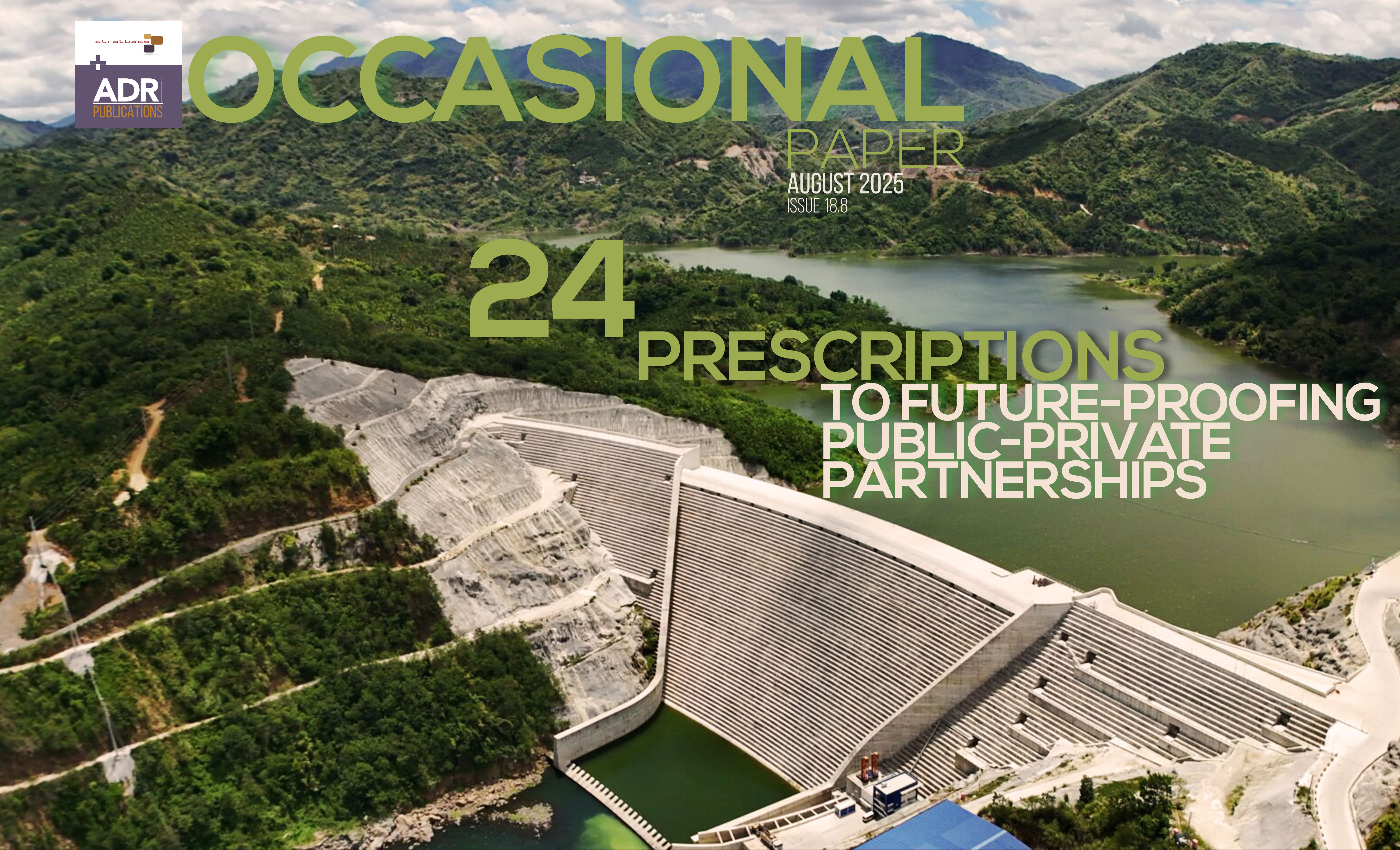

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24 PRESCRIPTIONS TO FUTURE-PROOFING PUBLIC-PRIVATE PARTNERSHIPS

24 PRESCRIPTIONS TO FUTURE-PROOFING PUBLIC-PRIVATE PARTNERSHIPS

This paper seeks to offer a holistic and integrated framework to making PPPs more resilient, sustainable, and aligned with the salient objectives of public welfare, environmental care, and inclusive development

In my *Insider Ph* article last 9 June 2025, I wrote:

Every time I lecture on Public-Private Partnerships (PPPs), whether before private sector players, government agencies, lawyers, or other professionals, I always ask this question: *What the Private Sector fears most in long-term contracts with government?*

Not surprisingly – but alarmingly – I receive the same set of responses:

> *"Contracts are cancelled."*
> *"The new head of agency will change the policies."*
> *"The agency will not pay."*
> *"The rate adjustment under the contract will not be implemented."*

After the audience shares their answers and recounts their experiences, I point out that there is a technical term for this fear: SUCCESSOR RISK – so prevalent and recognized that it has a universally-accepted name.

Who in government is responsible for this risk?

Successor risk is one of about 50 identified PPP risks, and one of approximately 10 classified as political risks. It can arise in PPP projects implemented by national government agencies (NGAs), government-owned and -controlled corporations (GOCCs), government instrumentalities with corporate powers (GICPs), and local government units (LGUs).

What is successor risk?

According to Hardcastle and Boothroyd,[1] successor risk is "brought about by change of policies by the successor administration."

This may involve the unilateral rescission or modification of a signed PPP contract, disruption of ongoing projects, non-recognition of contractual obligations entered into by a previous administration, material changes in project parameters, a shift in development priorities, delays in approvals and payments, or outright non-payment of subsidies.

While changes to PPP contracts are expected over time, they must always be mutually agreed upon. Any unilateral change without the consent of the private sector constitutes impairment of contracts, which is prohibited by the Constitution.

When does this risk arise?

This risk is foreseeable, as public officials serve terms set by law. The President has a six-year term; Cabinet officials serve at the President's pleasure; GOCC and GICP officials have one-year terms; and LGU officials serve for three years. The newly elected officials from the May 12 elections began their terms this June 30. We will soon witness, especially at the provincial, city, and municipal levels, whether successor risk is a real threat or one that can be effectively mitigated.

PPP projects and contracts must indeed be future-proofed. Yet more importantly, beyond the transaction and the physical project, it is the purpose of the PPP that must be future-proofed, protected, promoted, and guaranteed. PPPs are undertaken not merely to build facilities or deliver services, or to generate revenues, but to advance the general welfare. PPPs are for the people, for the planet, and for the betterment of our collective lives. Above all, PPPs must be pursued with the people. PPPs are for and with the people (PPPPs).

