PPPs in energy infrastructure: regional experiences in light of the global energy crisis

REPORT 7

THE PHILIPPINES

PPPs REGIONAL REPORT 7

Experiences from the Philippines: The Malampaya Deep Water Gas-to-Power Project

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Background: energy privatisation in the Philippines

The Malampaya Deep Water Gas-to-Power Project in the Philippines is "the first natural gas development and [the] largest industrial project"[1] in the country. The project has been operating commercially since 2001. The beginnings of the Malampaya project can be traced to the decade of energy privatisation in the Philippines

1 International Indigenous Peoples Movement for Self-Determination and Liberation (IPMSDL), "Peoples of the World Resist Chevron! Chevron Out of the Cordillera, Philippines Now!", November 10, 2013. https://www.ipmsdl.org/uncategorized/peoples-of-the-world-resist-chevron-chevron-out-of-the-cordillera-philippines-now/

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during the 1990s. This decade was marked by legal reforms for privatisation backed by international finance institutions such as the Asian Development Bank (ADB).

Blackouts and energy undersupply were major issues in the 1990s, especially for the country's capital, with the economic activity and daily lives of citizens disrupted. At a time of unclear state plans in constructing public energy infrastructure, the dire situation was used by the national government and its international institutions partners as pretext for privatising the government-owned corporations in the energy sector, in the name of private sector efficiency.

Regional actors, such as the ADB, entered the picture with technical assistance for the energy sector from 1998 to 2002, and again from 2005 to 2007.[2] The Electric Power Industry Reform Act (EPIRA) of 2001, a landmark law, emerged from ADB's work.[3] ADB-driven legal reforms and power sector restructuring were established, in theory making the sector a "competitive" market, but in practice facilitating privatisation and private monopolies.[4] [5] These developments expanded options for the private sector in energy generally, and Public-Private Partnerships (PPPs) in particular.

The Malampaya project emerged amid a greater demand for energy sources and a policy context that was increasingly accommodating to the private sector. The year 1990 witnessed the legislation of the Build, Operate, Transfer Law, which took a crucial role in the overall drive for later PPPs. Shell was granted a license for exploration as early as the 1990s, as the Philippines was scrambling to fill its energy supply gaps. Shell's success in finding the gas reservoir, which was called the Malampaya-Camago gas fields, made the prospect a reality for Shell and the Philippine government.

Later on, no less than the Philippine president issued an executive order to create the PPP Center in 2013. In 2021, government officials admitted that the Philippines had to shoulder Philippine Peso (PHP) 460 billion (USD 9 billion/EUR 8 billion) in PPP-related contingent liabilities, in that year alone, from an assortment of PPPs.[6] The government further conceded that recent increases in liabilities were partly from "unsolicited PPPs," which were riskier for the state, which the Duterte administration still included as part of its flagship infrastructure programme.

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2 Asian Development Bank, "Technical Assistance Completion Report: TA 4198-PHI: Institutional Strengthening for the Development of the Natural Gas Industry", October 30, 2003, https://www.adb.org/sites/default/files/project-document/65507/30546-phi-tcr.pdf

3 Iris Gonzales, "Special report: What's wrong with EPIRA?", *PhilStar Global*, January 14, 2014, https://www.philstar.com/headlines/2014/01/14/1278583/special-report-whats-wrong-epira

4 Asian Development Bank, 2012, "Philippines: Power Sector Development Program—Evaluation Document", https://www.adb.org/documents/philippines-power-sector-development-program

5 IBON Foundation, 2011, "Ten years of EPIRA: a decade of increasing private power monopoly", https://www.ibon.org/ten-years-of-epira-a-decade-of-increasing-private-power-monopoly/

6 Ben De Vera, "PPP rule changes eyed to cap rising contingent liabilities", Republic of the Philippines Public-Private Partnership Center, December 9, 2021, https://ppp.gov.ph/in_the_news/ppp-rule-changes-eyed-to-cap-rising-contingent-liabilities/

