

- *What did LGUs lose for 3 months?*
- *What aspects of local autonomy will be reclaimed tomorrow?*



# **The Post-Bayanihan Act**

## **Reclaiming LGUs' Local Autonomy**

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*Amicus Imperiorum Locorum*

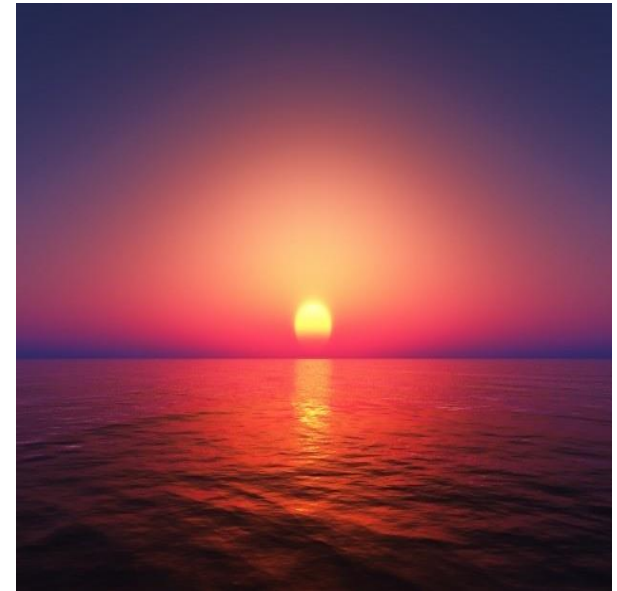
June 25, 2020

# Subsist tomorrow

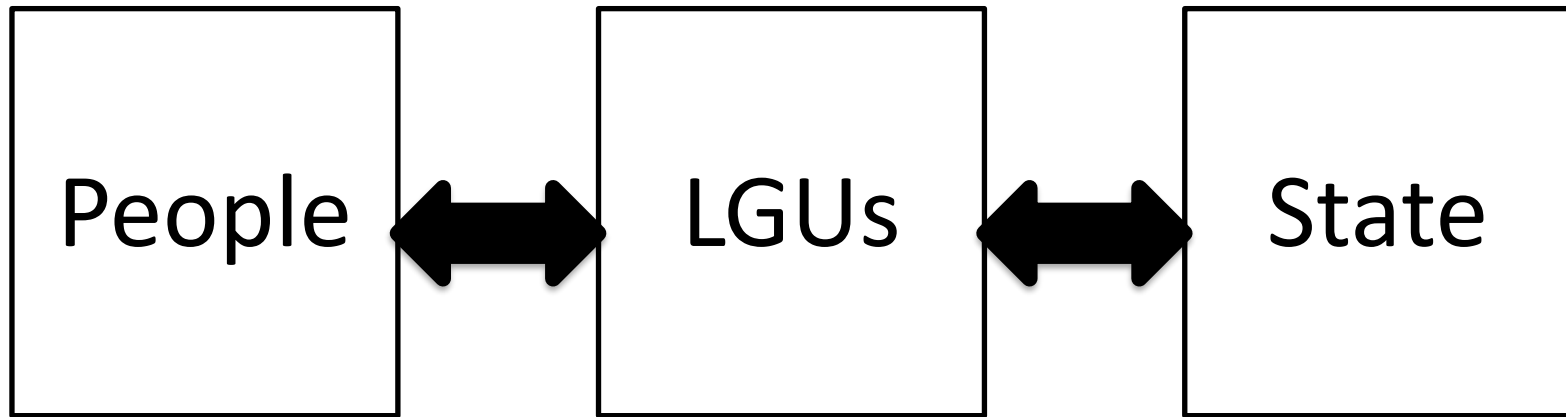
- COVID-19 Pandemic
- Laws, such as but not limited to:
  1. 1987 Constitution
  2. RA 7160: 1991 Local Government Code
  3. Charters of LGUs and other Administrative Agencies
  4. RA 6975 and Revised Administrative Code
  5. RA 11332: Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act
  6. RA 9184: Government Procurement Reform Act
- Agencies (IATF, DOH, DILG, NGAs, GOCCs, GlS [like PRA])
- “LGUs in the Middle”

# Expires today

- RA 11469:  
Bayanihan to Heal  
as One Act



# Context: LGUs in the Middle



- Institutional Frontliners
- Public Offices
- Public Servants
- Dual Capacity
- Dual Agency
- Development Partners
- Response-able and Responsible Organizations