Here are the 24 prescriptions for an integrated and holistic approach towards future-proofing PPPPs. (See Table)

The objectives of this paper are threefold: first, to underscore the importance of embedding people-centered and planet-sensitive principles into the purpose and design of PPPs; second, to outline actionable strategies for strengthening the institutional, contractual, and governance frameworks that underpin PPPs; and third, to advocate for active public participation and collective accountability in every stage of the PPP lifecycle.

By presenting 24 prescriptions, this paper seeks to equip

24 PRESCRIPTIONS FOR AN INTEGRATED AND HOLISTIC APPROACH TOWARDS FUTURE-PROOFING PPPPS	
A. The Purpose	Dramatizing the Noble Purpose of PPPs in its Name: PPP for the People
	Ensuring PPPs are for the Planet: PPP for the Planet
	Driving PPPs to advance the SDGs
B. The Project	Choosing the Right People-Centered Project
	Bundling Components into One PPP Project
	De-epalizing PPP Projects
C. The Parties	Engaging with Eligible Partners
	Encouraging Co-Grantorship and Inter-Agency Collaboration
	Rewarding the Private Sector/ Partner
D. The Policy	Nurturing a Learning Ecology and Culture of Innovation
	Strictly Adhering to the Law
	Undergoing the Required Approvals
	Practicing ALIR, Good Governance and Ethics
E. The Pact	Executing Robust PPP Contracts
	Incorporating the MAGA Clause in PPP Contracts
	Shaping Government Skin in PPPs
	Annotating the PPP Contract in the Title
	Seeking Judicial and Arbitral Confirmation of PPPs
	Rationalizing a Higher Vote Requirement for Local Legislative Bodies
	Working for ISO Certification
F. The People's Participation	Embedding Participation in Every Stage: PPP with the People
	Confirming a PPP Contract and Project through a Plebiscite
	Participating in Participatory Audit, and
	"Filipinizing" PPPs through Bayanihan

stakeholders—government agencies, private sector partners, and communities—with the tools and insights needed to transform PPPs into enduring partnerships that deliver tangible and equitable benefits for all. Through this integrated and holistic approach, PPPs can be future-proofed to withstand political transitions, economic shifts, and evolving societal needs.

A. THE PURPOSE

The Purpose must be explicit.

1 DRAMATIZING THE NOBLE PURPOSE OF PPPS IN ITS NAME: PPP FOR THE PEOPLE

As coined, "PPPs" do not reflect its noble purpose, its why, its true north. The term only captures the parties (i.e., public and private) and the arrangement between them (i.e., a partnership). This could lead to a perception that PPPs are simply transactions that are purely technical or contractual terms that are focused on procurement processes, risk allocation, and financing mechanisms.

While these are essential, the public rarely sees the transformative and human dimension of PPPs: the tangible benefits to communities, the improved quality of life, and the empowerment of citizens. To bridge this gap, there is a need to dramatize and humanize the PPP brand. Reframing PPP as "PPP for the People" or PPPP brings the focus squarely on the ultimate beneficiaries: the Filipino people. PPPP underscores the principle that PPPs exist not merely to build infrastructure or deliver services but to uplift lives.

A rebranding would focus on people-centered outcomes, and methodologies communicating the direct benefits to the communities, partnership with a purpose which is the general welfare and not just for the parties, and inclusive growth underscoring social and holistic development goals.

2 ENSURING PPPS ARE FOR THE PLANET: PPP FOR THE PLANET

PPPs are also about and must be for the planet. Government alone cannot ensure a livable and sustainable planet. Private sector participation is not only important. It is indispensable. We are all stakeholders. We are all duty-bearers. We are all stewards.

Under Republic Act No. 11966 or the PPP Code of the Philippines and its Implementing Rules and Regulations (IRR), climate resilience and environmental sustainability are not only guiding principles. They are mandatory considerations. These must be integrated into the planning, design, and implementation of all PPP projects.

Environmental and climate change considerations are now required as Key Performance Indicators (KPIs) and as components of the Project Feasibility Study for both solicited and unsolicited proposals. These considerations also factor in the review and approval of national and local PPP projects.

Beyond being compliance requirements, the government is expressly authorized to pursue environmentally sustainable PPPs. Government is allowed and enjoined to implement projects for climate change adaptation and mitigation, disaster risk reduction and management, biodiversity conservation, environmental protection, solid waste management, energy efficiency, and renewable energy.

3 DRIVING PPPS TO ADVANCE THE SDGS

Sustainable Development Goal 17 reminds us that PPPs themselves are partnerships for sustainable development, i.e., vehicles for aligning government authority, private initiative, and community participation in pursuit of people-centered, planet-sensitive, and prosperity-driven outcomes.

PPPs can be instruments to advance the following SDGs:

1. Mobilize Resources (SDG 17): PPPs epitomize Partnerships for the Goals. They combine public sector vision and authority with private sector efficiency, innovation, and capital.
2. Promote Inclusive Growth (SDG 8): PPPs create jobs, build skills, and foster equitable economic opportunities.
3. Build Sustainable Infrastructure (SDG 9): PPPs deliver resilient, innovative, and future-ready infrastructure.
4. Support Sustainable Cities and Communities (SDG 11): PPPs provide clean transport, housing, waste management, and utilities.
5. Advance Climate Action (SDG 13): PPPs integrate low-carbon, renewable, and climate-resilient technologies.
6. Protect Ecosystems (SDGs 14 & 15): PPPs help manage resources sustainably and safeguard biodiversity.

PPPs must therefore be framed not only as financing and service delivery mechanisms but as deliberate instruments to advance the SDGs. The SDGs demand integrated, inclusive, and sustainable development while eradicating poverty, protecting the environment, and ensuring prosperity and peace by 2030, and beyond. PPPs are essential to this agenda because they mobilize resources, expertise, and innovation beyond what government can achieve alone.

B. THE PROJECT

The Project must be well-conceived and designed.

4 CHOOSING THE RIGHT PEOPLE-CENTERED PROJECT

To future-proof PPPs, it is critical to ensure that they are genuinely for the people. This principle requires that PPP projects are not merely transactional or profit-driven, but anchored on the public good. The PPP project must be iconic, laudable, exciting, radical, gives a "feel-like-from-heaven" feeling, and indispensable. PPPs must consistently prioritize inclusivity, accessibility, and responsiveness to societal needs.