The Malampaya Project:
"one of the most successful PPPs" in the country

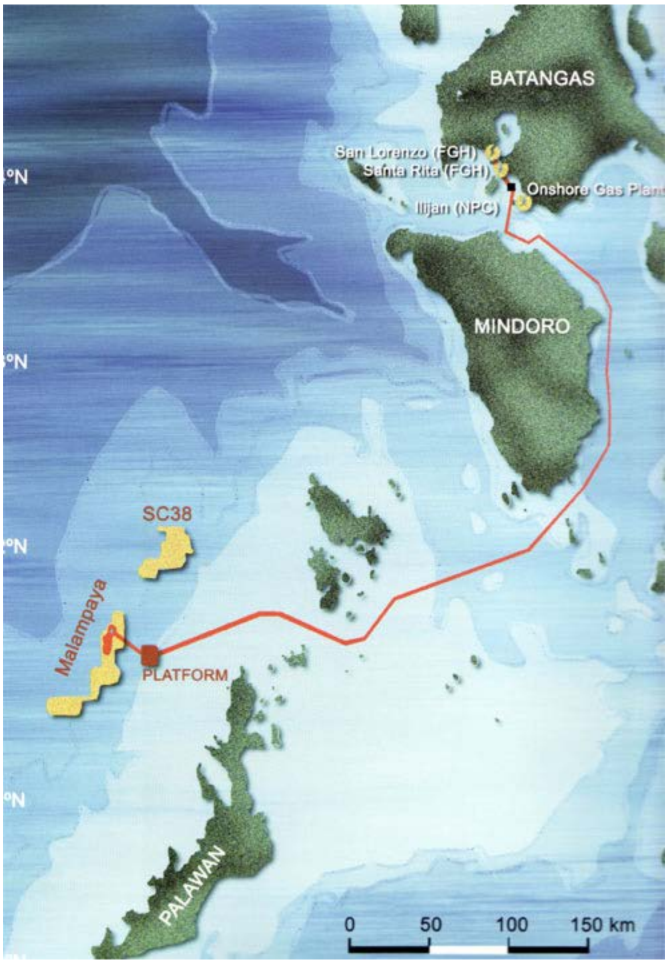

Figure 1 – Map of the Malampaya project (Source: malampaya.com)

The Malampaya Deep Water Gas-to-Power Project extracts natural gas from the sea floor, with the main project site and its above-sea platform located 50 kilometres off the coast of Northwest Palawan (*see Figure 1)*. Two hundred and fifteen kilometres of pipes carry the energy from Palawan to Batangas province, where five processing power plants are located. The project supplies around 30% of energy needs on Luzon Island, comprising 20% of the national energy share (*see Table 1*).

Established on a build-own-operate basis, the Malampaya project was dubbed as "one of the most successful Public-Private Partnerships in the history of the Philippines."[7] This supposed success has led Malampaya officials to enthusiastical-

7 Malampaya Project, "By Filipinos, for Filipinos: Behind Malampaya's world-class operations", April 13, 2021, https://malampaya.com/by-filipinos-for-filipinos-behind-malampayas-world-class-operations/

ly endorse PPPs to address all sorts of economic challenges.[8] The project originated in the context of Service Contract 38,[9] entered into by the Philippine government and private entities Shell Philippines Exploration B.V. and Occidental Philippines (*see Tables 1 and 2*). The contract allowed private sector natural gas exploration off the shores of Palawan province, located in Luzon Island.[10] The contract is in effect until 2024, after which assets will be turned over to the state, unless a contract extension is negotiated.

The Department of Energy leads the project with the Malampaya Consortium, the latter having a history of changing majority private sector shareholders (*see Table 2*). Before 2019, the developer and operator Shell Philippines Exploration (SPEX) was a 45% shareholder in the Malampaya Consortium, along with Chevron's 45%, and the state-owned Philippine National Oil Company completing the remaining 10% share.[11] The Udenna Corporation, owned by a businessman who is a known financier of Philippine president Rodrigo Duterte, created a subsidiary, UC Malampaya, to buy the 45% stake of Chevron in 2019[12] and the 45% stake of Shell in mid-2021.[13] By 2021, the Udenna Corporation controlled 90% of the project shares.

Table 1 - Malampaya project: key facts

- Project cost: USD 4.5 billion (EUR 4 billion)
- Project area size: 83,000 hectares
- Location: gas field – 50 km northwest of Palawan province, the Philippines. Processing plant – Batangas province
- Source of natural gas: Malampaya-Camago gas reservoir
- Share in national energy supply: 21% of national supply (compared to 50% of national energy coming from coal)
- Full capacity supply: 3,200 megawatts (5 power plants) to Luzon Island

8 Business World, "More PPPs Needed", Republic of the Philippines Public-Private Partnership Center, June 25, 2019. https://ppp.gov.ph/in_the_news/more-ppps-needed/

9 Service Contract 38 gave Shell the responsibility to provide the technology, financing, and services for the project. The contract stipulated that the government's Office of Energy Affairs (which later became the Department of Energy) shall have "full control and supervision" of the petroleum operations, contrary to state practice (see section 'Rising "cronyism" and the pitfalls of deregulation'). The contract also defined the sharing scheme for the oil production and sales.

