEREAS, considering the prospective character of the *Mandanas* ruling, and in keeping with Section 284 of Republic Act (RA) No. 7160 or the "Local Government Code of 1991," which states that the share of LGUs in national taxes is based on the collections in the third year preceding the current fiscal year, the adjusted national tax allocations of LGUs shall only start in Fiscal Year (FY) 2022;

WHEREAS, given the revenue collections of the National Government in FY 2019, the total shares of the LGUs from the national taxes is expected to significantly increase starting FY 2022 in line with the implementation of the *Mandanas* ruling;

WHEREAS, the substantial increase in the shares of the LGUs from the national taxes will empower the LGUs in providing basic services and facilities to their constituents, and aid them in the effective discharge of other duties and functions devolved to them under Section 17 of RA No. 7160;

WHEREAS, Section 3 of RA No. 7160 provides the operative principles of decentralization that shall guide the formulation of policies and measures on local autonomy;

WHEREAS, Section 17(f) of RA No. 7160 provides that the National Government or the next higher level of LGU may provide or augment the basic services and facilities assigned to a lower level of LGU when such services or facilities are not made available or, if made available, are inadequate to meet the requirements of its inhabitants;

WHEREAS, under Section 24(a), Rule V of the Implementing Rules and Regulations of RA No. 7160, the provision for the delivery of basic services and facilities shall be devolved from the National Government to provinces, cities, municipalities and barangays so that each LGU shall be responsible for a minimum set of services and facilities in accordance with established national policies, guidelines and standards;

WHEREAS, with the full devolution of the provision of basic services and facilities to the LGUs, national government agencies can assume more strategic and steering functions to address persistent development issues;

WHEREAS, Section 83 of the General Provisions of RA No. 11518 or the "General Appropriations Act of Fiscal Year 2021," directs heads of departments, bureaus, offices and instrumentalities under the Executive Branch to: (i) conduct a comprehensive review of their respective mandates, missions, objectives and functions, systems and procedures, and programs, activities and projects; and (ii) identify areas where improvements are necessary and more resources need to be rechanneled;

WHEREAS, Section 17, Article VII of the Constitution provides that the President shall have control of all executive departments, bureaus and offices, and that he shall ensure the faithful execution of laws; and

WHEREAS, Section 4, Article X of the Constitution provides that the President shall exercise general supervision over local governments;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order:

Section 1. Policy. The National Government (NG) is fully committed to the policy of decentralization enshrined in the Constitution and relevant laws which are aimed at (i) developing capabilities of local governments to deliver basic social services and critical facilities to their constituents, increase productivity and employment, and promote local economic growth; and (ii) ensuring accountability, competence, professionalism and transparency of local leaders through the development of institutional systems that uphold good governance and strengthen their capacities for managing public resources.

Section 2. Guiding Principles. Consistent with Sections 3 and 17 of RA No. 7160, all department secretaries and agency heads concerned shall, in pursuit of the full devolution of functions to the LGUs, conduct a functional and organizational review of their respective mandates guided by the following principles:

a. The role of the NG is to set the national policy, development strategy, and service delivery standards, and to assist, oversee and supervise the LGUs, complementary to the stronger implementing role that the LGUs shall assume by reason of devolution;

b. The devolution of the provision of basic services and facilities to the LGUs and the determination of the functional assignments between and among the different levels of government shall be guided by the following:

    i. Public services with little or no benefit spillover are best administered and financed by lower level governments, while public services with significant inter-jurisdictional externalities or benefit and cost spillovers are best assigned to higher levels of government;

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ii. The provision of public goods and services that involve economies of scale is best assigned to higher levels of government; and

iii. Functions related to the redistributive role of government should be best assigned to the NG;

c. The NG, in close collaboration with the LGUs through their respective Leagues, shall formulate and pursue an institutional development program to support the LGUs in order to strengthen their capacities and capabilities to fully assume the devolved functions based on RA No. 7160 and other relevant laws; and

d. Except as otherwise provided in this Order, any ambiguity as to the interpretation of a power granted to an LGU shall be resolved and interpreted in favor of devolution.