PPP projects, under the PPP Code and its IRR, must either be infrastructure- or development-oriented. They must be designed to fill existing service gaps or resolve pressing community problems. This aligns with the Declaration of Policy of the PPP Code, which mandates that PPPs shall contribute to national development, inclusive growth, and the general welfare. Whether in the form of transport systems, flood control, healthcare facilities, or digital connectivity, PPPs should address issues that directly affect the quality of life of citizens.

The gap or problem must be presented and substantiated in the feasibility study, whether it is lack of water, housing, access, connection, power, facilities or schools. The choice of the project or solution must match and lead to the solution of the problem. The PPP Code's IRR enumerates the infrastructure or development projects. To be covered under the PPP Code, the infrastructure or development projects must be typically provided by the public sector and must be used by the public.

PPPs are undertaken if it will provide "additionality" (i.e., the project can be implemented now with the private sector rather than later by the public sector alone), if it will yield better "value-for-money" for government (i.e., effective, efficient and economic use of resources), and/or if it will enlarge fiscal space by addressing the scarcity of government resources. Projects must also be performance-based.

PPPs must undergo rigorous needs assessment and stakeholder consultation to validate that the proposed initiative responds to real and pressing public concerns. The PPP Code and its IRR require public consultations for both national and local projects to ensure alignment with public interest. These provisions ensure that PPPs remain democratic, people-centered, and responsive.

PPPs must be equitable and sustainable, ensuring that benefits are distributed fairly across sectors, particularly for marginalized and vulnerable groups. PPPs must help free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all. Embedding sustainability and equity safeguards ensures that PPPs are future-proof against climate change, technological shifts, and evolving social demands.

In sum, PPPs are future-proof only when they are people-centered, problem-solving, and development-driven, advancing not just infrastructure growth but also social progress and national resilience, consistent with both the PPP Code and the constitutional mandate of participatory and accountable governance.

5 BUNDLING COMPONENTS INTO ONE PPP PROJECT

To future-proof PPP projects, government may bundle interrelated components or design multi-purpose projects that provide complementary functions and multiple benefits to the public. Such projects shall be structured to maximize economies of scale, optimize resources, ensure long-term sustainability, and enhance resilience, without compromising transparency, competition, and accountability as required under the PPP Code.

Combining related components, for example roads, drainage and fiber optic reduces overall costs. Integrated procurement avoids duplication of mobilization, design, and project management expenses. Multi-purpose projects like a flood control dam that also provides irrigation, hydropower, and recreation, ensure that even if one function becomes less relevant, the project remains useful. Bundling makes infrastructure adaptable to future needs and demographic changes.

Multi-purpose facilities (e.g., schools serving as evacuation centers, or sports complexes doubling as community hubs) maximize land use, public funds, and private investment. This supports long-term development goals such as the SDGs.

> "THE IMPORTANCE OF SELECTING PEOPLE-CENTERED PPP PROJECTS THAT ADDRESS SOCIETAL NEEDS, PRIORITIZE INCLUSIVITY, AND ALIGN WITH NATIONAL DEVELOPMENT GOALS, ENSURING EQUITABLE BENEFITS AND SUSTAINABLE SOLUTIONS FOR COMMUNITIES IS IMPERATIVE..."

Multiple revenue streams from bundled/multi-use assets improve project bankability. This reduces reliance on a single income source, thus lowering risks of default or failure. A comprehensive PPP avoids piecemeal contracts that may be inconsistent or subject to frequent renegotiations. Bundling aligns incentives and responsibilities of the private partner across complementary functions.

Every PPP "hard" project must have a "soft" component. This "hard-and-soft" approach would mean that social welfare projects will be part of the contractual arrangement. In this case, the PPP project will not be seen as a pure moneymaking venture but a PPP project with built-in corporate social responsibility.

6 DE-EPALIZING PPP PROJECTS

PPPs are not about personalities. They are institutional people-driven engagements. De-*epalizing* PPPs is one way to future-proof them. It ensures that projects are not derailed by transitions in leadership and that trust is rooted in governance and accountability, not grandstanding.

Beyond political vanity, prohibiting the display of names, images, acronyms, or symbols associated with public officials helps reduce successor risk, i.e., the threat that a succeeding administration may alter or cancel policies, plans, and projects simply because they are branded with a previous official's identity. Depersonalizing PPPs fosters policy stability and encourages long-term partnerships based on institutional rather than personal commitments.

Another evil that de-*epalization* curbs out is de facto campaigning. When a public official's face or name is plastered across the length (whether a road, bridge, or transit system) or on the wall (whether a hospital, school, or gymnasium) of a project, it becomes a form of premature, taxpayer-funded political promotion. Such tactics distort public perception and undermine electoral fairness.

The legacy that must endure beyond any term is not the memory of a name, but the lasting benefit of the project. The true north of every PPP is the people, i.e., their improved quality of life, their access to services and opportunities. PPPs must be for the people, not for a person. That should be the benchmark of success and public satisfaction.

C. THE PARTIES

The Parties must be qualified and accountable.

7 ENGAGING WITH ELIGIBLE PARTNERS

For a PPP project to be future-proofed, both the government agency and private proponent must be eligible. The Implementing Agency must possess the mandate to perform a particular project. Not all infrastructure or development projects listed under the PPP Code IRR can be undertaken by an Implementing Agency. It must also possess express, implied or necessary powers to undertake projects, enter into contracts, and exercise corporate powers.

The private partner, on the other hand, must first pass rigorous eligibility requirements. If the partner is weak, unqualified, or unstable, the project risks failure no matter how well-structured the contract is.

The private partner must be legally eligible. The company must pass the required nationality requirement. It must be a juridical entity in good standing, duly registered with the Securities and Exchange Commission or other regulatory body. It must have no pending disqualifications, blacklisting, or adverse findings by the Commission on Audit, courts, or regulators. This ensures that the entity has the legal capacity to enter into binding contracts with government.

The private partner must have a track record in designing, financing, constructing, operating, or maintaining projects similar in nature or scale to the PPP being pursued. Technical capacity ensures the project is implemented with expertise, efficiency, and minimal risk of failure or delay.

The private partner must demonstrate financial stability, capitalization, and access to funding. Lenders and investors must see it as bankable to avoid project stoppages due to financial distress. This guards against abandonment, cost overruns, or renegotiations that erode public trust.