10 Malampaya Project,"Service Contract 38 marks its 20th Year", December 14, 2010, https://malampaya.com/service-contract-38-marks-its-20th-year/

11 Sonny Africa, "Malampaya Experience Shows Philippines may Lose from Spratly Deal", *Bulatlat*, March 15, 2008, https://www.bulatlat.com/2008/03/15/malampaya-experience-shows-philippines-may-lose-from-spratly-deal/

12 Ralf Rivas, "Dennis Uy now owns almost half of Malampaya gas field", *Rappler*, November 13, 2019, https://www.rappler.com/business/dennis-uy-owns-almost-half-malampaya-gas-field

13 Shell Philippines, "Shell signs agreement to sell interest in Malampaya, Philippines", May 20, 2021, https://www.shell.com/media/news-and-media-releases/2021/shell-signs-agreement-to-sell-interest-in-malampaya-philippines.html.

- Shareholder structure:
- Pre-2019: Malampaya consortium (90% of TNCs – 45% Shell, 45% Chevron, 10% by government corporation – PNOC)
- Present: 90% UC Malampaya (Udenna subsidiary), 10% PNOC
- Total government revenues (as of Dec 2020): USD 12 billion

Sources:
https://www.shell.com/about-us/major-projects/malampaya-phases-two-and-three.html
https://www.energyvoice.com/oilandgas/asia/347429/bleak-outlook-for-philippines-upstream-as-malampaya-disappoints/
https://pnoc-ec.com.ph/projects/service-contract-38-malampaya-project

Table 2 - Key events in the history of the Malampaya project

1989/1992	Discovery of natural gas sources in Palawan
1990	Service contract 38 was granted to Shell for exploration; Shell received license to operate in 1991
1992	Shell enters into joint venture with Occidental Premium (OXI)
1998	Shell gains 100% shares in project after completing an asset swap with OXI
1999	Shell sale of 45% shares to Chevron Texaco, 10% to PNOC
2001–2002	Completion of construction; start of commercial operations
2013	Project expansion – completion of phase 2 (two production wells)
2015	Project expansion – completion of phase 3 (second offshore platform, to generate more energy in depleting source, via increasing pressure)
2019	Udenna-owned UC Malampaya buys Shell shares
2021	Udenna buys the rest of TNC shares
2024	Supposed expiration of the contract with Malampaya Consortium, and transfer of assets to the state[14]
2027	Projected depletion of current gas field

14 Maria Romero, "Malampaya service contract to expire in 2024", *Tribune*, May 1, 2021, https://tribune.net.ph/index.PHP /2021/05/01/malampaya-service-contract-to-expire-in-2024/

Narratives of gains vis-à-vis realities: a "successful" PPP for whom?

In 2014, representatives from the Bangko Sentral ng Pilipinas, the Philippine central bank, dubbed the project a "testament to the benefits" of PPPs.[15] The project, it has been claimed, tapped indigenous energy resources using the private sector's technology and expertise. Its proponents have stressed that as well as contributing to the country's energy security, providing around 20% of the country's needs, and generating public revenues, the project also supports business growth.

The claim of "mutual benefits" to private and public interests extends to the financial sector. According to the private sector partner Shell Philippines, the US rating agency Standard & Poor's raised the country's sovereign credit ratings "two months after visiting the Malampaya gas platform." As a project dubbed "by Filipinos, for Filipinos", another aspect of the public benefits narrative is its supposed drive for employment. Shell claim that phase 3 of the Malampaya project, which added another extraction platform, created 1,200 new jobs for Filipinos and had Filipino workers comprising 90% of workers in the new platform.[16] Shell also cited the project's climate benefits, highlighting that the natural gas project saves the country from emitting 1.35 million kilograms of carbon dioxide per hour, compared to using coal and oil to generate energy.[17]

While the Malampaya PPP uses the slogan "by Filipinos, for Filipinos", the project has been criticised for violating the Philippine constitutional limit on foreign ownership, namely 40% for exploration and use of resources.[18] The abovementioned claims of benefits, coming from both state and private actors, especially Shell, must contend with questions related to performance, taxes and corporate power, as well as negative impacts on affected communities.

