

# **Energizing the States:**

## **The Power Sector in Federal Philippines**

**Alberto C. Agra**

Certified PPP and Regulation Specialist™

Local Government Law and PPP Law Professor, and  
Political Law Bar Reviewer, Ateneo Law School

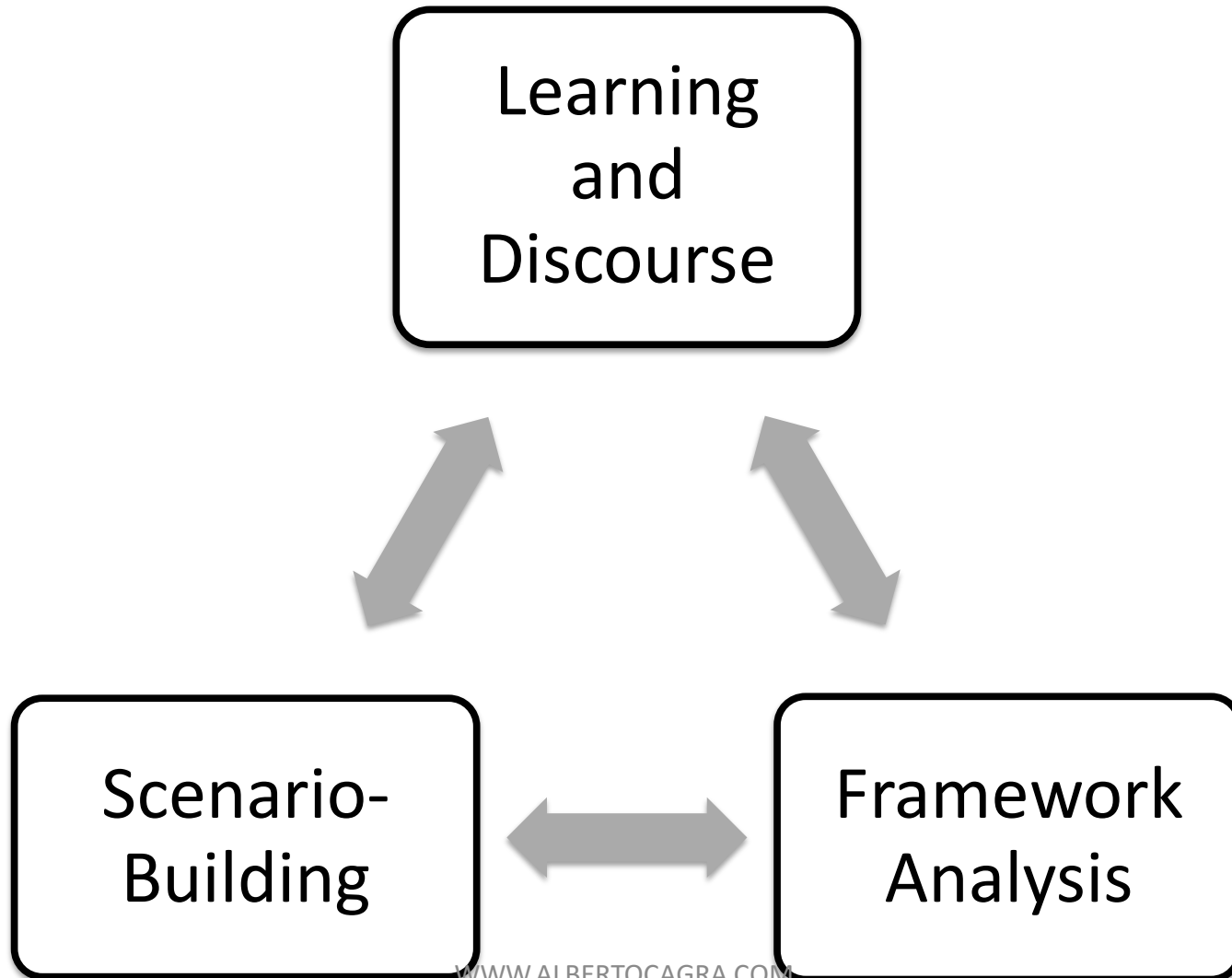
President, Forensic Solutions

Columnist, PPP Lead, BusinessMirror

PhD Candidate, Leadership Studies major in Public  
Management, Ateneo School of Government

Former Acting Secretary of Justice, Acting Solicitor  
General and Government Corporate Counsel

# 3-Part Objective



# Flow of Presentation

Current  
Local  
Gov't  
Structure

Federal  
Form

Current  
Power  
Sector  
Set-up

Power  
Sector in  
Federal  
Phl

Moving  
Forward

# 7 questions to be answered

1. What is the current **national-sub-national set-up**?
2. What is **federalism**? **Why** federate?
3. What will happen to **DOE, ERC, NPC, Power GOCCs and LGUs** under a federal set-up?
4. How about gencos, DUs, supply and transmission **assets**?
5. What would be the possible power-related **mandate and functions of “states”**?
6. Are **national plans** relevant in a federal set-up?
7. What lies **ahead**?