8 ENCOURAGING CO-GRANTORSHIP AND INTER-AGENCY COLLABORATION

The PPP Code and its IRR expressly allows and encourages co-grantorship arrangements where more than one Implementing Agency aligns with the private sector. NGAs, GOCCs, GICPs, LGUs and State Universities and Colleges (SUCs) can enter into inter-Agency partnership and they in turn, can partner with the private sector. Under the 1987 Constitution and the Local Government Code of 1991 (LGC), inter-LGU cooperation is allowed and encouraged.

On the part of the private sector, consortiums or joint venture arrangements may be desirable for big-ticket projects.

In which case, three levels of "PPPs" come into play – Public-Public, Private-Private and Public-Private. Rather than just one party working for the success and sustainability of a PPP project, co-grantorship will entail shared vision, collective accountability, mutual benefit, pooling of risks. Several rather than one or a couple will future-proof a PPP project. This involves resource exchange.

Having multiple agencies ensures comprehensive oversight, shared resources, expertise, and competencies. Checks and balances may be fostered preventing abuse, corruption, or regulatory capture by ensuring that no single agency has unchecked authority. Joint accountability increases project resilience against leadership or policy shifts since multiple institutions are invested in the PPP.

Specifically, risks are shared and better mitigated when different agencies contribute oversight. Agencies align their policies and approvals, reducing conflicting directives that could stall projects. Multi-agency oversight reduces opportunities for collusion or unilateral decision-making. Projects are more likely to incorporate sustainability goals. Agencies learn from one another and from private partners, increasing institutional capacity to manage PPPs. Citizens have greater confidence in PPPs vetted by multiple agencies rather than a single contracting authority.

These arrangements are not without challenges. Multiple agencies may lead to delays, duplication, or bureaucratic inefficiency. Agencies may have differing priorities. Rivalries or turf issues may hinder collaboration.

9 REWARDING THE PRIVATE SECTOR/ PARTNER

The partner of government, i.e., the private sector, must be rewarded and incentivized. The participation of the private sector must be sustained through a clear, predictable, and equitable framework. This requires four mutually reinforcing pillars: reward, reasonable return, resource exchange, and accountability.

Private proponents bring innovation, efficiency, and financing into public service delivery. They assume significant risks such as construction, financing, operation, and even political risks. To keep PPPs viable, the private sector must be rewarded for its contributions not only through profits, but also through access to opportunities for innovation, long-term contractual stability, and recognition of value creation. The PPP Code highlights mutual benefit as a principle, ensuring that both parties derive legitimate value from the partnership.

A PPP that does not provide a fair and predictable return will discourage participation, particularly for large-scale, capital-intensive projects such as flood control, transport, or energy. The PPP Code allows government support mechanisms, such as viability gap funding, availability payments, performance undertakings, and guarantees, to ensure that investors recover costs and earn a reasonable rate of return. This principle balances two interests: preventing excessive profiteering while ensuring sufficient incentives for sustained private involvement.

Future-proofing also requires shared responsibility and resource exchange. The private sector contributes capital, technology, and management expertise, while government contributes land, permits, regulatory support, and in some cases, subsidies or incentives. The PPP Code mandates that risks and resources be allocated to the party best able to manage them ensuring efficiency, lowering overall project costs, and preventing one-sided arrangements. This reciprocity builds trust, fosters fairness, and makes PPPs more resilient to political or economic shifts.

For PPPs to stand the test of time, they must be anchored in accountability and transparency. The law requires performance security, regular monitoring, and contract management systems to ensure that obligations are met. Accountability assures both government and the public that projects will deliver the intended benefits, whether in infrastructure, social services, or climate resilience, while also holding the private sector answerable for lapses.

By embedding reward, return, resource exchange, and accountability into both law and practice, PPPs become resilient, credible, and people-centered. These pillars align private incentives with the public good, ensure long-term sustainability, and uphold constitutional principles of transparency, accountability, and efficiency in governance. They also shield PPPs from political cycles, corruption risks, and economic shocks, thereby future-proofing PPPs as enduring instruments of national development.

D. THE POLICY

The Policy must be faithfully observed.

10 NURTURING A LEARNING ECOLOGY AND CULTURE OF INNOVATION

To ensure future-proofing of PPP projects, the government must cultivate a learning ecology and a culture of innovation. This includes capacity-building, knowledge transfer, documentation of lessons learned, and institutional mechanisms for continuous improvement. PPP contracts shall incorporate provisions requiring private partners to contribute to training, technology transfer, and innovation-sharing, ensuring that benefits extend beyond the project and strengthen long-term governance and service delivery.

A learning ecology means knowledge is not siloed but shared across government, private partners, civil society, and communities. Lessons from one project can be replicated, improved, and scaled in future PPPs. By embedding learning into PPP processes, technical staff, regulators, and stakeholders gain expertise that outlives one administration or project. Knowledge transfer clauses in PPP contracts ensure skills are passed on to the government and local communities. A culture of learning prevents “reinventing the wheel” every time there’s a change in leadership. The PPP Code mandates capacity-building and technical assistance consistent with cultivating a learning ecology.

A culture of innovation encourages experimentation, pilot-testing, and adaptation of global best practices. Innovation reduces costs, enhances service delivery, and future-proofs infrastructure against rapid technological and social changes. Innovation keeps projects relevant even when social, environmental, or technological conditions shift.

Civil Society, the general public must be part of this ecology and culture.

11 STRICTLY ADHERING TO THE LAW

The relevant law and applicable rules, ordinances and guidelines must be followed to the letter. Any deviation may result in the cancellation of the contract and litigation holding the non-compliant party liable and accountable. Ultimately, the people will suffer.

The PPP Code and its IRR must be followed. This landmark legislation consolidated all prior laws and regulations on PPPs, such as the Build-Operate-Transfer (BOT) Law (R.A. 7718 amending R.A. 6957) and the Joint Ventures Guidelines issued then by the National Economic and Development Authority (NEDA).

While the PPP Code is the principal law on PPPs, said law does not cover all possible arrangements and transactions between Government/ Public Sector and Private Companies/ Private Sector. The PPP Code and its IRR cover the following:

1. Joint Ventures which are purely public, or public and private in nature
2. Lease which are purely public, or public and private in nature
3. Build-Transfer
4. Build-Lease-Transfer
5. Build-Operate-Transfer
6. Build-Own-Operate
7. Build-Transfer-Operate
8. Contract-Add-Operate
9. Develop-Operate-Transfer
10. Rehabilitate-Operate-Transfer
11. Rehabilitate-Own-Operate
12. Operate and Maintain, and
13. Others with PPP features

These schemes below-listed, however, are excluded from the scope of the PPP Code, and therefore, Administrative Agencies can adopt their own guidelines and LGUs can enact their own ordinances on:

1. Onerous Donations
2. Gratuitous Donations
3. Joint Ventures which are purely commercial in nature, and
4. Leases which are purely commercial in nature

There are other relevant laws for excluded arrangements. These are:

1. New Government Procurement Act (R.A. No. 12009) for procurement of infrastructure, management and service contracts projects
2. Revised Corporation Code (R.A. 11232) for corporatization and incorporation of subsidiaries, and
3. Commission on Audit Circular No. 89-296 for divestment/ disposition of property

Each law will have its own requisites, procedures, conditions, and approval requirements, all of which must be followed.