Underperformance in energy objectives and impending depletion

While proponents of the project like to cite the energy security of the country, natural gas remains a non-renewable energy source. The Malampaya-Camago gas field is projected to be depleted by 2027, three years after the Malampaya Consortium contract supposedly ends. The aforementioned phase 3 of the project was built

15 Shell Philippines, "Bangko Sentral ng Pilipinas showcases Malampaya Gas Project to international credit rating agency", May 20, 2014, https://www.shell.com.ph/media/media-releases/2014-media-releases/bangko-sentral-ng-pilipinas-showcases-malampaya.html

16 Shell Philippines,"Malampaya Phases 2 & 3", October 5, 2015, https://www.shell.com/about-us/major-projects/malampaya-phases-two-and-three.html

17 Malampaya Project, "Clean Energy for Luzon", https://malampaya.com/clean-energy-for-luzon/

18 Sonny Africa, "Malampaya Experience Shows Philippines may Lose from Spratly Deal", *Bulatlat*, March 15, 2008, https://www.bulatlat.com/2008/03/15/malampaya-experience-shows-philippines-may-lose-from-spratly-deal/

precisely to address decreasing energy production, with the new structures able to extract additional gas. Despite the move to create more output through better extraction processes, pundits have still observed that the project has been underperforming, and its energy output steadily declining.[19]

Impending depletion would put pressure on the energy supply, particularly on Luzon Island, where the national capital, and many of the economic and financial centres, are located. Amid the government's drive for more private investors, undersupply in power means interrupted business operations, negatively impacting the investment climate. More importantly, less available power means blackouts for the households of the 64 million people on Luzon, along with a projected increase in electricity fees. As it is, September 2021 shutdowns in Malampaya operations are projected to increase power rates by PHP 65 (USD 1.30/EUR 1.16) for every 200 kilowatts. The effects would result in worsening economic prospects for a country where the minimum wage rate in the capital is just PHP 575 (USD 11.50/EUR 10) per day. To fill the gaps, importing natural gas and other energy sources, in a country already reliant on foreign capital, has been seen as a more feasible alternative. The reliance on the Malampaya PPP, driven by the trajectories of fossil fuel giants, has created new problems on top of those it was supposed to solve.

Given these risks to the project's viability, analysts have tried to make sense of the Udenna group's 2020 and 2021 purchase of 90% of the project shares from Shell and Chevron. Some have opined that it might have been to facilitate new searches for natural gas on the sea floor, which would mean great profits to Udenna.

Some parties are worried that the Udenna Corporation's majority interest in the project opens the door for greater influence of foreign powers, amid critiques of the Duterte administration's subservience to the government of China, despite a territorial and resource dispute.[20] Fears have emerged about the risks of a joint exploration for energy sources in the disputed territories in the West Philippine Sea near Palawan, or that Udenna could possibly be looking to China's firms to fill the technological and financial gaps[21] in reviving energy generation. Either way, the concerns involve a *de facto* capitulation to China's claim over the resources and territories.

The non-renewable, fossil fuel character of natural gas projects such as the Malampaya also poses a challenge to Shell's "clean energy" narrative. In fact, Shell has been investigated by the Philippines' national human rights institution for the adverse climate impacts of its activities in the country. Responding to a petition by environmental groups, the Commission on Human Rights launched a three-year

19 Damon Evans, "Bleak outlook for Philippines upstream as Malampaya disappoints", Energy Voice, March 9, 2021. https://www.energyvoice.com/oilandgas/asia/347429/bleak-outlook-for-philippines-upstream-as-malampaya-disappoints/

20 Reuters Staff, "Philippines' Duterte approves resumption of energy projects in South China Sea", *Reuters*, October 15, 2020, https://www.reuters.com/article/us-southchinasea-philippines-energy-idUSKBN2701VP

21 Lian Buan, "IBP: Scrap Malampaya sale to Dennis Uy, let government take over", *Rappler*, November 25, 2021, https://www.rappler.com/business/ibp-statement-scrap-malampaya-sale-dennis-uy-let-government-take-over/

probe that eventually declared that Shell and Chevron, along with 45 other fossil fuel giants operating in the Philippines, could, legally speaking, be held to account in cases of climate-related rights violations.[22]

Losses from corporate-led arbitration and government corruption

Another narrative regarding public benefit involves supposed public revenues from the project. According to Service Contract 38, the Philippine energy department shall receive 60% of net proceeds from the energy operations, while the private sector actors will keep 40%. The Philippine government has been receiving between USD 800 million (EUR 715 million) to USD 1.1 billion (EUR 1 billion) annually in income taxes, with a total of USD 12 billion from 2001 to December 2020. A more recent estimate, covering 2002 up to June 2021, claims a smaller total government collection of PHP 332 billion (USD 6.6 billion/EUR 6 billion).[23] The government revenues constitute what is commonly called the "Malampaya fund".