Section 3. Coverage. This Order shall cover all LGUs, departments, agencies and instrumentalities of the Executive Branch whose functions are in line with the devolved functions of the LGUs under Section 17 of RA No. 7160, and other pertinent laws.

Section 4. Functions, Services and Facilities for Full Devolution. The functions, services and facilities which shall be fully devolved from the NG to the LGUs no later than the end of FY 2024, shall include those indicated under Section 17 of RA No. 7160 and other existing laws which subsequently devolved functions of the NG to LGUs.

Consistent with Section 17(e) of RA No. 7160, and for purposes of this Order, devolution shall pertain to the act by which the NG, as may be allowed by existing laws, confers power and authority to the various LGUs to perform specific functions and responsibilities.

Except those functions that shall continue to be shared with the NG pursuant to Section 2 of this Order, local governments shall be primarily and ultimately responsible and accountable for the provision of all basic services and facilities fully devolved to them in accordance with the standards for service delivery to be prescribed by the NG.

In accordance with Section 17(g) of RA No. 7160, the basic services and facilities fully devolved shall be funded from the share of the LGUs in the proceeds of national taxes and other local revenues. Local chief executives shall ensure that any fund or resource available for the use of their respective LGUs shall be first allocated for the provision of basic services or facilities devolved before applying the same for other purposes, in accordance with relevant laws and budgeting and auditing laws, rules and regulations.

Section 5. Devolution Transition Plans. The national government agencies (NGAs) concerned and all LGUs shall prepare their respective devolution transition plans (DTPs) which conform to the guidelines to be jointly issued by the Department of Budget and Management (DBM) and the Department of the Interior and Local Government (DILG).

There shall be only one (1) DTP for each department, which shall already cover the agencies and government-owned or -controlled corporations (GOCCs) under the control or supervision or attached to such department. The department secretaries shall lead and oversee the preparation and implementation of their DTPs. Agencies and instrumentalities not under the control or supervision or attached to a department shall prepare and implement their own DTPs in consultation and coordination with the DBM and DILG.

The NGA DTPs shall identify and clarify the functions and services devolved to the LGUs, by level of LGU, based on RA No. 7160 and other relevant laws, and the strategy for and phasing of devolution to the LGUs. They shall also include the definition of standards for the delivery of devolved services; strategy for the capacity development of the LGUs; framework for

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monitoring and performance assessment of the LGUs; and an organizational effectiveness proposal to strengthen the department/agency in assuming "steering functions" as part of the devolution efforts.

The NGAs concerned may consult and collaborate with the DILG, National Economic and Development Authority (NEDA), Department of Finance (DOF), Civil Service Commission (CSC), and the Development Academy of the Philippines (DAP), and other resource institutions for technical assistance in the preparation of their respective DTPs.

The DTP shall be submitted by the NGAs concerned to the DBM within one hundred twenty (120) days from the effectivity date of this Order, for evaluation and approval.

Section 6. Committee on Devolution. A Committee on Devolution (ComDev) is hereby created to be composed of the following:

Chairperson	:	Secretary, DBM
Co-Chairperson	:	Secretary, DILG
Members	:	Socioeconomic Planning Secretary, NEDA; Secretary, DOF; Executive Secretary; and Presidents of the Leagues of Provinces, Cities and Municipalities of the Philippines, the *Liga ng mga Barangay ng Pilipinas*, and the Union of Local Authorities of the Philippines.

The ComDev Chairperson, Co-Chairperson and Members from the government sector shall designate, within fifteen (15) days from the effectivity date of this Order, a senior official within their respective departments, with a rank not lower than an Undersecretary or its equivalent, to act as their permanent representative in the ComDev and who shall be responsible for overseeing their respective agency's overall efforts on the implementation of this Order. Alternates from the various leagues shall be endorsed by their organizational heads.

The DBM shall provide secretariat services to the ComDev.