Administrative Agencies have therefore three government contracting mechanisms to choose from: Procurement, PPPs and Privatizations.

12 UNDERGOING THE REQUIRED APPROVALS

The governing law, spells out, among others, the approving bodies for PPP projects. It could be the Economy and Development Council (formerly, the NEDA Board), Investment Coordination Committee, the Head of Agency, the Board of the GOCC, GICP or SUC, and the Local Chief Executive and/or the *Sanggunian*.

If approval from the appropriate body is not secured, the contract for that PPP project is void or at the very least unenforceable and can only be enforced once the required approval is obtained.

Aside from the approvals, a favorable counsel's opinion must also be secured. Depending on the nature of the Administrative Agency, the Office of the Solicitor General, Office of the Government Corporate Counsel, or local legal officer must give its imprimatur on the legality of the terms of the PPP contract.

After the issuance of the Notice of Award and the execution of the PPP contract, approvals and clearances must also obtained from other Administrative Agencies and Regulatory Bodies. These are considered conditions precedent or prerequisites to the issuance of the Notice to Proceed.

Depending on the nature of the PPP project, a Special Purpose Vehicle must be incorporated before the Securities and Exchange Commission, an Environmental Compliance Certificate must be issued by the Department of Environment and Natural Resources, and / or a letter of no objection from other Administrative Agencies and LGUs must be disclosed.

13 PRACTICING ALIR, GOOD GOVERNANCE AND ETHICS

Accountability, Legality, Integrity and Responsiveness (ALIR), per Makrydemetres,[2] must be practiced and present in PPP initiatives. Expanding these concepts, Democratic Legitimacy and Accountability of Public Bureaucracy; Rule of Law and Principle of Legality, Principle of Professional Integrity, Meritocracy, Autonomy and State Capacity, and Principle of Responsiveness and Responsibility to Civil Society must be established.

All government stakeholders and the private proponents are mutually accountable to the State and public in pursing PPPs. There must be respect for the law in the selection of the available PPP modalities, the allocation of functions and risks and the selection of the private proponent; otherwise, the contract may be voided and public officials may be rendered liable for abuse of discretion or misfeasance, nonfeasance, or malfeasance.

There must be professional integrity and autonomy in the recruitment, training, discipline of public officials. The parties to a PPP contract must be responsive to society and pay attention to the needs and demands of the people, facilitating access to services and creating an enabling environment for sustainable human and social development.

Ingrained in ALIR is good governance. There must be transparency through clear rules, open and competitive bidding, and public disclosure of contracts. There must also be efficiency through proper planning, project preparation, and monitoring prevent waste and delays. Public participation must be established to ensure that PPP projects respond to actual community needs and not just commercial interests. Lastly, predictability is key because investors require a stable and consistent policy environment to commit long-term capital.

Ethics is another feature of ALIR. It is not enough that the purpose or the objective of the PPP which is the general welfare is ethical (i.e., ethical content). Equally important is the manner by which the general welfare is attained (i.e., ethical process). These two dimensions must be present in every PPP program or project. A PPP program or project pursued unethically cannot be and should be "future-proofed."

There is breach of ethics related to PPPs when:

1. Traditional procurement is advanced despite its many failures without considering other innovative options that could yield more and better services
2. An Administrative Agency has already pre-identified a private proponent that will implement the PPP project prior to the competitive selection process
3. A PPP project is awarded to a private proponent as a reward for campaign contributions made by the latter to elective officials
4. Feasibility studies of a bidding are not furnished interested parties which includes not only those that are opting to participate in the bidding, but the general public and civil society organizations who desire to participate and make their voices heard
5. A winning private proponent is favored and other bidders discriminated upon during the pre-qualification and selection stages thereby defrauding the public
6. The Public Party, after bidding and awarding the contract, assumed obligations and liabilities in case of bidder default not found in the original contract, absorb more risks that what it should, gave more concessions and financial advantages to the bidder not previously given, and changed the revenue scheme that favored the bidder; and
7. Officials of the regulatory agency become subservient to the private proponent in terms of making policies, adjusting tariffs, and ascertaining performance which favors the private proponent in contravention of the PPP contract and contrary to the general welfare

E. THE PACT

The Pact must be robust and resilient.

14 EXECUTING ROBUST PPP CONTRACTS

All PPP contracts shall be drafted to be robust and comprehensive even if they cannot anticipate all contingencies. They must contain clear provisions on risk allocation, performance standards, monitoring, flexibility mechanisms, and dispute resolution. Robust PPP contracts shall ensure that government commitments are honored, private investments are protected, and the public interest is secured over the full life cycle of the project. A robust contract ensures continuity despite political transitions, economic shifts, or leadership changes.

Clear assignment of risks on construction, demand, finance, regulatory, and force majeure prevents disputes. Future-proof contracts anticipate contingencies such as pandemics, climate change, and technology shifts and prescribe how risks will be shared or mitigated. Contracts must be flexible enough to allow adjustments through amendments, renegotiation or rebalancing mechanisms while stable enough to protect investors and the public from arbitrary changes.

Ambiguities breed litigation. Robust contracts are explicit on obligations, timelines, performance indicators, government support, and dispute resolution. Robustness also means alignment with existing laws. Future-proof contracts build in accountability measures, transparency obligations, and protection of the government from onerous provisions. They also uphold constitutional principles such as non-impairment of contracts, protection of public funds, and service to the people.

15 INCORPORATING THE MAGA CLAUSE IN PPP CONTRACTS

MAGA stands for Material Adverse Government Action. Under the PPP Code and its IRR, every PPP contract must contain a MAGA clause. Its purpose is to safeguard the Private Partner from specific government actions that negatively impact project implementation and financial viability. The occurrence of MAGA results in a contingent liability potentially requiring monetary compensation, among other relief mechanisms.