# Operative “Permanent” Laws

<b><i>1987 Constitution</i></b>	<ul style="list-style-type: none"><li>○ Local autonomy and fiscal autonomy of 5 LGU types/ levels</li><li>○ Executive Supervision</li><li>○ Legislative Control</li></ul>
<b><i>RA 7160: 1991 Local Government Code</i></b>	<ul style="list-style-type: none"><li>○ Operationalized local autonomy</li><li>○ Executive Supervision (<i>with executive control on health operations by DOH and on community-based forestry projects by DENR</i>)</li><li>○ Defined powers, resources and structure for 4 LGU types/ levels (<i>exercise of legislative control</i>)</li></ul>

# Operative “Permanent” Laws

<b><i>LGU Charters</i></b>	<ul style="list-style-type: none"><li>○ Operationalized local autonomy</li><li>○ Executive Supervision</li><li>○ Defined powers, resources and structure of particular LGUs (<i>exercise of legislative control</i>)</li></ul>
<b><i>Charters of AAs</i></b>	<ul style="list-style-type: none"><li>○ Mandate, Jurisdiction, Functions, Powers and Structure defined by Creating Authority</li></ul>
<b><i>RA 6975 and Revised Administrative Code</i></b>	<ul style="list-style-type: none"><li>○ Charter of DILG</li><li>○ Assist the President in exercising the power of supervision over all LGUs</li><li>○ Strengthen the administrative capability of LGUs and develop the capability of local officials</li></ul>

# Operative “Permanent” Laws

<b><i>RA 11332: Health Events of Public Health Concern</i></b>	<ul style="list-style-type: none"><li>○ Declaration of Epidemic or Public Health Emergency<ul style="list-style-type: none"><li>○ President: National Epidemic threatening national security</li><li>○ DOH: National or International Epidemics</li><li>○ LGU: Territorial Disease Outbreak</li></ul></li><li>○ Mandatory Reporting</li><li>○ Response Systems and Activities<ul style="list-style-type: none"><li>○ Rapid containment</li><li>○ Quarantine and isolation</li><li>○ Disease prevention and control measures</li></ul></li><li>○ Penal Clause (violation of Act)</li></ul>
<b><i>RA 9184: GPRA</i></b>	<ul style="list-style-type: none"><li>○ Procurement of Goods, Services and Infrastructure</li><li>○ Bidding and Negotiated</li></ul>

# A “Pause\*”: Bayanihan Act

Emergency/ Extraordinary Powers

NG-Defined and -Undefined Areas

Penal Clause

➔ *Temporary involuntary surrender of aspects of local autonomy*

# Local Autonomy ...

“means a **more** responsive and accountable local government structure instituted through a system of **decentralization.**”

*(Section 3, Article X, 1987 Constitution)*

***More or greater than before:***

- Autonomy
- Freedom
- Rights
- Discretion
- Powers
- Funds
- Accountability
- Trust

***Less:***

- Restrictions
- Intervention



# Local Autonomy ...

- is qualified, not absolute, self-governance (i.e., LGU powers are broad but not without limits)
- does not contemplate making mini-states or impenetrable states out of LGUs (Unitary System)
- necessarily includes fiscal autonomy
- is either decentralization of administration or decentralization of power
- is decentralization in 2 forms: devolution and deconcentration
- is not a license to violate the law (Subordinate Legislation)
- means that absent a law, NGAs **cannot limit/ restrict** discretion of LGUs/ **cannot impose requirements through executive fiat**
- mandates **executive supervision, not control**, and legislative control
- gives LGUs **discretionary powers** and allows **diversity**
- acknowledges **superior competence** of LGUs in addressing local affairs
- supports **Principle of Subsidiarity/ Local Dimension Rule**
- allows for exercise of **residual powers**

# Universe/ Totality of Powers

## Liberal

LGUs can exercise those powers:

1. Expressly given
  2. Implied and necessary to perform express powers
  3. *Not otherwise prohibited by law and for the general welfare*
- and cannot violate law

## Centrist

LGUs can only exercise those powers:

1. Expressly given
  2. Implied and necessary to perform express powers
- and cannot violate law

# Contrasting the Relationships

## *Supervision*

- Oversees and monitors
- Ensures that supervised unit follows law/ rules
- Allows interference if supervised unit acted contrary to law
- Over actor (discipline) and act (declare illegal)
- There must be a law (Yes - DOJ, DBM; None - OP, DILG, DENR)
- Only involves questions of law, not fact/ wisdom (i.e., declare act legal or illegal)

