

The Mandanas Ruling: Shifting the Tide of Local Autonomy

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What is the Mandanas-Garcia Ruling?

THE KEY ISSUES since the enactment of Republic Act No. 7160 (RA 7160) otherwise known as the Local Government Code (LCG) of 1991 are the sufficiency in resources to finance the devolved functions to local government units; the effectiveness of the fiscal mechanisms in incentivizing mobilization of resources at the local level; and equalizing the economic capacity of LGUs. The recent ruling of the Supreme Court on the Mandanas and Garcia petitions might significantly change the landscape of local autonomy in the country.

Representative Hermilando Mandanas of Batangas, together with other local government officials and Congressman Enrique Garcia of Bataan filed two separate petitions before the Supreme Court. They challenged the computation of the just share in the national taxes of the local government units.

Before the SC decision, the share of local governments were computed based on national internal revenues collected by the Bureau of Internal Revenue (BIR). The petitioners argued that excise tax, value-added tax (VAT), and documentary stamp tax (DSTs) collected by the Bureau of Customs (BOC) are part of national internal revenue taxes, albeit collected by the BOC, and should form part of the base from which the Internal Revenue Allotment (IRA), now called National Tax Allotment (NTA) should be computed.

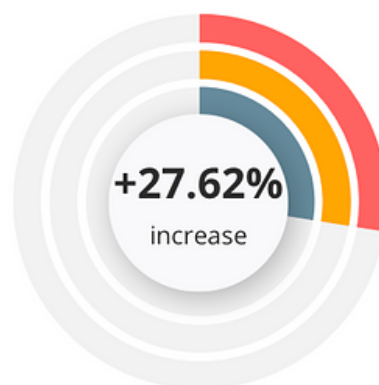
Further, the petition argued that the words “internal revenue” in the phrase “national taxes” found in Section 284 of the LGC caused the diminution of the base for determining the just share of the LGUs, and should be declared unconstitutional.

In 2019, the Supreme Court decided in favor of the petitioners. The decision emphasized that all national taxes regardless of source - whether from the BIR or the BOC - should be included in the reckoning of the tax base. It also emphasized that while Congress has the mandate to make laws, congressional lawmaking remains subject to the limitations stated in the 1987 Constitution. The decision declared Section 284 of the LGC unconstitutional.

Impact of the Mandanas Ruling

The Mandanas Ruling would have a significant impact on the fiscal space of the national and local governments. The national revenues collected by the BOC is about 20% of the total government revenues. This will now be included in determining the 40% share of LGUs' national tax allotment. For FY 2022, the LGU's share is expected to increase by Php 234.30B (26.62 percent more) from Php 848.44B to PhP 1.083T.¹

Note that the share of LGUs in 2022 will be based on the 2019 tax collections. While there will be windfall gains in 2022, the LGUs should also prepare for a lower National Tax Allotment amount in the succeeding years due to the economic slowdown brought about by the pandemic.