Under the PPP Code, MAGA is defined as:

> *"Any act of the government which the Private Partner had no knowledge of, or could not be reasonably expected to have had knowledge of, prior to the effectivity of the PPP contract, and that occurs after the effectivity of the PPP contract, other than an act which is authorized or permitted under the PPP contract, which (1) specifically discriminates against the sector, industry, or project, and (2) has a significant negative effect on the ability of the Private Partner to comply with any*

of its obligations under the approved PPP contract. MAGA may include unanticipated regulatory risks."

The MAGA clause is intended to insulate the Private Partner from political and regulatory risks – the most feared risks in the Philippine context. MAGA may be triggered when:

- permits, approvals, or clearances are revoked
- laws, regulations, or policies are changed to the detriment of the project
- government undertakings, subsidies, or incentives are breached or withdrawn
- regulatory approvals are cancelled or withheld; and
- government action is unreasonably delayed—or worse, completely lacking

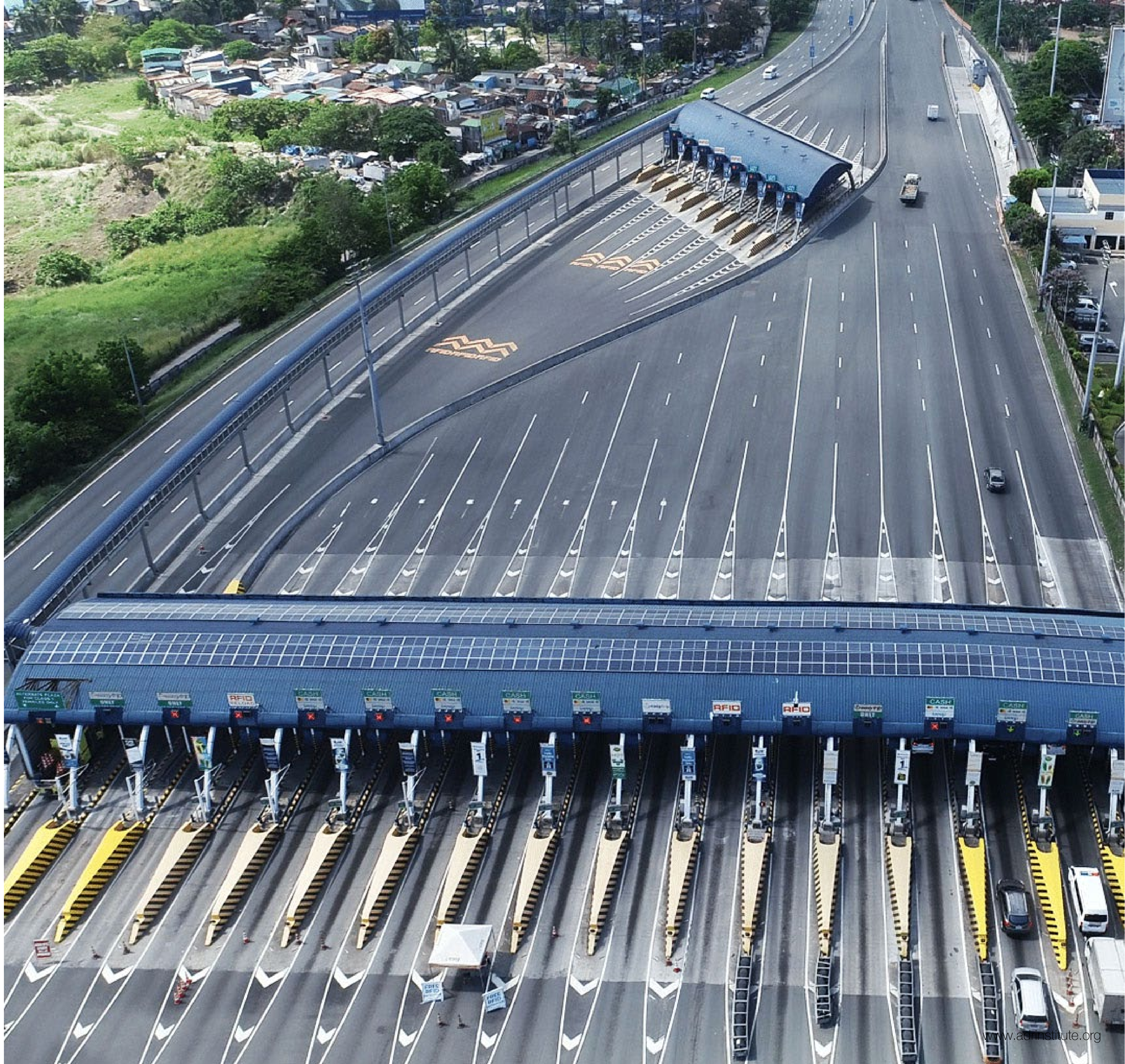
Beyond protection, the MAGA clause is designed to preserve the risk allocation agreed upon in the PPP contract. Relief mechanisms such as compensation, contract extension, or tariff adjustment ensure the project's financial viability is maintained.

The MAGA clause must be clear and specific. "Material" must be defined and "adverse" delineated. Implementing Agencies and regulatory bodies must commit to contractual sanctity. Political will and adherence to the rule of law are essential. Alternative dispute resolution mechanisms must be in place and credible. Tribunals must be neutral and trusted.

MAGA should be complemented by guarantees, performance undertakings, insurance, letters of comfort, or multi-party agreements. Public officials who are responsible for or complicit in causing MAGA must be held accountable.

16 SHAPING GOVERNMENT SKIN IN PPPS

In PPPs, the government's "skin in the game" refers to its direct



commitments, contributions, and risks undertaken to ensure that the project succeeds. This demonstrates that the government is not just an overseer but an active stakeholder. These may include land contributions, rights-of-way, or existing facilities; Co-financing, subsidies, or viability gap funding; guarantees (e.g., minimum revenue, debt repayment, performance undertakings); policy commitments (e.g., tariff-setting authority, regulatory stability); and long-term monitoring and enforcement responsibilities. Under the PPP Code, government undertakings, except for Availability Payments, are only allowed for solicited PPP projects.

Having government skin in the game helps future-proof PPPs because it demonstrates that government is fully committed, not just delegating risks to its partner. This allows for fair allocation of risks, making the project more sustainable. When government invests public resources or issues guarantees, projects are harder to cancel or abandon. Government is also incentivized to ensure the project benefits the people.

The downside would be overexposure when government takes on too much risk, thereby increasing fiscal burdens. Guarantees, if not carefully studied and weighed, may be extended to unviable projects for short-term gains. Too much or too little government skin can distort incentives.