Section 7. Functions of the ComDev. The ComDev shall perform the following functions:

a. Oversee and monitor the implementation of administrative and fiscal decentralization goals of this Order consistent with RA No. 7160, as amended;

b. Evaluate the status and monitor the implementation of the DTPs of NGAs and LGUs, and ensure compliance of NG officials or employees and local chief executives or personnel, and initiate appropriate action(s) as may be warranted;

c. Resolve issues and concerns that may arise in the implementation of this Order, without prejudice to the respective mandates of its member-agencies in individually resolving the same;

d. Ensure the elimination of any regulatory or fiscal controls on the automatic release of LGU shares on national taxes, in accordance with Sections 286 and 293 of RA No. 7160, unless such restrictions are warranted under relevant laws;

e. Adopt mechanisms to ensure continuous delivery of public services by the NGAs and the LGUs during the transition period to full devolution;

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f. Develop a strong communications plan and pursue strategies to effectively inform the public, as well as other stakeholders, on the delineation of the functions between the NGAs and the LGUs, and their respective accountabilities. For this purpose, the ComDev may tap the Presidential Communications Operations Office and its attached agencies and offices, call upon all NGAs, both the oversight and the affected agencies, to designate focal officials and personnel who shall participate in this information drive, and ensure the integration of the ComDev's key messaging and communications plan to their respective agencies' communication efforts;

g. Issue rules and regulations for the effective implementation of this Order within thirty (30) days from its effectivity, and thereafter, such other supplemental guidelines as may be appropriate;

h. Submit to the Office of the President an annual report on the implementation of this Order. The report shall include the status of implementation of the DTPs, as well as the recommendations of the ComDev based on the annual assessments thereof; and

i. Call on any relevant department, agency or office of the Executive Branch for the fulfillment of its functions and the accomplishments of the objectives of this Order, and ensure convergence of all government efforts on the devolution program.

Section 8. Growth Equity Fund. A Growth Equity Fund (GEF) shall be proposed by the ComDev to Congress to address issues on marginalization, unequal development, high poverty incidence and disparities in the net fiscal capacities of LGUs. The amount constituting the GEF shall be included by the DBM in the National Expenditure Program starting FY 2022 and thereafter, to cover the funding requirements of programs, projects and activities of poor, disadvantaged and lagging LGUs to gradually enable the full and efficient implementation of the functions and services devolved to them.

The GEF shall be released to the LGUs in accordance with the implementing rules and regulations to be prescribed by the Development Budget Coordination Committee. It shall be subject to the mechanisms and guidelines for an equitable, performance-based, and time-bound allocation and distribution of the fund to the LGUs.

Section 9. Capacity Development. The DILG, through its Local Government Academy (LGA), shall oversee the provision of capacity development interventions for local governments, and shall develop the appropriate mechanisms to ensure efficient utilization of government resources on this effort. The LGA shall harmonize all capacity development interventions by the DBM, NEDA, DOF, other NGAs, DAP and third party service providers for the LGUs. It shall optimize the potential of the Local Governance National and Regional Resource Centers as the convergence platform for capacity development.

Further, the DILG, DBM and the Bureau of Local Government Finance of the DOF shall include public financial management processes, such as local planning, investment programming, resource mobilization and budgeting, in the capacity development of the LGUs to ensure that the allocation of the revenue allotment for basic services and facilities is in accordance with Section 17 of RA No. 7160 and other relevant laws.

Moreover, the DILG shall develop other capacity development strategies, facilitate institutionalization of performance standards, and develop performance incentive mechanisms under the Seal of Good Local Governance to promote excellence in local governance.

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To ensure continuity in the efficient and effective delivery of services, capacity development interventions shall, as far as practicable, be offered preferably to career or permanent local government personnel as a means of institutional strengthening.

Section 10. Role of LGUs. Consistent with Section 5 of this Order, all LGUs shall likewise prepare their DTPs in close coordination with the NGAs concerned, especially with regard to devolved functions and services critical to them. The DTPs of LGUs shall be used as a guide in the monitoring and performance assessment of the LGUs by the DBM, DILG and NGAs concerned.

In view of the devolution of certain functions from the NGAs, the LGUs shall also formulate their respective Capacity Development Agenda based on the assessment framework and guidelines to be issued by the DILG-LGA. The capacity development agenda shall be guided by, among others, the strategy for capacity development of the LGUs as contained in the NGA DTPs, local development thrusts, and performance goals and objectives.