₱990 M
Province A

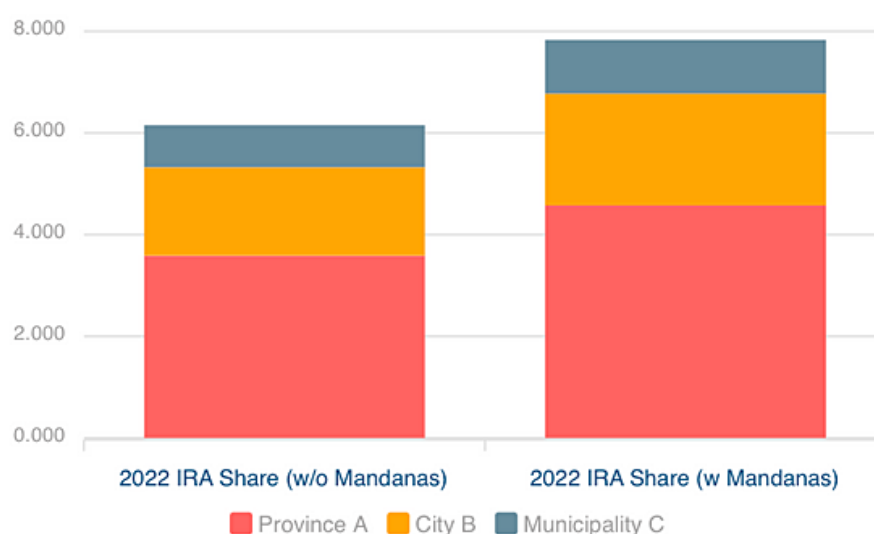
₱480 M
City B

₱228 M
Municipality C

Increase in IRA (in billion ₱)

The figures are estimated increase in the share of three hypothetical LGUs:

Source: Based on the November 2020 computation of the Department of Finance (DOF)



¹ The figures are from the 178th Development Budget Coordination Committee meeting dated 3 Dec 2020 as cited by Director John Aries S. Macaspac of the Department of Budget and Management - Local Government and Regional Coordination Bureau in his presentation entitled "Implementation of the Supreme Court Decision in the Mandanas Case," dated 27 January 2021.

Bracing for Full Devolution

The implementation of the Mandanas ruling will start in 2022 with full implementation in 2024. This is to give time to the LGUs and the NGAs to prepare for full devolution. Currently, national government agencies continue to provide funding for specific local government projects. But with the full devolution, the role of national government agencies will now focus on strategic and steering functions.²

Malacañang issued Executive Order No. 138 last June 01, 2021 to provide the framework for the transition and full implementation of the Mandanas Ruling.³ It covers the delineation of the roles of national and local governments, the preparation of devolution transition plans, the establishment of growth equalization fund and the creation of the committee on devolution.⁴ It will be implemented by a Committee on Devolution chaired by the Executive Secretary with the Secretary of Budget and Management, Secretary of the Interior and Local Government, Secretary of Socioeconomic Planning, Secretary of Finance, Heads of the Leagues of Provinces/Cities/Municipalities of the Philippines, Liga ng mga Barangay sa Pilipinas, and Union of Local Authorities of the Philippines as members.

EO 138 mandates LGUs and NGAs to coordinate and develop the following:



The NGA and the LGUs are expected to iron out the programs and projects to be devolved to LGUs by 2024. The rest of the items are to be laid out within this year. Special considerations will be given to fourth to sixth-class municipalities since they still must grapple with a very minimal increase in resources versus their needs. These considerations will be incorporated in the planning of NGAs for transition to full devolution.

² Executive Order No. 138.