The revenue flows are, however, complicated by the following drains: 1) the billions worth of a tax deficiency case flagged against the Malampaya Consortium, especially against Shell Philippines;[24] 2) the losses from corruption cases involving shell organisations supported by government officials;[25] and 3) the profit capture arising from the 90% big business interests with close ties with the previous Philippine presidency.[26]

The Malampaya project is exempt from excise and value-added taxes,[27] but not income taxes. At the root of the tax case against the Malampaya Consortium, flagged by state auditors, is the following difference in reading the stipulations of aforementioned Service Contract 38: the state auditors claim that Malampaya's income taxes should come on top of the share of government royalties, with deficiencies from 2002 to 2010 calculated at PHP 53 billion (USD 1.1 billion/EUR 1 billion). But the Malampaya Consortium argues that the tax deficiency does not exist, because it should already have been counted in the amounts remitted to government as state shares in the earnings. The state auditors' initial computation of PHP

22 Hilary Lamb, "Fossil fuel firms could be found guilty for human rights violations", Institution of Engineering and Technology, December 10, 2019, https://eandt.theiet.org/content/articles/2019/12/fossil-fuel-firms-could-be-found-guilty-for-human-rights-violations/

23 Ted Cordero, "DOE wants higher gov't share in Malampaya revenues", *MSN Money*, January 12, 2021, https://www.msn.com/en-ph/money/economy/doe-wants-higher-govt-share-in-malampaya-revenues/ar-AARkFPw

24 Court ruling needed to enforce P146.8-B Malampaya award", *Manila Bulletin*, May 21, 2019, https://mb.com.ph/2019/05/21/court-ruling-needed-to-enforce-p146-8-b-malampaya-award/

25 Aries Rufo,"How the Malampaya fund was plundered", *Rappler*, September 20, 2013, https://www.rappler.com/newsbreak/39418-malampaya-fund-plundered/

26 Anjo Bagaoisan,"Malampaya sale to Udenna 'most incredible crony' deal in history, says graft complainant", *ABS-CBN News*, October 26, 2021, https://news.abs-cbn.com/news/10/26/21/malampaya-sale-to-udenna-most-incredible-crony-deal-in-history-complainant

27 Judy Gulane, "BIR rules: Malampaya group exempted from excise tax, VAT", *GMA News Online*, May 8, 2007, https://www.gmanetwork.com/news/money/content/41501/bir-rules-malampaya-group-exempted-from-excise-tax-vat/story/

53 billion later increased to PHP 147 billion (USD 3 billion/EUR 2.7 billion), with tax claims for 2015 and 2016 added.[28]

With continuing state auditors' tax bills, Shell Philippines has invoked provisions in the Netherlands—Philippines bilateral investment treaty. Flexing its corporate muscle, it filed investor-state dispute cases at two arbitration courts. In late 2015, Shell filed at the Singapore International Arbitration Centre,[29] and again in mid-2016 at the World Bank Group's International Centre for the Settlement of Investment Disputes (ICSID).[30]

The Philippine energy department's position has been consistently favourable to investors and against state auditors, arguably a continuation of the decades-long policy norms that have demonstrated how the government creates the best conditions for private capital. The same department even claimed that the government may cover the tax deficiencies, if necessary, fearful that such taxes "sent a very wrong signal to the existing and future petroleum exploration investors".[31] Eventually, the Singapore arbitration court ruled in favour of Shell, a decision praised by the government's energy department as it would encourage investors' "renewed confidence" in the Philippine petroleum and gas sector. The ICSID proceedings are still postponed as of writing.

The Shell victory meant a victory for corporate interests: it protected its yearly PHP 21 billion (USD 420 million/EUR 376 million)[32] income from its Philippine natural gas operations. On the other hand, the decision meant loss in tax revenues that could have been useful today amid the pandemic, and a blow to prospects of state regulation.