# Framework of National-Sub-National Structure



Levels and Types

Relationships and Hierarchy

Power Allocation and Reallocation

Integration and Harmonization

# Current Local Government Structure

- Not in a “**pre-federal**” state
- **Unitary** Form of Government (i.e., LGUs form part of 1 whole)
- LGUs are Territorial and Political **Subdivisions**
- **5 Levels** of LGUs (Autonomous Region[s], Provinces, Cities, Municipalities and Barangays)
- LGUs are **not *Imperium in Imperio***; not mini-states
- LGUs have **no claim** against the State

# Current Local Government Structure

- **Levels of Local Autonomy:** Political and Administrative Autonomy
- Local Autonomy means a **more responsive and accountable** local government structure instituted through a system of **decentralization**
- **Liberal View** (i.e., not prohibited, allowed)
- Local Autonomy includes **Fiscal Autonomy**
- **5 Des:** Decentralization, Devolution, Deconcentration, Delegation, Democratization
- LGUs under **Executive Supervision, Legislative Control** and subject to **Judicial Review**

# Current Local Government Structure

- LGUs possess **delegated**, not inherent, **powers**
- **Power Distributed:** Centralized and Decentralized
- **Dual Capacities and Agency:** Governmental/ Public for State, and Proprietary/ Private for People
- **PPPs** at LGU Level (also National and GOCC)
- **Integration critical:** Application of Principle of Subsidiarity, National Dimension and Local Dimension rules, and Anti-Fragmentation
- No **national development without local development** and vice-versa
- Principle of **Subordinate Legislation**



# Federalism is not just ...

From ...

State

LGUs

To ...

Federal Gov't

States

LGUs

# Federal Philippines

division or amalgamation

associative relationship

repository of  
residual powers

Regions or Islands  
as States

Claim against the  
Federal  
Government

Inherent Powers

Re-allocation of  
powers of national  
and local powers

7-tier Integration

Primacy of Laws  
and Policies

effectively,  
diminution and  
redistribution

From 6-tier

top to bottom

# Current Power Sector Set-up

## Electric Power Industry Reform Act of 2001

- Restructuring of electric power industry
- Unbundling of 4 components: generation, supply, distribution and transmission
- Delineation of Policy-Making (DOE) and Regulation (ERC)
- Mix of Regulation (distribution and transmission) and Deregulation (generation and supply)
- Creation of Wholesale Electricity Spot Market

# Current Power Sector Set-up

## Electric Power Industry Reform Act of 2001

- Centralization of Regulation by ERC
- Indispensability of National Plans: Philippine Energy Plan, Power Development Plan, Transmission Development Plan, Distribution Code and Grid Code
- Creation of national-level GOCCs (aside from NPC, NEA and PNOC+, TRANSCO and PSALM)
- Privatization of assets, Public-Private Partnerships

# The Government Players

Law-making and  
Oversight through JCPC

Congress

Plans, Service  
Contracts and Permits

DOE

Regulations and  
Rate-Fixing

ERC

DENR/  
DAR

LGUs

GOCCs

ECC/ Conversion

Approval, Zoning, Nat'l Wealth Tax,  
Local Taxes, Reclassification and  
Building Code

Specific Mandates,  
National Focus

# What the future may be

<b>PO</b>	<b>Unitary (Today)</b>	<b>Federal (Tomorrow)</b>
<b>Congress</b>	Laws   JCPC	Laws   JCPC
<b>DOE</b>	National Plan   SC   Permits   PPP	National Plan   Inter-State SC   PPP
<b>ERC</b>	Rates   Regulation   Compliance	Rates   Regulation   Compliance
<b>DAR</b>	Conversion	---
<b>DENR</b>	ECC	Inter-State ECC
<b>GOCCs</b>	Specific Mandates   PPP	Shift to Inter-State   PPP
<b>States</b>	---	SC   Permits   Conversion   State-Level ECC   State Laws   State Taxes   State GOCCs   Inter-Province Projects   PPP   Integration of LGU Plans   Share in National Wealth Tax   Hierarchy in Ordinances
<b>LGUs</b>	Ordinances   Approval   Zoning   Nat'l Wealth Tax   Local Taxes   Reclassification   Building Code   PPP   Integration of Plans	Ordinances   Approval   Zoning   Nat'l Wealth Tax   Local Taxes   Reclassification   Building Code   PPP   Integration of Plans

# How about the Assets

<b>Assets</b>	<b>Unitary (Today)</b>	<b>Federal (Tomorrow)</b>
<b>SPUGs</b>	National	States
<b>Gen Cos</b>		Area
<b>Private DUs</b>		Area
<b>Electric Coops</b>		Area
<b>Gov't DUs</b>		Area
<b>Eco Zones</b>		Area
<b>Dams</b>	National	States
<b>Transmission</b>	National	National   States

# Considerations Moving Forward

State and LGU

Whole Bureaucracy,  
Laws and Policies

Constituent Assembly,  
Constitutional Convention

Competence

Readiness

Manner

Timing

Trust

Transition

2019 or 2022

Consensus-Building and  
Strategic Communications

Plebiscite, ARMM,  
CAR and LGUs



(0917) 5353823

alberto.c.agra@gmail.com

www.albertocagra.com

**THANK YOU. MORE POWER.**