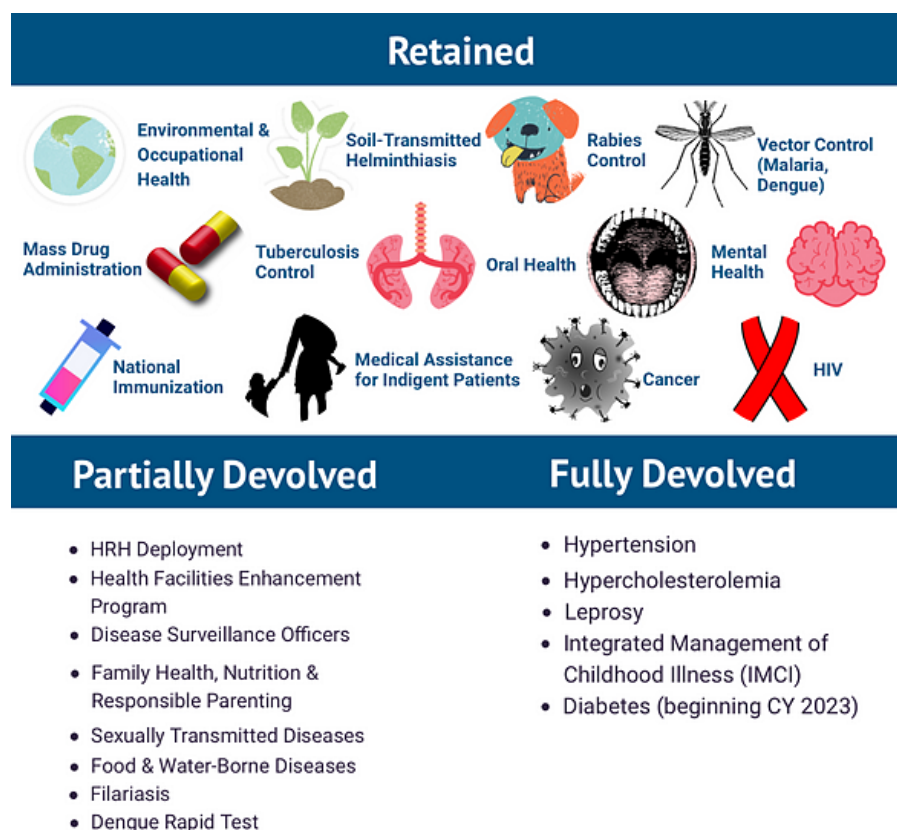
³ Executive Order No. 138 refers to "Full devolution of certain functions of the Executive Branch to Local Government, creation of a Committee on Devolution, and for other purposes"

⁴ As the Bangsamoro Organic Law (BOL) is still in the process of transitioning towards its full implementation, the Executive deemed it best to leave out the region from the coverage of EO 138.

For example, the Department of Social Welfare and Development will maintain programs to mitigate hunger through its supplementary feeding program in fifth and sixth class municipalities, crisis intervention for vulnerable and distressed inter/regional clients, especially the youth and children while its KALAHI-CIDSS program will transition until 2023.

Program	National Government	Local Government
Comprehensive Project for Street Children	Set national policy and service delivery standards, and assist, oversee and monitor LGUs	Implement or continue to implement social welfare services as enshrined in Section 17 of the Local Government Code, and align with the set policy and service delivery standards provided by the DSWD, through the transition plan.
Assistance to Persons with Disabilities (PWD)		
Recovery and Integration Program for Trafficked Persons (RRPTP)	Maintain crisis intervention only for vulnerable and distressed inter/regional clients, and management of financial assistance provision in established Malasakit Centers per RA No. 11463	
Sustainable Livelihood Program (SLP)		
Assistance to Individuals in Crisis Situation (AICS)		
Supplementary Feeding Program (SFP)	Transitory for Zero Hunger commitments- 5th-6th Class Municipalities	
Programs for Older Persons	Transition to National Commission of Senior Citizens	

Source: Asec JP Niwane (2021). DSWD Transition Plan: Learning Session on the Mandanas Ruling," a presentation via Zoom by Asec Joceline P. Niwane, Asec for Policy and Plans and Head, DSWD TWG Secretariat on Devolution, 3 June 2021



Another example is that of the Department of Health (DOH) where there is a spectrum of retained, partially devolved, and fully devolved functions based on an assessment on the scope of a particular LGU's responsibility. Addressing, for instance, food and water-borne diseases is partially devolved as this might be better dealt with at the regional level especially when one looks at water systems and bodies of water transcending several municipalities.

Source: DOH Usec Mario C. Villaverde (2021). Presentation of the Health Policy and Systems Development Team during the 7th National Health Sector Meeting last 2 July 2021.

The initial list of projects, activities, and programs (PAPs) for phasing out, scaling down or will be discontinued starting with the 2021 General Appropriations Act can be found in Annex A.

The following are the guiding principles that will be used in the rationalization of functions to LGUs:⁵

- 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;
- The provision of public goods and services that involve economies of scale is best assigned to higher levels of government, and;
- Functions related to the redistributive role of government should be best assigned to the National Government.