Aside from the tax case, another revenue drain arises from alleged corruption. In 2013, it was revealed that illegitimate transfers of PHP 900 million (USD 18 million/EUR 16 million) were made, from the Malampaya funds to non-existent disaster rehabilitation projects. Said transfers were made possible by key cabinet officials who were able to cite a 2009 executive order that expanded the allowable uses of the Malampaya funds to post-typhoon rehabilitation efforts. In this instance, documents were forged and a bidding process was not held, on the pretext of projects assisting farmers who, it has been discovered, did not receive anything. The Philippine president authorised the release of funds to what would be ghost projects.[33]

28 "Court ruling needed to enforce P146.8-B Malampaya award", *Manila Bulletin*, May 21, 2019.

29 Neil Jerome Morales, "Shell Philippines says will exhaustively challenge 53.14-billion-peso tax claim", *Reuters*, December 18, 2015, https://www.reuters.com/article/uk-philippines-shell-court-idUKKBN0U117020151218

30 World Bank Group, "Shell Philippines Exploration B.V. v. Republic of the Philippines (ICSID Case No. ARB/16/22) Latest Development", International Centre for Settlement of Investment Disputes, February 28, 2022, https://icsid.worldbank.org/cases/case-database/case-detail?caseno=ARB/16/22&tab=PRD

31 Lenie Lectura, "Malampaya consortium runs to SC in P53-billion tax dispute", *Business Mirror*, September 5, 2018, https://businessmirror.com.ph/2018/09/05/malampaya-consortium-runs-to-sc-in-p53-billion-tax-dispute/

32 Jarius Bondoc, "Uy's P42-B Malampaya profits can feed 10.5-M starving families", *PhilStar Global*, December 1, 2021, https://www.philstar.com/opinion/2021/12/01/2144860/uys-p42-b-malampaya-profits-can-feed-105-m-starving-families

33 Aries Rufo,"How the Malampaya fund was plundered", *Rappler*, September 20, 2013.

Rising "cronyism" and the pitfalls of deregulation

In the years after the 2019 Shell tax case resolution, and with the 2024 contract expiration an uncertain prospect, the multinational corporations in Malampaya Consortium sold their shares to Udenna Corporation subsidiary UC Malampaya. Shell sold their shares for USD 460 million (EUR 370 million) and Chevron for USD 565 million (EUR 500 million). The sale, which was sanctioned by the Philippine energy department, presents another challenge to the narrative of Malampaya's public benefits. It was criticised by various groups as the biggest crony deal in Philippine history — a concession to the business interests close to Duterte and a source of finance for his presidential campaign.

The legitimacy of the government-approved deal is questionable, as UC Malampaya, the current 90% shareholder in the Malampaya Consortium, was found to be unregistered as a legal entity at the Philippine Securities and Exchange Commission at the time of the sale. The corporation's basic registration was only completed after the deal.[34] The private corporation was also found to have no financial capacity, as it was deep in debt and had negative working capital. Concerned groups filed a graft case, in October 2021, against actors involved in the controversial sale, against the energy department secretary and Udenna Corporation officials, as well as executives of Shell and Chevron, arguing that state actors bent rules to approve the change in shareholders.

At stake in the large-scale share buyout would be the profits for the private sector actors. While the Malampaya gas fields are projected to dry out by 2027, any future exploration of new gas fields in the surrounding areas is a boon for big business interests currently involved in the project. The yearly PHP 42 billion (USD 840 million/EUR 750 million) Malampaya profits previously captured by the multinational actors would be funnelled to the Udenna Corporation, assuming profits remain at similar levels and that the current division of earnings is observed.

Critics argue that had state actors taken over the Malampaya project instead of allowing the private sale, the amount could have financed social spending, public services and emergency assistance in the Philippines amid the pandemic and the country's current economic downturn.[35] A lawyers' group argues that the state company PNOC, which has its origins in the oil crisis in the 1970s, has "better technical and financial qualification[s]" than Udenna.[36]

In its defence, the Philippine energy department claimed that the sale was a just "deal between two companies", and is "beyond the agency purview" — a policy

34 Anjo Bagaoisan, "Malampaya sale to Udenna 'most incredible crony' deal in history, says graft complainant", *ABS-CBN News*, October 26, 2021.

35 Jarius Bondoc, "Uy's P42-B Malampaya profits can feed 10.5-M starving families", *PhilStar Global*, December 1, 2021, https://www.philstar.com/opinion/2021/12/01/2144860/uys-p42-b-malampaya-profits-can-feed-105-m-starving-families

36 Lian Buan, 2021, "IBP: Scrap Malampaya sale to Dennis Uy, let government take over", *Rappler*, November 25. https://www.rappler.com/business/ibp-statement-scrap-malampaya-sale-dennis-uy-let-government-take-over/

choice of surrender when it comes to regulating strategic economic sectors, and yet another show of leniency towards private capital. Complainants in the graft case argued that the energy department shirked from its responsibility in reviewing the technical and financial capabilities of UC Malampaya.