17 ANNOTATING THE PPP CONTRACT IN THE TITLE

Annotation refers to the registration and official recording of contractual rights and obligations in public registries, such as the Register of Deeds, Land Titles, or relevant regulatory registries, by attaching or “annotating” key details of the PPP contract. For land or infrastructure projects, the PPP contract can be annotated in the Transfer Certificate of Title (TCT). If intellectual property or usufruct rights are granted, annotations secure recognition of these rights against third parties.

An annotation informs all third parties of the existence of contractual obligations and rights related to the asset. It safeguards both the government and private partner from conflicting claims, unauthorized encumbrances, or disposals. It is a form of disclosure that makes PPP projects more credible and accountable. Annotations ensure that obligations and restrictions “run with the property” or asset, surviving changes in administration or leadership.

Annotations bind successors-in-interest thereby ensuring that obligations cannot be ignored by future governments. It encourages private sector participation by assuring that contractual rights are protected against future claims or political shifts. Annotation aligns PPP projects with requirements under property law, civil law, and land registration rules. Sustainability clauses, when annotated, become legally binding obligations tied to the project. Annotation provides a public record of contractual restrictions and benefits, reducing future disputes.

18 SEEKING JUDICIAL AND ARBITRAL CONFIRMATION OF PPPS

Judicial and arbitral confirmation refers to the validation, recognition, or enforcement of PPP contracts and obligations by courts or arbitral tribunals. This provides a formal, binding assurance that PPP agreements are legally enforceable under the rule of law, both domestically and internationally.

Such confirmation confirms the PPP contract’s validity and enforceability under Philippine law. Lenders and investors will then be more willing to finance projects when contracts and arbitral awards are backed by courts. Such act protects contracts from unilateral cancellation by future governments. It also provides a predictable mechanism for resolving disputes fairly and efficiently.

However, court confirmation may take time, affecting cash flow and project timelines, and may cause uneasiness during the pendency of the court case. Sensitive PPP disputes, like those involving toll hikes and water tariffs, may face resistance despite arbitral awards. Arbitration can be expensive, limiting access for smaller PPPs.

19 RATIONALIZING A HIGHER VOTE REQUIREMENT FOR LOCAL LEGISLATIVE BODIES

Under the LGC, a majority vote, as a rule, is required to enact ordinances and issue resolutions. Local legislative bodies, under the principle of subsidiarity, however, can prescribe a higher vote requirement for certain measures.

For long-term PPP contracts involving bid investments, the private sector needs assurance that government approvals will not be easily withdrawn by shifting political winds. A higher vote threshold safeguards against abrupt reversals. Requiring a supermajority (e.g., two-thirds or three-fourths of all members of the *sanggunian*) signals to the private sector that PPP contracts are protected from arbitrary rescission. This strengthens the credibility of government commitments.

While the *sanggunian* has legislative authority, prescribing a higher vote aligns with constitutional and statutory practice where major decisions require more than a simple majority. The PPP Code emphasizes transparency, accountability, and predictability. By prescribing a supermajority for rescission, LGUs and *sanggunians* uphold the spirit of the law promoting certainty and fairness in PPP arrangements.

20 WORKING FOR ISO CERTIFICATION

ISO certification can play a significant role in future-proofing PPPs. It strengthens governance, enhances credibility, and ensures that projects meet international standards that are adaptive to evolving challenges such as climate change, digital transformation, and sustainability.

ISO certification is not intended to replace the PPP Code, national or local regulations, but it complements them by embedding internationally accepted standards into PPP design, procurement, and operation. By adopting ISO frameworks, PPPs become more resilient, sustainable, and investor-friendly, effectively future-proofing the PPP project against emerging risks and evolving global expectations.

Since ISO standards are globally recognized, this builds credibility and trust. Certification signals that a PPP project or institution adheres to best practices, increasing public confidence and investor trust. ISO frameworks (e.g., ISO 9001 on Quality Management) ensures consistency and quality assurance which ensures that project implementation is standardized, reducing risks of inefficiency, corruption, or substandard output. Certifications like ISO 31000 on Risk Management helps PPPs identify, assess, and mitigate risks systematically which are vital for long-term projects with shared responsibilities.

F. THE PEOPLE'S PARTICIPATION

People's Participation must be institutionalized.

21 EMBEDDING PARTICIPATION IN EVERY STAGE: PPP WITH THE PEOPLE

Aside from underscoring the purpose and direct beneficiaries of PPPs, i.e., the people and the planet, the people should also be part of the process. The people and the community should not be fencesitters and wait for the benefit of a new or rehabilitated water system, flood control infrastructure, socialized housing units or hospital. They must be active participants in the whole process.

The PPP Code mandates the conduct of public consultations and market sounding activities. For national projects which are harmful to the environment, and not for all projects, the sectors affected must be consulted under the LGC. Other than these, the people are not part of the process.

For PPPs to truly fulfill their purpose, they must not only serve the people but also actively involve them. PPPs should be designed, implemented, and monitored with the people. Communities should not be passive beneficiaries. They are direct stakeholders who best understand their needs, priorities, and local realities. Involving citizens at the project conceptualization stage ensures that PPPs address actual problems and reflect community aspirations, rather than being imposed solutions.

Transparency in planning, feasibility assessments, and procurement processes strengthens public trust. Mechanisms such as public consultations, participatory budgeting, and disclosure of project studies provide avenues for citizens, civil society, and local organizations to meaningfully shape outcomes and prevent misaligned or controversial projects. Implementation must not be confined to government and private partners. Regular dialogues with affected communities, grievance redress systems, and citizen monitoring keep projects accountable and responsive. Participation at this stage also builds local ownership, reducing opposition and fostering support.

Civil society groups can also act as observers of the Prequalifications/Qualifications Bids and Awards Committee. The Implementing Agencies, through their own rules and policies, can institutionalize this. They can also serve as observers before the Regulatory Agencies.

Civil society groups can witness and attest to PPP contracts since they represent citizens who will ultimately benefit from or be affected by PPP projects. This promotes openness and helps dispel suspicions of collusion or corruption. Their presence ensures that both government and private proponents adhere not only to the letter but also the spirit of the contract. Civil society signatories serve as watchdogs, providing an independent record that the process was participatory and aboveboard. While elected officials change, CSOs and citizens' groups remain. By having them witness the contracts, continuity and institutional memory are preserved, helping guard against abrupt or arbitrary rescissions.

The people are the best auditors of service delivery. End-user feedback mechanisms, participatory audits, and citizen scorecards help evaluate PPP performance beyond financial or technical metrics. This ensures projects are judged by their social impact, inclusivity, and sustainability.