## *Control*

- Directs/ prescribes manner by which an act is done
- Preempts action
- Lays down rules in doing of an act
- Imposes limitations when there is none imposed by law
- Decides for subordinate or change decision, i.e., substitute judgment
- Alters wisdom, law-conforming judgment or exercise of discretion
- Orders an act to be undone or re-done

# Conflict-Resolution

*In favor of **NGA** if:*

- Integration
- Centralization
- Avoid fragmentation
- Mandate exclusive under Charter/ law
- Implied repeals not favored
- Instrumentalities of the State
- National or cross-boundary concerns are best addressed by NGAs/ GOCCs/ Gis
- Uniformity

***National Dimension Rule***

***Default: Follow law***

*In favor of **LGU** if:*

- Local autonomy
- Local concern/ issue
- ‘Isolated’ issue
- No law will be violated
- As agents of communities
- Amounted to executive control
- Express repeal; Conclusive implied repeal
- Beyond powers of NGA/ GOCC/ GI
- Local concerns are best addressed by LGUs (Principles of Subsidiarity and Stewardship; Superior Competence)
- Diversity

***Local/ Municipal Dimension Rule***

# 2 Branches of General Welfare Clause

(1) **General  
Legislative**

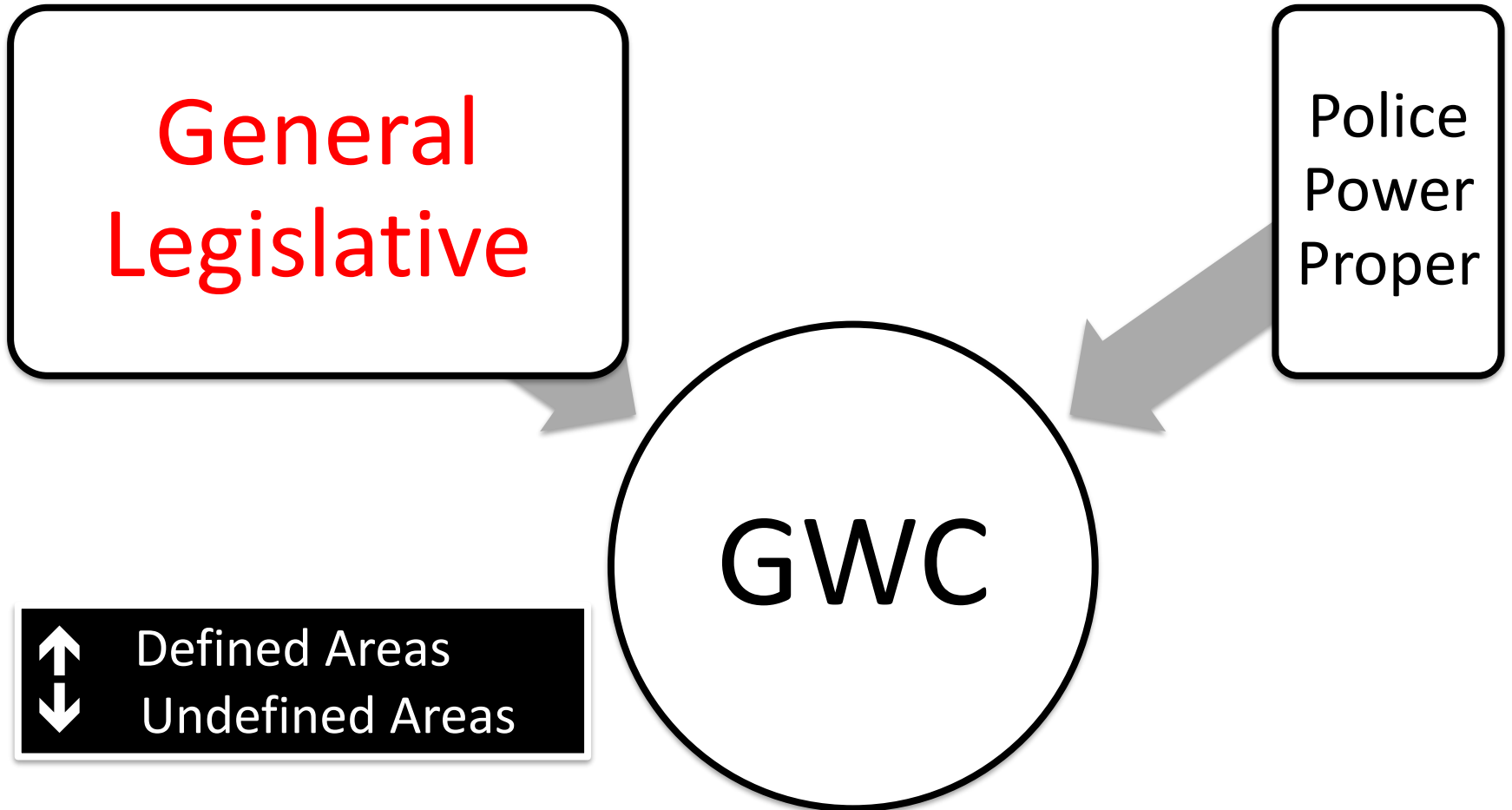
What law  
specifically  
provides and  
directs;  
Enumerated-  
Statutory  
Powers (“cut-  
and-paste”)