International Finance Institutions (IFIs) admit that "PPPs can be susceptible to corrupt activity if not carefully planned and designed."[37] In reality, the partnership does not happen in a vacuum. Philippine state institutions have internalised private sector promotion as a key imperative, and big business has been long entrenched behind the scenes of political life. Anti-corruption institutions are weakening further; the Duterte administration's repression of the freedoms of association and expression discourage public criticism of corruption.[38] In this broader socio-economic and policy context of the Malampaya case, the PPP arrangement became a launching pad for favouring private interests, and bypassing national regulations and processes along the way.

The issues around the Malampaya PPP challenge the narrative of PPPs' public benefits: the yearly USD 800 million (EUR 715 million) to USD 1.1 billion (EUR 1 billion) in tax revenues should be counterposed with the USD 3 billion of losses in allegedly unpaid taxes, the USD 18 million (EUR 16 million) lost to corruption and the assumed yearly figure of USD 841 million (EUR 750 million) that the current shareholders will continue to see flowing into their pockets. The USD 12 billion (EUR 11 billion) figure regarding Malampaya government revenues from decades of operations should also be considered in the context of the PHP 460 (USD 9 billion/EUR 8 billion) in contingent liabilities that have arisen, especially from various "unsolicited" PPPs which the government nevertheless pursued for the Duterte administration's infrastructure drive. The USD 9 billion in additional liabilities consists of "guarantees of revenue and returns on investment which the government will shoulder, as well as fees and charges which consumers will pay."[39] These, together with the sunk costs of missed tax revenues and other drains, matter especially as the Philippines is presently the biggest borrower from the World Bank, having taken USD 3 billion (EUR 2.7 billion) in loans for its pandemic and economic response.[40]

At the root of these issues is the unequal public-private relationship illustrated in Malampaya's history. Corporate capture prevailed and the government was beholden to private interests. Despite the evidence of costs, and the blow to national sovereignty in arbitration losses, state actors have held steadfastly to a policy dogma. The government has been firm that attracting private capital in itself will bring positive economic and development outcomes, in line with the

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37 World Bank Group, "Transparency, Good Governance and Anti-Corruption Mechanisms", The World Bank, https://ppp.worldbank.org/public-private-partnership/overview/practical-tools/good-governance-anticorruption

38 Revin Mikhael Ochave,"'Historic low': PHL slumps in anti-corruption index", *Business World*, January 26, 2022, https://www.bworldonline.com/historic-low-phl-slumps-in-anti-corruption-index/

39 Ben De Vera, "PPP rule changes eyed to cap rising contingent liabilities."

40 Philippine Daily Inquirer, "With $3.07B in loans, PH is World Bank's top borrower," *Inquirer.net*, October 7, 2021, https://business.inquirer.net/332058/with-3-07b-in-loans-ph-is-world-banks-top-borrower

narrative from IFIs. Ultimately, the people are at the losing end from the drains in public coffers, and also from the project impacts at community level.

Community impacts: hampering the livelihoods of fisherfolk

According to the locals in Barangay Bucana, Northwest Palawan, they were neither consulted nor informed about the construction of the Malampaya platform.[41] They were also never notified about the changing ownership and its implications to the area's resources. While the project generates almost one third of the electricity on the whole of Luzon Island, villagers in Barangay Bucana live on a weak energy supply coming from a single generator.

Before the Malampaya project, villagers in Barangay Bucana were able to freely fish the area of Northwest Palawan for their own consumption and livelihood. The location of the project site was an ideal fishing ground, they explain. But authorities enforced strict limitations when the Malampaya platform was completed, to prevent "trespassing" of boats around the structure. Small-scale fishermen were forced to stay near the beaches for their catch, which has reduced their source of readily available food and income.

By 2005, the Philippine Marines started to maintain the "security" of Malampaya, in response to supposed "increasing terrorist threats" against the project.[42] Since then, enforcing the limitations in fishing zones has become one of the Marines' tasks. A clear and formal process to establish and negotiate the said limits has been absent. Instead, local fishermen were merely told of a "thumb rule": to measure the allowed distance, they were asked to raise a thumb to the horizon in the platform's direction. If a part of the platform is visible, it means they are in the restricted zone and should move their boats.

