

Local Governance and PPPs

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12 Features of Local Governments

(1) LGUs are Subdivisions

- Unitary, not federal, form of government
- LGUs are political and territorial subdivisions
- LGUs are intra-sovereign subdivision of one sovereign nation

(2) 5 Levels/ Types of LGUs

- Identified in the 1987 Constitution
- Levels:
 1. Autonomous Region(s)
 2. Provinces
 3. Cities
 4. Municipalities
 5. Barangays

(3) LGUs are Public Corporations

- Municipal Corporation Proper
- Administrative Agency
- Public Offices
- Elements:
 1. Name
 2. Corporate Succession
 3. Inhabitants
 4. Area
 5. Corporate Powers
 6. Juridical Personality

(4) LGU Creation a Legislative Act

- Congress creates Provinces, Cities, Municipalities and Barangays
- Provinces and Cities create Barangays
- Congress sets the requirements
- Process:
 1. Creation (law or ordinance)
 2. Incorporation (approval in a plebiscite)
 3. Corporate Existence (qualification of elective officials)

(5) Intramural Nature

- Territorial subdivisions
- Exercise powers within the territory
- May collaborate with other LGUs and Administrative Agencies

(6) Integration is Indispensable

- National Development – Local Development connect (indispensability)
- Centralization – Decentralization mix
- NGA vs. LGU Conflict-Resolution:
 1. Follow law
 2. Absent a law:
 - a) National Dimension Rule
 - b) Local Dimension Rule/ Subsidiarity

(7) Dual Capacity of LGUs

- 2 Capacities
 1. Governmental or Public
 2. Proprietary or Private
- Relevance
 1. Delegability

(8) Dual Agency of LGUs

- Agent of State in performance of Governmental/ Public functions
- Agent of the People/ Community in exercise of Proprietary/ Private functions

(9) Dual Accountability

- Corporate Accountability and Liability
 1. Not immune from suit
 2. Depending on circumstances, liable for acts and omissions
 - a) Official Acts
 - b) Sanggunian participation/ acquiescence
- Personal Accountability and Liability
 1. Public Office is a Public Trust
 2. Public Servants
 3. Liable for Crimes, Malfeasance, Misfeasance and Nonfeasance

(10) Delegated Powers

- No Inherent Powers
- Nature of Powers
 1. Delegated
 2. Limited Self-Governance
 3. Residual
- Sources of Powers
 1. Constitutional
 2. 1991 Local Government Code
 3. Statutes
 4. Charters

(11) Diversity of Powers

- Classes of Powers
 1. Uniformity of Powers (Constitution and general law)
 2. Specificity of Powers (charters)
- Exercise is LGU-specific (vision, needs, priorities, strategies, activities, resources)

(12) Statutory Separation of Powers

- Separation of powers under the 1987 Constitution does not apply to LGUs
- 1987 Constitution silent on LGU structure
- Congress allocates powers within an LGU
 1. Executive and Legislative branches in LGUs
 2. Currently, separation of powers

12 Principles of Local Autonomy

(1) Entitlement and Grant

- All LGUs enjoy local autonomy.
- Totality of powers dependent on laws and powers actually exercised by the LGU

(2) Definition

- Local Autonomy means a more responsive and accountable local government structure instituted through a system of decentralization.
- Components:
 1. Address needs of people
 2. Performance
 3. Governance
 4. Rule of Law
 5. Transfer of Powers to LGUs

(3) Limited Self-Governance

- LGU powers:
 1. Broad, not absolute
 2. Delegated, not inherent
 3. Discretionary, but for general welfare and not violate law
 4. Specific and Residual
- Subordinate to laws

(4) 2 Levels

- Decentralization of Administration
 1. Provinces, Cities, Municipalities and Barangays
 2. Delegation of Regulatory Powers and Responsibility over Delivery of Basic Services
- Decentralization of Power
 1. Autonomous Region(s)
 2. Self-immolation
 3. Abdication of power and freedom to chart destiny

(5) 5 De's

- Decentralization consists of:
 1. Delegation
 2. Devolution
 3. Deconcentration
 4. Democratization
- Exists with Centralization

(6) 3 Governmental Powers

○ Police Power

1. General Welfare

- a) General Legislative Branch (what law states)
- b) Police Power Proper (what law does not state)

2. 2 Components

- a) Lawful Subject
- b) Lawful Means

3. No payment for taking

(6) 3 Governmental Powers

- Power of Eminent Domain
 1. Taking
 2. Of property
 3. For a public purpose
 4. Upon payment of just compensation
 5. Strict compliance with law
- Power to Tax
 1. Raise revenues
 2. Activities and Persons
 - a) Specified in law
 - b) Not prohibited and not delegated to others