Issues and Concerns regarding the Mandanas Ruling

As the Mandanas Ruling provides greater opportunities to strengthen decentralization in the Philippines, it also highlights important issues and concerns that need to be addressed.

- LGUs' spending capacity

WorldBank conducted an analysis of the Commission on Audit (COA) reports on LGUs from 2015 to 2018 and found that nearly half of LGU's capital outlays remain unspent.

Budget execution rates worsen as more funds are allocated for capital outlay to wit, a 20% increase in capital outlay is projected to increase underspending by 15 percentage points by provinces and cities and 24% for municipalities.⁶

- LGU Dependency on the IRA

Some worry that LGUs might not graduate from IRA dependency.

Most LGUs' operating income is derived from transfers from the national government or IRA. In 2018 and 2019, LGUs, on average, even increased their IRA dependence by one percentage point from 61 to 62%. On the other hand, real property taxation, on average, only accounts for 28% of locally generated funds, with the lowest collection efficiency of 84% amongst other local revenue sources.

⁵ Section 2-b. Executive Order No. 138

⁶ Zoom Public forum on the "Mandanas Ruling and EO 138: Implications on the BARMM and its LGUs" sponsored by IAG Philippines, 24 June 2021

- Reinforcing political dynasties

While greater devolution increases the potential for greater accountability between the politician and the electorate, the level of political maturity of our electorate and the proliferation of political dynasties in the country might result on the contrary.

Local chief executives belonging to political dynasties will now have more resources at their disposal to sustain their political influence.

- Growth Equity Fund (GEF) as a Congressional Kitty Fund

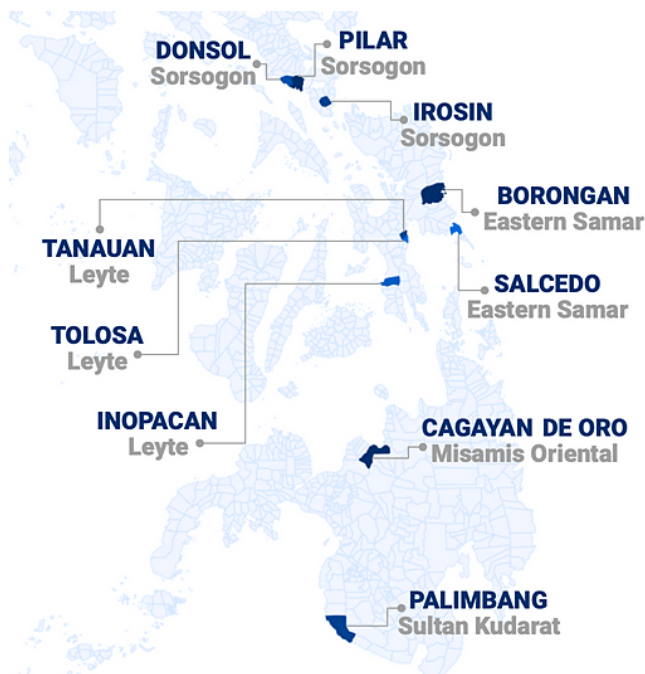
EO 138 mandates the creation of the GEF to address issues on marginalization, unequal development, high poverty incidence, and disparities in the net fiscal capacities of LGUs. The GEF will be included in the Executive’s 2022 National Expenditure Program that will be submitted to Congress.

Without accountability mechanisms and clear parameters to guide the allocation of this fund, the GEF might just become a substitute for pork barrel.

- LGU Capacity for data driven policy making

The results of the recent baseline survey of COLLABDev with 10 partner LGUs indicate the need to build the capacity of LGUs in collecting and analyzing data to inform policy. Most LGUs also need to develop concrete policies on data privacy, access, and management.

Data has a very important role to play in ensuring the effectiveness and efficiency of programs and policies implemented by LGUs.



Policy Recommendations

The following recommendations are put forward to address the potential issues and concerns with Mandanas Ruling:



Clear assignment and delineation of functions will help minimize service delivery gaps during the transition period.