**GWC**

(2) Police  
Power  
Proper

Not listed:  
Necessary for  
health and  
safety,  
prosperity,  
morals, peace,  
good order,  
comfort, and  
convenience

# Extraordinary Times



# 3-Month “Enhanced Supervision”

## NG-Defined

LGUs are directed to:

- Act within the letter and spirit of all the rules, regulations and directives by the NG
- Implement standards of CQ consistent with what the NG has laid down for the subject area

## Undefined by NG

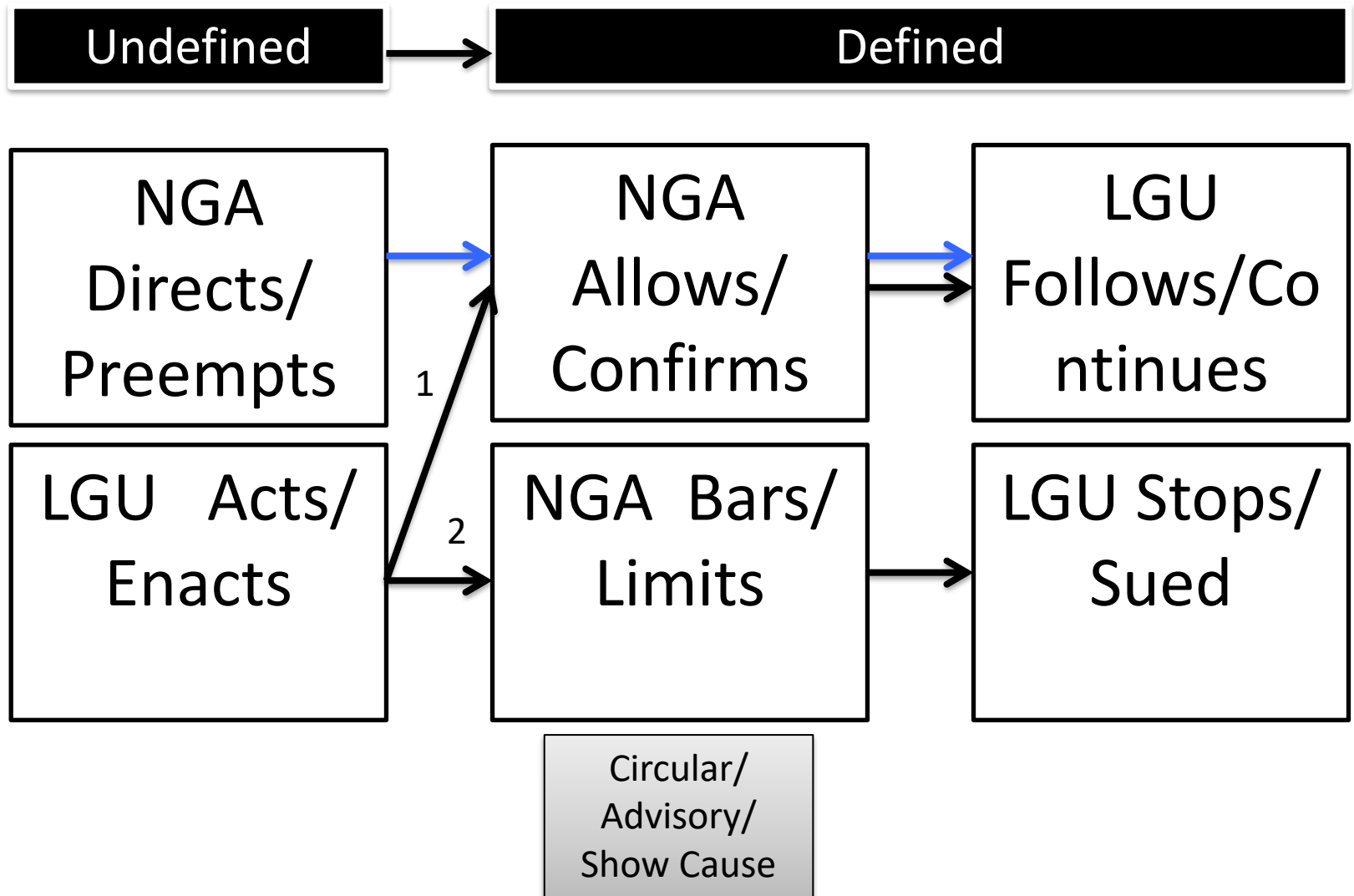
LGUs shall exercise local autonomy, provided, that they:

- Act within the parameters NG has set, and
- Fully cooperate towards a unified, cohesive and orderly implementation of the national policy to address COVID-19.

Regardless:

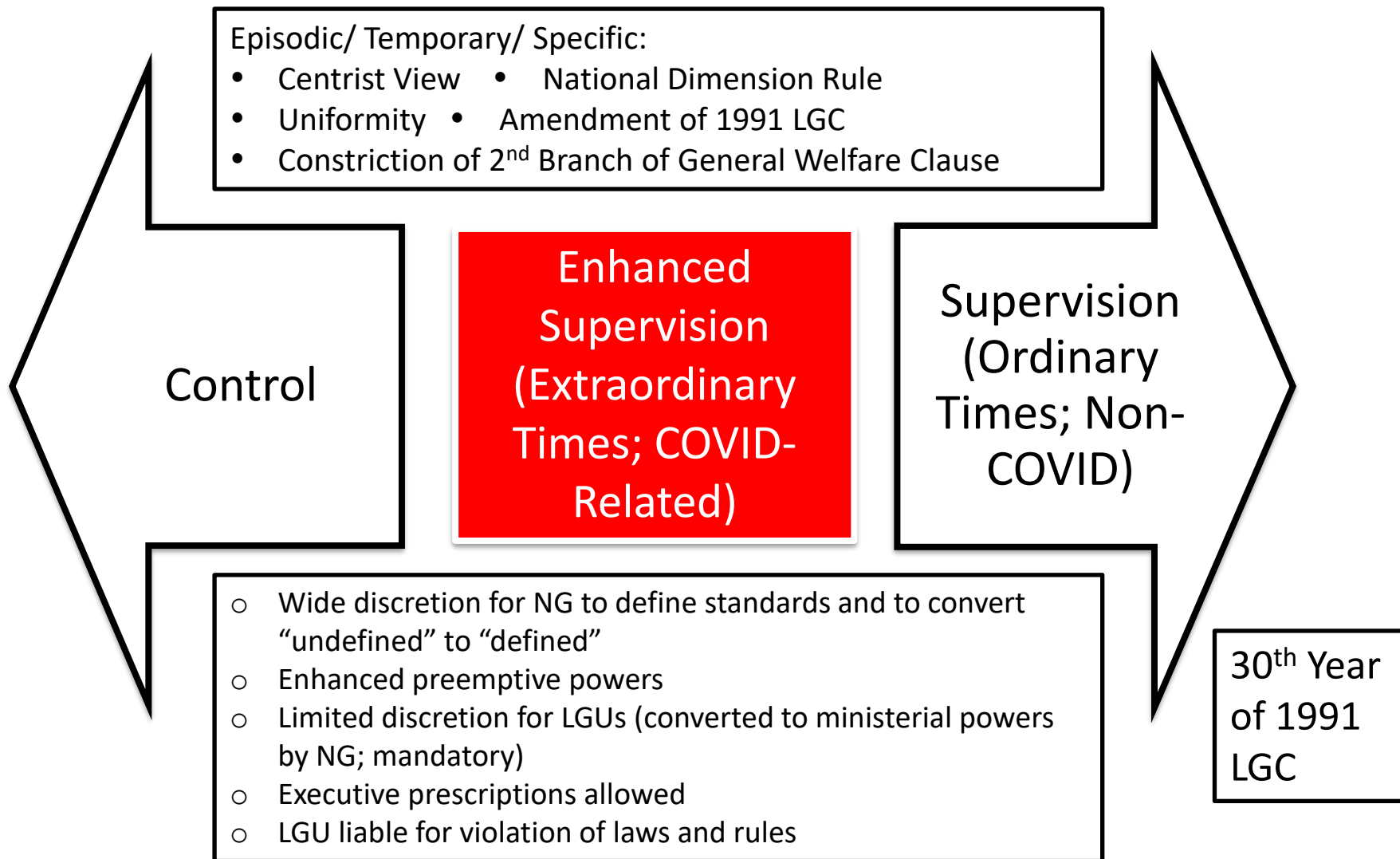
- Non-impairment of Local Autonomy
- Bayanihan Act and Exercise of Powers Listed vs. Other Laws (e.g. 1991 Local Government Code) and Rules, former prevails
- LGU officials must follow quarantine policies and directives, otherwise, penalized
- Only under Bayanihan Act/ COVID-19-related (not all aspects of local governance)