(7) Relationships

○ Executive Branch

○ Legislative Branch

○ Courts

○ Other LGUs

○ People



Supervision

Control

Judicial Review

Supervision

Agency

(7) Relationships

Executive Supervision

1. Review of Orders and Ordinances
2. Disciplinary Action
3. Integration of Plans/
Zoning
4. Boundary Disputes
5. Leaves/ Resignation/
Vacancies
6. Augmentation of Basic
Services

Legislative Control

1. Structure
2. Elective and Appointive
Officials
3. Powers
4. Qualifications
5. Manner of Selection
6. Taxes
7. IRA/ National Wealth
8. Creation

(8) 2 Natures

- Passive Nature

1. Grant of Powers
2. Uniform (general statute) or Specific (charter)

- Active Nature

1. Diversity
2. Exercise of Powers
3. LGU-specific (vision, needs, priorities, strategies, activities, resources)

(9) Subsidiarity

- Local concerns better addressed by LGUs (rather than by national government, other administrative agencies)
- LGUs have superior competence
- Liberal View of Local Autonomy
 1. Even if no specific grant of power
 2. LGU can exercise that power, provided:
 - a) General Welfare
 - b) No prohibition under law
 - c) Exercised as agent of people

(10) Fiscal Autonomy

- Indispensable to Local Autonomy
 1. Perform mandates
 2. Operation of LGU
 3. Attain vision and objectives
- Components:
 1. Sourcing of Funds
 2. Use of Funds
 3. Budgeting and Prioritizing

(11) Other Mandates

- Local Autonomy is one of many constitutional mandates and policies
- Reconcile with, among others:
 1. Due Process
 2. Environmental Protection
 3. Social Justice
 4. Public Trust
 5. Non-impairment of Contracts
 6. Private Sector Participation in Development

(12) Interpretation of Powers

- When law clear, apply law (presumed constitutional)
- When law ambiguous:
 1. National Government vs. LGU: LGU
 2. Supervising/ Higher LGU vs. Supervised/ Lower LGU: Supervised/ Lower
 3. Grant or Withdrawal of Power: Grant
 4. Devolved Power or Not: Devolution
 5. General Welfare or Not: General Welfare
 6. Local Autonomy or Not: Local Autonomy
 7. Fiscal Autonomy or Not: Fiscal Autonomy

12-12 in Relation to PPPs

Relate to LGU-PPPs

- LGU-PPPs operationalizes the constitutional policy on **private sector participation in development**
- An LGU as the “Public” Partner enters into a PPP in its capacity as a **Public Corporation** using its **Corporate Powers**
- LGUs pursue PPP using its **Proprietary Powers** (for the special benefit of the community)
- **People** is the Core and Purpose of PPPs
- LGUs undertakes PPPs for the **General Welfare** (1st and 2nd branches)

Relate to LGU-PPPs

- Congress *can* provide for a PPP Law for LGUs (5 components: rationale, modalities, requirements, procedures and contributions)
 - However, at present, there is no such omnibus law
- Of the **24+ LGU PPP Modalities**, only BOT+8, Disposition, Management Contracts and Service Contracts have laws defining the 5 components
- These Laws must be followed (**Subordinate Legislation**)

Relate to LGU-PPPs

- For those PPP Modalities where the 5 components are not provided by law, LGUs have the **freedom to define**.
 - JVs, Leases, Concessions, Service and Management Contracts not using LGU funds
- LGUs can enter into PPPs or any of the modalities even if there is no law for as long as there is **no law that will be violated**
- This may be embodied in an **LGU PPP Code or JV ordinance**

Relate to LGU-PPPs

- The Local Chief Executive concerned can issue **rules** to implement and supplement the PPP Code
- Pursuing a PPP Project must be part of a **Strategy/** Development Plan
- **Local Legislative Processes** needed (contract approval by the Legislative Council, PPP Code; authority to sign; ordinance to confirm terms)
- PPPs can be done for **Devolved Powers** (Delivery of Basic Services)

Relate to LGU-PPPs

- LGUs may expropriate, reclassify agricultural land or zone as part of its contribution to or facilitate a PPP (**Governmental Powers**)
- Doing a PPP is in furtherance of **fiscal autonomy** since LGU generates revenues
- LGU **General Funds** can be used or allow its property to be used
- LGUs may allot its **IRA** or allow IRA-intercept
- When not prohibited, LGUs can provide **Direct Equity, Subsidy and Guarantee**

Relate to LGU-PPPs

- The NGA cannot **impose limitations** when there are none imposed by statute; otherwise, this will amount to **control**, not just supervision.
- The President/ DILG cannot **review PPP ordinances**
- The Higher LGU can only **supervise**, not control the Lower LGU (question of law)

Relate to LGU-PPPs

- The **party to a PPP contract** is the LGU, not the LCE
- PPP contracts entered into by the previous LGU Administration cannot be unilaterally rescinded by new Administration (**Corporate Succession; Non-impairment**)
- Part of the PPP Process is Stakeholder Assessment and **People's Participation**; CSOs should be part of PPP life cycle or party to contract

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THANK YOU.