Technical assistance to LGUs should be provided to improve their absorptive and spending capacity.



The roles of provinces and regional development councils in developing coherent development plans cannot be overemphasized. These plans should form the building blocks of the national development plan which will guide national agencies in “steering” development.



The existing partnerships of LGUs and CSOs should be reinforced.

Participatory budgeting, project monitoring and evaluation should be institutionalized to help improve the LGUs fiscal capacity and ability to implement big projects in a transparent manner.



Transparency, open data initiatives, civic monitoring of

intergovernmental transfers can be enhanced if the department uses a carrot (e.g. adding the FOI ordinance as criteria) to earn a seal of good housekeeping.



Clear directives should be given so that cities and municipalities do not formulate fiscal incentives that will look like a race to the bottom as they all try to compete to attract investments within their territory.



Instead of creating a discretionary fund like the GEF, **the IRA formula should be reviewed** so that poverty incidence, revenue capacities, and expenditure needs of LGUs are considered. The transfer formula should incentivize local revenue generation and should consider the varying needs of LGUs for additional funds to address poverty and encourage development.



If the government decides to create an equalization fund than amend the IRA formula, **clear parameters should be formulated to guide the allocation of the equalization fund** for it to be effective in addressing inequality across LGUs.



The LGUs must be able to effectively implement the Community-Based Monitoring System.

The CBMS data will greatly assist the LGUs in formulating and implementing informed policies and programs. Capacities of LGUs to collect, manage, secure and analyze data should be built.

Conclusion

The Mandanas Ruling brings a lot of potentials to strengthen decentralization in the country. Best practices on good governance at the local level tell us that enlightened and active citizenry and progressive local government officials are key elements for successful decentralization. The need to implement policy reforms like amending the IRA formula and mainstreaming participatory governance are urgently needed to make the Mandanas ruling more effective.

ANNEX

List of PAPs to be Phased out, Scaled-Down, Discontinued in the 2021 GAA

Department/Agency	Program/Activity/Project (PAP)
DEPARTMENT OF AGRICULTURE	
DA-OSEC	Farm-to-market Road (FMR) Sub-program
DA-OSEC	Operational Plan for Rabies Elimination
DA-OSEC	Production Support Services
DA-OSEC	Irrigation Network Services
DA-OSEC	Agricultural Machineries, Equipment and Facilities
DA-BFAR	Aquaculture Subprogram
DA-BFAR	Coastal and Inland Fisheries Resource Management
DA-BFAR	Post-Harvest Equipment and Facilities
DA-FPA	Quality and Control Inspection
DA-NMIS	Meat Establishment and Meat Inspection Assistance to LGUs Services
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES	
DENR-OSEC	Management of Coastal and Marine Resources/Areas
DENR-OSEC	Forest Development, Rehabilitation, Maintenance and Protection
DENR-OSEC	Soil Conservation and Watershed Management including River Basin Management and Development
DENR-OSEC	Land Survey, Disposition, and Records, Management (Rapid Land Tenure Assessment)
DENR-EMB	Implementation of Clean Water Regulations
DENR-EMB	Implementation of Ecological Solid Waste Management Regulations
DENR-MGB	Mineral Regulation Services
DEPARTMENT OF EDUCATION	
DepEd-OSEC	Basic Education Facilities
DEPARTMENT OF HEALTH	
DOH-OSEC	Health Facilities Enhancement Program
DOH-OSEC	Human Resources for Health Deployment
DOH-OSEC	Environmental and Occupational Health
DOH-OSEC	Family Health, Immunization, Nutrition and Responsible Parenting (formerly Family Health, Nutrition, and Responsible Parenting)
DOH-OSEC	Elimination of Disease, such as Malaria, Schistosomiasis, Leprosy, and Filariasis
DOH-OSEC	Prevention and Control of Communicable Diseases (formerly Prevention and Control of Other Infectious Diseases)
DOH-OSEC	Prevention and Control of Other Non-communicable Diseases
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT	
DILG-OSEC	Capacitating LGUs on Resettlement Governance
DEPARTMENT OF LABOR AND EMPLOYMENT	
DOLE-OSEC	Jobstart Philippines Program: Life Skills Training (LST), Technical Skills Training (TST), and Apprenticeship/Internship
DOLE-OSEC	Job Search Assistance: Public Employment Service
DOLE-OSEC	Livelihood Program/ DOLE Integrated Livelihood Program (DILP)
DEPARTMENT OF SCIENCE AND TECHNOLOGY	
DOST-OSEC	Diffusion and Transfer of Knowledge and Technologies and Other Related Projects and Activities
DOST-OSEC	Community Empowerment thru Science and Technology
DOST-ITDI	Locally Funded Project: Industrial Technology Research and Development Program
DEPARTMENT OF TOURISM	
DOT-OSEC	Tourism Planning
DOT-OSEC	Tourism Standards Development, Regulation and Accreditation, Monitoring and Enforcement
DOT-OSEC DOT-NPDC	Locally Funded Project: Branding Campaign program; Rehabilitation of Water & Sprinkler System, Dredging and Waterproofing of Lagoon
DOT-NPDC	Landscaping and Park Redevelopment of Light and Sound Complex
DOT-NPDC	Pest Control of NPDC Offices & Park Building Facilities
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS	
DPWH	Local Infrastructure Program (LIP)
DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT	
DSWD-OSEC	Supplementary Feeding Program Sustainable Livelihood Program
DSWD-OSEC	Protective Services for Individuals and Families In Especially Difficult Circumstances (Assistance to Individuals in Crisis Situation [AICS])
DSWD-OSEC	Recovery and Reintegration for Trafficked Person