Combining "for" and "with" the people transforms PPPs from mere transactions between government and private proponents into genuine partnerships that include the public. It reinforces the principle that infrastructure and services are not simply delivered to citizens but are co-created with them, embodying democratic governance and social accountability.

The people should co-create, co-author, co-determine, co-drive, co-own, co-produce, co-sign, co-learn, co-design, co-evaluate, co-develop, co-communicate, co-sell, co-support and co-think PPP initiatives.

22 CONFIRMING A PPP CONTRACT AND PROJECT THROUGH A PLEBISCITE

Approval of PPP contracts and projects through people's plebiscites is a future-proofing mechanism that strengthens democratic legitimacy, transparency, and resilience of projects. By giving citizens the final say in projects that shape their communities, PPPs can withstand political changes, foster public trust, and deliver long-term benefits.

A plebiscite is a direct vote by the people to decide on a policy, law, or major project. Applying this to PPPs means that certain projects, especially those with far-reaching social, environmental, or financial impacts, would require the direct consent of the affected population before implementation. This mechanism ensures that PPP projects are not merely government-to-private transactions but community-approved initiatives.

Projects ratified by the people are harder to cancel or reverse by future administrations. Popularly approved projects face less resistance in courts or streets. Investors and lenders gain confidence when projects have public legitimacy.

There are challenges to this approach. Conducting people's votes may be expensive and time-consuming which requires the intervention of the Commission on Elections. Decisions may be swayed by short-term interests rather than long-term vision. Citizens must have access to accurate, understandable project information, avoiding misinformation.

To address these challenges, the criteria may be defined for which PPPs require plebiscites, for example, projects exceeding a financial threshold, affecting natural resources, or displacing communities. PPP contracts and governance frameworks may incorporate plebiscite provisions in. Digital voting platforms to lower costs and widen participation may be adopted.

23 PARTICIPATING IN PARTICIPATORY AUDIT

A participatory audit is a collaborative and transparent auditing approach that enables citizens, civil society groups, and local communities to take part in the auditing process of PPPs. It ensures that not only financial compliance but also social, environmental, and service delivery outcomes are assessed.

Participatory audits ensure that project selection, bidding, contracting, and implementation are open to public scrutiny. They hold both government agencies and private partners answerable for project performance and contractual obligations. This kind of audit can incorporate feedback from actual users of the infrastructure/service to assess quality and accessibility. Involving the people can reduce risks of collusion, overpricing, or substandard work by involving third-party oversight. This also builds confidence among citizens in both government and private partners through openness.

Participatory audits can be applied to different stages of PPP projects from Pre-Procurement and Feasibility where citizens can be consulted to check if the project addresses real needs; Procurement/Bidding where civil society observers may monitor bidding to ensure fairness; Implementation and Operation where communities can help check if timelines, quality, and performance indicators are being met; and Monitoring and Evaluation where local stakeholders can assess whether the PPP delivers promised outcomes.

24 FILIPINIZING PPPS THROUGH BAYANIHAN

PPPPs can be *filipinized* through *Bayanihan*. PPPPs, like any *Bayanihan* entails cooperative undertaking" and collective participation. *Bayanihan* encapsulates PPPP in two respects, i.e., PPPP as *Bayan-ihan* and *Bayani-han*. Both depict a story, a journey, and a purpose.

At the heart of "PPP for and with the People" is the bayan, i.e., the country, the people, the public, the general welfare. We all carry and share the load, not just the government agency and the private partner. It is our responsibility, acting on our accord and our desire to do good and serve the people, to bring the PPP project to life and to sustain it. Under a PPPP, there is collective responsibility and strength that will bring about the shift from status quo to real change, and better quality of life.

The *bayan* is ours to shape and protect. All stakeholders and

"THE SIGNIFICANCE OF EMBEDDING PEOPLE'S PARTICIPATION IN PPPS, ADVOCATING FOR ACTIVE COMMUNITY INVOLVEMENT IN PLANNING, IMPLEMENTATION, AND MONITORING TO ENSURE TRANSPARENCY, ACCOUNTABILITY, AND ALIGNMENT WITH PUBLIC NEEDS AND ASPIRATIONS CANNOT BE OVERSTATED..."

duty-bearers must work together, journey together, learn together, innovate together, act as stewards together, trust each other, so that the general welfare, *our* own welfare, will be *future-proofed* by PPPPs and other developmental engagements and partnership strategies. All are moved by one purpose through shared and collective leadership.

We are partners. We are all responsible. We are all accountable. We all lead and follow. We are all heroes. We are the heroes (*bayani*) in our country (*bayan*). We should not sit idly by and watch from the sidelines.

CONCLUSION

Future-proofing PPPs must be intentional, purposive, and anchored on consensus-building. The Purpose must be explicit, the Project must be well-conceived and designed, the Parties must be qualified and accountable, the Policy must be faithfully observed, the Pact must be robust and resilient, and People's Participation must be institutionalized.

PPPs are not merely about isolated transactions or projects where success is measured solely by the award of a contract, the construction of a facility, or the generation of revenues. PPPs are far more than their legal, technical, or financial dimensions. They are both a means and an end. PPP is a development strategy, an instrument of reform, and a democratizing, value-driven partnership ultimately aimed at advancing the general welfare.

A PPP is, first and foremost, a strategy that is not episodic, not transactional, but transformative. It is a reform and development approach that is adaptive, ethical, and change-oriented. It calls for purposive innovation, integrative and transformational leadership, organizational reform, and the creation of a lasting learning ecology.

Above all, PPPs are designed to serve the public good, the general welfare, the planet, and the people.

When understood and pursued as a strategy to realize the vision of inclusive development, PPPs must be future-proofed. They must be publicly embraced, resilient over time, safeguarded against risks, and continuously assessed to ensure fidelity to their true objective which is the promotion of the general welfare.

PPPs are not only for the people — they are with the people.

REFERENCES

[1] Hardcastle, C. and Boothroyd, K. (2003). Risks Overview in Public-Private Partnership

[2] Makrydemetres, A. (2002). Dealing with ethical dilemmas in public administration: the 'ALIR' imperatives of ethical reasoning

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[2] *Page 2: manilatimes.net/2024/12/03/fast-times/light-rail-transit-line-1-cavite-extension-phase-1/2013895*

[3] *Page 10: nlex.com.ph/2020/08/26/mptc-expressways-rfid-campaign-on-track-following-dotr-push-for-cashless-toll*

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