# Undefined to Defined





# Administrative Relationship



# Amendments to 1991 LGC+

## Regulation

- Bayanihan Act vs. 1991 LGC, former prevails
- Limitations on 2<sup>nd</sup> Branch of General Welfare Clause
  - Quarantine/ Lockdown
  - Closure of Establishments
  - Curfew
  - Coding for Transport
- Regulation of Tricycles
- Ban on Cockfighting
- Traffic Management

## Funds/ Budgeting

- Rescheduling of Local Tax Payments with no penalty
- Expansion of usages for 20% Development Fund
- Mid-Year Realignment of Unexpended Appropriation
- AIP post-release of funds
- Inclusion of COVID-19 related items in budget
- Increase in Calamity Fund
- Relaxed Procurement
- Increase amount of Payment in Advance

**DILG to LGUs: Don't impose excessive fees for medical certificate required for travel authority of LSIs**

May 26, 2020

**DILG issues show cause orders against 3 governors, 2 mayors for violating national quarantine policies**

April 15, 2020

**DILG urges LGUs to pass ordinance vs discrimination of Covid-19 frontline workers**

April 9, 2020

**DILG recommends disciplinary action to the Ombudsman against 20 punong barangays for violating ECQ protocols**

June 18, 2020

**DILG to LGUs: Pass ordinance on mandatory wearing of face mask in public**

April 6, 2020

**DILG: Malls will be closed if they violate physical distancing rules, curfew will still be imposed**

May 18, 2020

**43 mayors to be given show cause order for poor SAP payout accomplishment**

May 14, 2020

**All relief operations must be LGU-certified - DILG**

May 4, 2020

**DILG to LGUs: No mandatory COVID-19 testing needed for returning workers**

May 26, 2020

**DILG clarifies: Tricycles, pedicabs still banned on national highways in all GCQ and MGCQ areas**

June 5, 2020

**DILG: LGUs planning to donate gadgets to schools should comply with DepEd technical specs**

June 18, 2020

**DILG to public: Breaking quarantine directives is breaking the law**

April 21, 2020

**DILG to LGUs: Stop spraying disinfectants, mists on individuals**

April 20, 2020

**DILG to LGUs: Establish bike lanes, motor taxis still prohibited**

June 1, 2020

**DILG: 301 barangay officials now facing criminal charges for various SAP pay-out anomalies**

June 3, 2020

# Other Agencies

- *IATF: Guidelines on Community Quarantine*
- *DOH IRR (RA 11332): Mandatory Reporting of Notifiable Diseases*
- *DOH Administrative Order: Guidelines to Securing COVID-19 Testing Laboratory*
- *BIR Revenue Memorandum Circular: Streamlined Registration of Businesses (removed Mayor's permit)*
- *DTI Memorandum Circular: Operation of Malls and Shopping Centers*
- *BLGF-DOF Department Circular: Extension of Deadlines for Local Taxes and Fees*
- *DEPED Department Order: August 2020 opening of classes*
- *LTFRB Memorandum Circular: Operation of Transport Network Vehicle Service and Taxis; and Buses*
- *COA/ GPPB Circular: Emergency Procurement*
- *PCSO Memorandum: Resumption of STL and Lotto (to be verified)*