41 This section is based on three key informant interviews and one focus group discussion conducted in Barangay Bucana, El Nido municipality in Palawan Island, from 5-7 February 2022.

42 Jaime Laude, "Military secures Malampaya amid terror threats", *PhilStar Global*, April 5, 2005, https://www.philstar.com/nation/2005/04/05/272721/military-secures-malampaya-amid-terror-threats

Figure 2 – Fisherfolk in Barangay Bucana

The small-scale fishermen have also been told that the platform is a "protected area", and that their hooks could damage the platform's pipes, which carry the energy from Palawan. But the fishermen dispute this; they assert that their negligibly small hooks simply cannot damage the 24-inch diameter underwater pipeline. They have instead observed a double standard in how large fishing boats, which use potentially unsustainable methods such as trawling,[43] have been spotted in the restricted fishing area around Malampaya.

In addition, fisherfolk in Bucana have also experienced intimidation from the Marines, from being chased around by speedboats to threats of extra-judicial killings. One fisherman recounted physical abuse: he and his friend were invited to eat at the Marines' outpost near the platform, but the Marines repeatedly punched them in the stomach until they forcibly vomited.

Other impacts: Malampaya and Philippine democratic spaces

The controversies surrounding the history of the Malampaya project, especially those involving state actors, are also linked to other violations of civil and political rights in the country. A Palawan journalist was killed for reporting misuse of Malampaya funds, with local government officials later apprehended abroad

43 In trawling, boats pull a net through the water. Villagers in Bucana worry that the trawlers use fine-meshed nets that also catch younger and smaller fish.

as suspects.[44] More recently, journalists reporting on the Malampaya sale to the Udenna Corporation subsidiary[45] were slapped with a libel case. The Malampaya case has shown that issues arising from PPP projects are inextricably linked to governance norms, the political climate, and the pattern of shrinking civic and democratic spaces in the project country.

Conclusions and policy recommendations

The Malampaya project illustrates that PPPs are not necessarily the most efficient way to produce energy, and challenges the narrative that these arrangements are cheaper options for developing countries. It also shows the limits of an overall private sector—oriented policy framework, historically promoted through international finance institutions. Countries open up not just to "investment", but also to risks of bolstered corporate power and of toothless national institutions unable to regulate for the public interest. Shell's international arbitration case on the PPP project shows the realities of corporate power at the international level, as enabled by investor—state dispute settlement provisions in free trade agreements. Such provisions have long been questioned by social movements and civil society.[46] With current international norms favouring big business, Shell has the power to file a case against government actors; the responsibilities of the state to regulate and to protect public interest are being abandoned.

Policy norms need to shift towards ending deregulation. Investment rules that allow international arbitration, which corporations can maximise against public interest, need to be reversed. Government and IFI re-examination of private sector—driven models, including PPPs, is overdue, especially amid the pandemic, rising inequalities and the climate crisis. They should shift away from PPPs, especially when development outcomes and financial efficiency are absent or unproven, and instead advance public sector roles in financing and developing infrastructure.

The Malampaya project also makes the case for realising effective development principles. Energy consumers and people's organisations need to have roles in determining national energy plans and investment priorities, in line with the principle of democratic ownership. Instead of the "partnership" between state actors and various private sector firms, people's participation in broader development priorities need to be affirmed by all actors. People's rights, including the right to social services and other economic rights, should be foundational in project decisions, financing and development, including in the assessment of results.

44 Michael Bueza, "Timeline: Gerry Ortega Murder Case", *Rappler*, September 22, 2015, https://www.rappler.com/newsbreak/iq/106638-timeline-gerry-ortega-murder-case/

45 Bueza,"Timeline: Gerry Ortega Murder Case".

46 People Over Profit, 2017, "Beyond investment protection: group warns of intensified corporate attacks vs people's rights as ASEAN leaders meet in PH", https://peopleoverprofit.online/beyond-investment-protection-group-warns-of-intensified-corporate-attacks-vs-peoples-rights-as-asean-leaders-meet-in-ph/

Finally, mechanisms to realise full transparency and accountability must be established, not just regarding PPP project information but also in initiating assessments and redressing impacts to communities, consumers and public coffers. The project's impacts on communities on the Palawan shores should be more comprehensively monitored, towards accountability of parties in incidents of rights violations. Measures to address fisherfolk livelihood needs must be a priority for the national government. Affected fisherfolk communities should have a voice in the future of the project as it compromises their economic needs.

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Author information

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