In accordance with Section 8(f) of this Order, all LGUs are highly encouraged to formulate their respective communications plans and strategies which are aligned and complementary to the communications plan formulated and approved by the ComDev.

Local programs and policies shall be integrated and coordinated towards a common national goal and shall abide by the policies, standards and strategies which the NG may establish pursuant to the Guiding Principles in Section 2 of this Order.

Section 11. Strengthening Planning, Investment Programming and Budgeting Linkage and Monitoring and Evaluation (M&E) Systems. The vertical and horizontal linkages across different levels of government in development planning, investment programming and budgeting shall be strengthened to align NG, regional and local priorities. The Regional Development Councils shall set the strategic direction for the faster development of the regions, especially in the lagging areas, and facilitate the alignment of the local development and the land use plans with the goals, objectives and targets in the Updated Philippine Development Plan and the respective regional development plans.

The regional development investment programs shall contain the proposed intra- and inter-regional programs, projects and activities (PPAs) of regional line agencies to be funded by the NG, while the provincial/local development investment program (P/LDIP) of provinces, cities and municipalities shall contain their prioritized list of PPAs for funding by the LGUs. The annual investment program of the LGUs to be funded through local funds, borrowings and public-private partnerships shall be sourced from their respective P/LDIPs.

Horizontal linkages shall be strengthened through the improvement in the coordination, synchronization, and joint execution of programs and projects between and among the LGUs. In line with this, provincial governments are reminded of their oversight and coordination functions in the provision of services and implementation of projects within their provinces that cut across city/municipal borders.

Relative to this, the DILG, DOF, NEDA and DBM shall update existing circulars, and recalibrate the synchronized local and regional planning and budgeting calendars accordingly.

Further, results-based M&E systems shall be in place in the DILG, DBM, DOF and other NGAs to ensure the purposive conduct of evaluations by the agencies concerned, and to guarantee that the LGUs have assumed the devolved functions and services effectively in support of good governance, transparency, accountability and evidence-based decision making.

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Section 12. Personnel Options. To the extent authorized by civil service laws, rules and regulations, personnel hired on a permanent basis, who may be affected by the devolution, shall have the option to:

a. Apply for transfer to other units/offices within the department/agency/GOCC concerned without reduction in pay;

b. Apply for transfer to other departments/agencies/GOCCs in the Executive Branch without reduction in pay; or

c. Avail the retirement benefits and separation incentives as provided under Section 13 of this Order and, subject to the discretion of the LGUs, apply to vacant positions therein, provided that their reemployment shall be considered as new entry to the civil service and that they shall be subject to the compensation system of the LGU concerned.

Affected employees occupying medical/allied-medical items may apply for transfer to a Department of Health-supervised hospital of their choice.

The DBM and DILG, in coordination with the CSC and with prior consultation with the LGUs through their respective Leagues, shall develop and issue the guidelines, as may be necessary, to ensure the fair, orderly, and transparent implementation of this provision; provided, that the NGAs are authorized to institute their respective internal operationalization guidelines, subject to existing CSC and DBM rules and regulations.

Section 13. Retirement/Separation Benefits. Affected personnel with permanent appointments who would opt to retire or separate from the service shall be given the option to avail the retirement benefits under existing laws, if qualified.

In addition to said retirement benefits, the affected personnel who would opt to retire or separate from the service shall be entitled to the following separation incentives:

Length of Service	Rate
Less than eleven (11) years of service	½ of the actual monthly basic salary for every year of government service
Eleven (11) to less than twenty-one (21) years of service	¾ of the actual monthly basic salary for every year of government service, computed starting from the 1st year
Twenty-one (21) to less than thirty-one (31) years of service	actual monthly basic salary for every year of government service, computed starting from the 1st year
Thirty-one (31) years of service and above	1 ¼ of the actual monthly basic salary for every year of government service, computed starting from the 1st year

The actual monthly basic salary shall refer to the salary of the affected personnel as of the date of approval of the department/agency's revised organizational structure and staffing pattern by the DBM.