DSWD-OSEC	Recovery and Reintegration for Trafficked Person
DSWD-OSEC	Comprehensive Project for Street Children
DSWD-OSEC	Services for Residential and Center-based clients
DSWD	KAI AHI-CIDDS
DEPARTMENT OF TRADE AND INDUSTRY	
DTI-OSEC	Establishment of Negosyo Centers
DTI-OSEC	Shared Service Facilities (SSF) Project
DTI-OSEC	Conduct of National and Regional Trade Fairs
DTI-OSEC	One Town, One Product (OTOP): Next Generation
GOVERNMENT-OWNED AND -CONTROLLED CORPORATIONS	
GOCC-NHA	Comprehensive and Integrated Housing Program
GOCC-NHA	Housing Program for Calamity Victims-Permanent Housing
GOCC-NIA	Establishment of Groundwater Pump Irrigation Systems Project (EGPIP)
GOCC-NIA	Communal Irrigation System (CIS) Sub-program
GOCC-NIA	Extension/Expansion of Existing Irrigation System (CIS)
GOCC-NIA	Repair of Groundwater Pump Irrigation Systems
GOCC-NIA	Feasibility Study and Detailed Engineering (FSDE) and Pre-engineering Activities of Various Projects - CIP and CIS
GOCC-NIA	Irrigation Management Transfer Support Services
GOCC-NIA	Balikatan Sagip Patubig Program
GOCC-NIA	Small Irrigation Project (SIP)
LOCAL GOVERNMENT SUPPORT FUND	
LGSF	Assistance to Municipalities
LGSF	Assistance to Cities
LGSF	Conditional Matching Grant to Provinces (CMGP) for Road Repair, Rehabilitation and Improvement
LGSF	Provision for Potable Water Supply (SALINTUBIG)

Source: "NGA Plans and Preparation for the Implementation of the Mandanas Ruling," Rochelle F. Ramirez, Chief Budget and Management Specialist Systems and Productivity Improvement Bureau, Department of Budget and Management, as presented via zoom on 8 July 2021, hosted by the Development Academy of the Philippines.