# Ordinances/ Executive Orders

- State of Calamity
- Quarantine
- Hard Lockdown
- Calibrated Lockdown
- Curfew
- Closures of Malls/  
Establishments
- Anti-Discrimination
- Anti-Hoarding/ -  
Profiteering
- Anti-Spitting
- Requiring Face Masks
- Liquor Ban
- Financial Assistance
- Supplemental Budget
- Tax Amnesty
- Waiver of Fees
- Regulation of Tricycles
- Loan for relief goods

# **In sum, DILG, under the Bayanihan Act ...**

Followed the  
President/ IATF  
Guidelines

Prescribed Norms  
through MCs (“law-  
making” or aspects  
of control)

Imposed Penal  
Provisions in MCs

Initiated Filing of  
Cases/ Issued Show  
Cause Orders

# LGUs, on the other hand ...

Followed MCs

Passed  
Counterpart  
Measures

Explained  
Alleged Non-  
Observance

Face Cases

**Questions about  
tomorrow**



# What happens tomorrow when the sun rises? Back to “Normal”

## Will IATF continue to exist or is it *functus officio*?

<i>Today</i>	<i>Tomorrow like Before</i>
Yes	<ul style="list-style-type: none"><li>○ IATF created prior to Bayanihan Act</li><li>○ Its continued existence can be justified under RA 11332</li><li>○ Under the Revised Administrative Code, President can reorganize</li><li>○ President can create Administrative Agencies</li><li>○ IATF powers pursuant to RA 11332/ other laws</li><li>○ NG powers, as contrasted under the Bayanihan Act, are emasculated.</li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

**Can IATF/ DOH impose quarantine levels/ measures?  
Can DILG issue counterpart Memorandum Circulars?**

<i>Today</i>	<i>Tomorrow like Before</i>
Yes	<ul style="list-style-type: none"><li>○ No longer under the Bayahinan Act</li><li>○ As a “response activity” per RA 11332</li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

**Can IATF/ DILG/ NGAs still prescribe the “defined areas” and convert “undefined” to “defined,” i.e., prescribe manner by which LGUs can/ should act, and limit powers of LGUs without any statutory limitation?**

<i>Today</i>		<i>Tomorrow like Before</i>
<i>Defined</i>	<i>Undefined</i>	
Yes (standards and quarantine policies and directives; NG can preempt)	<ul style="list-style-type: none"><li>○ Set parameters and LGU must cooperate</li><li>○ LGU cannot impose excessive requirements</li><li>○ Can convert to defined and preempt</li></ul>	<ul style="list-style-type: none"><li>○ Only laws can limit powers and exercise of discretion of LGUs</li><li>○ NG cannot prescribe manner/ preempt as this amounts to executive control</li><li>○ DILG MCs loses its anchor</li><li>○ DILG back to overseeing, monitoring and checking, not directing</li><li>○ Back to Principle of Subsidiarity, LGU Superior Competence and broad 2<sup>nd</sup> Branch of General Welfare Clause</li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

## Can the President/ NGAs/ DILG substitute/ change LGU decisions?

<i>Today</i>		<i>Tomorrow like Before</i>
<i>Defined</i>	<i>Undefined</i>	
No (but LGU officials can be penalized for not following rules, directives and standards; NG can preempt)	No (but LGU officials can be penalized for not following parameters/ being uncooperative; NG can preempt)	No. This amounts to executive control which is proscribed under the 1987 Constitution

# What happens tomorrow when the sun rises? Back to “Normal”

**What happens to the provisions of the 1991 LGC and other laws which were amended by the Bayanihan Act?**

<i>Today</i>	<i>Tomorrow like Before</i>
Amendments are temporary, situational, episodic	<ul style="list-style-type: none"><li>○ Revival of the amended statutes</li><li>○ Continued implementation</li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

## Can the President and NGAs declare LGU acts illegal?

<i>Today</i>		<i>Tomorrow like Before</i>
<i>Defined</i>	<i>Undefined</i>	
<p>If there is conflict between NG and LGU:</p> <ul style="list-style-type: none"><li>○ NG prevails</li><li>○ LGU Officials will be penalized (with prior declaration of illegality)</li></ul>	<p>If LGU not follow parameters and not cooperate, and if excessive:</p> <ul style="list-style-type: none"><li>○ NG prevails</li><li>○ LGU officials can be penalized (with prior declaration of illegality)</li></ul>	<ul style="list-style-type: none"><li>○ Only the law can prescribe administrative review</li><li>○ To date, only DOJ (tax ordinances) and DBM (appropriations ordinances) can review</li><li>○ Review extends only to declaring acts illegal/ ultra vires</li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