A minimum of five (5) years of government service is required in order for affected personnel to be entitled to avail of the separation incentives; Provided, that for the purpose of computing the total amount of separation incentives that affected personnel shall receive, only the government service up to the age of fifty-nine (59) and a fraction thereof shall be counted. Government service starting at the age of sixty (60) shall no longer be subject to the separation incentives provided herein; Provided, further, that for the purpose of complying with the required number of years of service under RA No. 8291 or the "The Government Service Insurance System (GSIS) Act of 1997," the portability scheme under RA No. 7699 (Portability Law) may be applied, subject to existing policies and guidelines.

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The retirement gratuity benefit of affected personnel who are qualified and shall avail of RA No. 1616, as amended, shall be paid by the GSIS. The GSIS shall no longer pay the refund of retirement premiums, both personal and government shares, of the affected personnel who will opt to retire under RA No. 1616.

Section 14. Other Benefits of Retired/Separated Personnel. The affected personnel who retired or separated from the service shall, on top of applicable statutory benefits, be entitled to the following:

a. Refund of Pag-IBIG contributions, both personal and government shares, of all affected members, pursuant to existing rules and regulations of the Home Development Mutual Fund; and

b. Commutation of unused vacation and sick leave credits of the affected personnel in accordance with existing civil service rules and regulations.

Section 15. Prohibition on the Rehiring of Personnel. Without prejudice to existing laws and regulations, affected personnel with permanent appointments who retired/separated from the service as a result of the devolution efforts shall be prohibited from reemployment in any agency of the Executive Branch, for a period of five (5) years, except as teaching and medical staff in educational institutions and hospitals, respectively.

The reemployment of the retired/separated personnel in the Executive Branch within the prohibited period shall cause the refund of the separation incentives received by subject personnel under Section 13 of this Order, on a pro-rated basis.

It is understood that the prohibition on the reemployment of the affected personnel shall not apply in the other branches of the Government and in the local governments. However, the affected personnel who will opt to be reemployed in the local governments shall be subject to the prevailing compensation system in the LGU concerned.

The engagement of consultancy services of government personnel who retired or separated from the service as a result of the devolution efforts shall be governed by Section 7 of RA No. 6713 or the "Code of Conduct and Ethical Standards for Public Officials and Employees," and other pertinent laws, rules and regulations.

Section 16. Funding. The amount necessary for the first year of implementation of this Order shall be sourced from existing appropriations in the case of NGAs, and the respective corporate funds of GOCCs, subject to availability thereof, and existing budgeting, accounting, and auditing rules and regulations. The amounts necessary for subsequent years shall be included in the budget proposals of the agencies concerned.

The funds for the separation incentive of the affected personnel in regular government agencies shall be provided by the NG, subject to existing and applicable budgeting, accounting, and auditing rules and regulations. The separation incentives for the affected personnel of GOCCs shall be sourced from their respective corporate funds. In case of deficiency of funds of GOCCs not exempted from the Salary Standardization Law, the NG may provide assistance in the payment of the separation incentives.

Section 17. Non-interruption of Government Service. This Order, or any guidelines, rules or regulations issued in pursuance thereof, or any initiative towards the transition of devolved functions from the NGAs to the LGUs, shall not operate to suspend or exempt any government office or personnel from compliance with the provisions of RA No. 11032 or the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018."

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Section 18. Construction and Interpretation. Any conflict between and among the provisions of this Order, or any guidelines, rules or regulations issued in pursuance thereof, shall be resolved or construed liberally in favor of the interpretation that would prevent any impediment in the delivery of public services by the NGAs and the LGUs.

Section 19. Separability. Should any part or provision of this Order be held unconstitutional or invalid, the other parts or provisions not affected thereby shall continue to be in full force or effect.

Section 20. Repeal. Executive Order Nos. 48 (s. 1998), 444 (s. 2005), and all other orders, rules and regulations, issuances, or any part thereof, inconsistent with the provisions of this Order are hereby repealed, amended or modified accordingly.

Section 21. Effectivity. This Order shall take effect immediately following its publication in the Official Gazette or in a newspaper of general circulation.

DONE, in the City of Manila, this 1st day of June, in the year of the Lord Two Thousand and Twenty-One.

By the President:

SALVADOR C. MEDIALDEA
Executive Secretary

REPUBLIC OF THE PHILIPPINES
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DIRECTOR IV