## Can LGUs restrict mobility through curfews?

<i>Today</i>	<i>Tomorrow like Before</i>
<ul style="list-style-type: none"><li>○ NG-Defined area</li><li>○ Counterpart ordinances by LGUs</li></ul>	<ul style="list-style-type: none"><li>○ No longer under the Bayahinan Act</li><li>○ Possible as a “response activity” per RA 11332</li><li>○ Per case law on curfew for minors:<ul style="list-style-type: none"><li>○ compelling need</li><li>○ least restrictive means</li><li>○ guarantees constitutional rights</li></ul></li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

## What happens to the taxing and permitting authorities of LGUs?

<i>Today</i>	<i>Tomorrow like Before</i>
Rescheduled/extended deadline for Local Tax and Fee Payments with no penalty	<ul style="list-style-type: none"><li>○ Constitutional: fiscal autonomy</li><li>○ Collection resumes</li><li>○ LGUs may grant amnesties and reprieves</li><li>○ Taxes for revenue-making while fees for regulation (= cost of regulation)</li><li>○ DOJ review of tax (not fee) ordinances</li><li>○ Permitting per ordinance and compliance with National Building Code for all businesses</li></ul>



# What happens tomorrow when the sun rises? Back to “Normal”

## What types of penalties can be imposed?

<i>Today</i>	<i>Tomorrow like Before</i>
<p>For violation of RA 11469:</p> <ul style="list-style-type: none"><li>○ 2 months and/ or fine of P10,000 to P1M</li><li>○ LGU officials disobeying national government policies or directives in imposing quarantines</li></ul>	<ul style="list-style-type: none"><li>○ RA 11469 expires</li><li>○ RA 11332 remains<ul style="list-style-type: none"><li>○ 1 to 6 months and/ or fine of P20,000 to P50,000</li></ul></li><li>○ RA 7160 remains (local ordinances)</li><li>○ Community service and admonition allowed (not considered penalties)</li></ul>

# What happens tomorrow when the sun rises? Back to “Normal”

## Can LGUs be penalized for violating the Bayanihan Act?

*Today*

Yes. Penal clause pertaining to LGU officials operative.

*Tomorrow/ Before*

- Penal provisions expired
- Offenses no longer exists

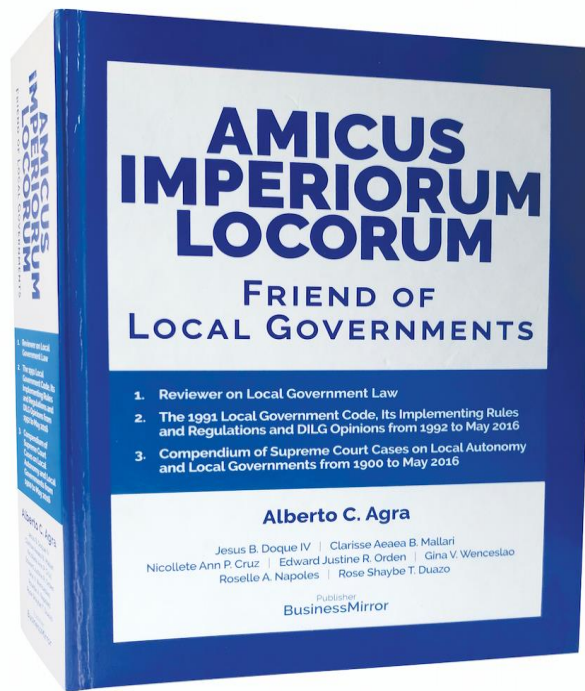
## Will cases filed during the effectivity of the Bayanihan Act continue?

Yes. Offenses were allegedly committed during effectivity of law.

Yes. Cases not mooted.



**Reclaim Local Autonomy for a  
Meaningful and Happy 30<sup>th</sup> Year  
of the 1991 LGC this 10.10.2020.  
Looking forward to a much  
better normal.**



## REVIEWER ON LOCAL GOVERNMENT LAW

Alberto C. Agra

(cases as of October 15, 2019)

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