

IBON Primer on

Public-Private Partnerships (PPPs)



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IBON PRIMER ON:
PUBLIC-PRIVATE PARTNERSHIPS (PPPs)



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IBON Primer on Public-Private Partnerships (PPPs)
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INTRODUCTION

Public-Private Partnerships— Privatization by Other Means

Public-private partnerships (PPPs) have gained popularity especially since the failure of privatization programs initiated by the World Bank, the International Monetary Fund (IMF), and other bi- and multilateral institutions. PPPs are perhaps best understood as privatization by other means, i.e., an effort to attain the perceived benefits of the discredited practices of privatization, while maintaining a somewhat more publically palatable presentation of its activities. Yet, in some ways, the consequences of PPPs can be worse than the privatization programs implemented in the past. It is therefore unsurprising that these projects, which range from mega projects (e.g., the Thoubal River Valley Multi-purpose Project in Manipur) to efforts to institutionalize private control over water provision (e.g., in Sri Lanka as discussed below in *Box 1*), have been the focus of fierce opposition.

Rather than privatization outright, PPPs are privatization with added benefits. Not only do private business secure profits, these profits, as well as potential risks are subsidized by the state. PPP contracts establish flows of public resources into private hands. As is further elaborated below, PPPs play a role in diverting government attention from addressing social concerns. Such concerns are the true criteria by which sustainable development should be measured. PPPs exacerbate social problems by contributing, among other things, to the unequal distribution of wealth within countries.

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CHAPTER 1

Public-Private Partnerships Advancing Neoliberalism

The rationale behind public-private partnerships (PPPs) and privatization more generally makes sense only within its proper ideological framework. Since the 1980s, privatization has been one of the core components of the neoliberal capitalist policy agenda, together with liberalization and deregulation. These latter two components are supposed to increase the level of competition in the economy. Privatization, on the other hand, serves the overall aim of limiting the economic role of the state.

Neoliberalism may be roughly understood as an ideology asserting that the state distorts the functioning of markets, and that “the market” is the only institution appropriate for the coordination of economic activity. The policies implemented under this framework have faced increasing protest throughout the world. Resistance has, without doubt, been the strongest in developing countries, where the social and economic consequences of neoliberalism have been by far the most severe.

The IMF testified to this in June 2016, when it released a paper bearing an indicative title: “Neoliberalism: Oversold?” While this paper was not an outright rejection of neoliberalism, it did highlight some of its significant failures particularly in regard to its components of liberalization and deregulation, reaching these three conclusions:

- Firstly, evidence is insufficient to conclude that they lead to increased growth.

- Secondly, the two components entail a high social cost in terms of increased inequality.
- Thirdly, this “increased inequality in turn hurts the level and sustainability of growth.”¹

These findings are particularly damning when growth is supposedly “the sole or main purpose of the neoliberal agenda.”² Yet the fact that neoliberalism so narrowly focuses on growth is a further problem, as indicators of growth in some countries belie the aforementioned worsening inequalities, diminishing livelihood standards and increasing incidence of unpaid or exploited labor. All of this comes hand-in-hand with evident “costs in terms of increased economic volatility and crisis.”³

PPPs have often been proposed with an eye towards gross domestic product (GDP) growth. Yet little attention is given to the allocation of the newly created wealth that GDP increases represent. The exclusion of this consideration is too systematic to be simple neglect. In fact, under the name of “new public management,” the reorientation of government priorities by means of implementing performance assessments measured mainly in monetary terms has been an important aspect of neoliberalism since the 1980s. PPPs continue to supplement this agenda.

Defining and Assessing Public-Private Partnerships

Defining Public-Private Partnerships

The meaning of public-private partnership (PPP) varies with context. Jomo K.S., Anis Chowdhury, Krishnan Sharma and Daniel Platz collect a variety of operative definitions in a recent UN DESA Working Paper.⁴ This suffices to provide an initial sense of the range. Romero further specifies the most widely accepted definition as featuring the following aspects: (a) medium- or long-term contract between the government and a private enterprise; (b) the private enterprise contributes to the delivery of an asset

1 Ostry et al. 2016, 39.

2 Ibid.

3 Ibid.

4 K.S. et al. 2016. Cf. Table 1 (p. 4) and Annex 1 (p. 26).

or service formerly provided by the government; (c) there is risk sharing between the government and private enterprise.

While this definition is a useful starting point, it also excludes some forms of PPPs, e.g., some that are particularly relevant in developing country agricultural sectors: capacity building and economic development PPPs. These include forms of contracting-out, NGO-government alliances, and community-local government cooperation. However, it is worth noting that, while in some cases providers and partners label these as PPPs, in other cases they use other terms.

Brinkerhoff and Brinkerhoff⁵ group PPPs in the following manner: policy, service delivery, infrastructure, capacity building, and economic development. This locates PPPs according to the field of their intended effects.

1. *Policy PPPs* are concerned with the design, promotion, coordination, or monitoring of sectoral national or global policies. Their aim is normative in the sense that they seek to change the behavior of institutions of governance and orient the use of public resources in particular ways.
2. *Service delivery PPPs* constitute a contracting out of public services to private enterprises, or possibly (but much more rarely) nonprofit organizations.
3. *Infrastructure PPPs* are perhaps the most common type. These are concerned with the financing, building and operation of infrastructure (e.g., transportation, telecommunications, water, electric power).
4. *Capacity building PPPs* are concerned with the training, skills-transfer and development of capabilities, i.e., the capacitation of individuals, organizations and institutions as development actors.
5. *Economic development PPPs* have as their stated aim the reduction of poverty and economic growth, with cross-sectoral partnerships being the vehicle for achieving these.

⁵ 2011.

Table 1. Public-Private Partnerships: A Purpose-based Taxonomy

| PPP purpose | Organizational structures/ processes | Performance metrics | Normative dimensions |
|----------------------|---|--|--|
| Policy | <ul style="list-style-type: none"> • Network • Task force • Joint committee • Special commission | <ul style="list-style-type: none"> • Technical quality • Responsiveness • Consensus-building • Legitimacy | <ul style="list-style-type: none"> • Equity/representativeness • Citizen participation • Transparency |
| Service delivery | <ul style="list-style-type: none"> • Co-production • Joint venture • Contract • Partnership agreement (MOU) | <ul style="list-style-type: none"> • Quality • Efficiency • Effectiveness • Reaching targeted beneficiaries | <ul style="list-style-type: none"> • Accountability • Business values and incentives • Access • Responsiveness |
| Infrastructure | <ul style="list-style-type: none"> • Joint venture • Build-operate-transfer • Build-own-operate-transfer • Design-build-operate | <ul style="list-style-type: none"> • Quality • Efficiency • Value for money • Maintenance and sustainability | <ul style="list-style-type: none"> • Accountability • Business values and incentives • Access • Responsiveness |
| Capacity building | <ul style="list-style-type: none"> • Knowledge network • Twinning • Contract • Partnership agreement (MOU) | <ul style="list-style-type: none"> • Skills transfer • Intellectual capital • Social capital • Organizational systems and output | <ul style="list-style-type: none"> • Ownership • Agency • Empowerment • Autonomy/independence |
| Economic development | <ul style="list-style-type: none"> • Joint venture • Contract • Partnership agreement (MOU) | <ul style="list-style-type: none"> • Poverty reduction • Profitability • Sustainability | <ul style="list-style-type: none"> • Equity • Social inclusion • Empowerment |

The advantage of grouping PPPs in this way is that the focus on their intended effects already, to some extent, delimits the appropriate criteria for assessment. Brinkerhoff and Brinkerhoff provide some elaboration on this point in the form of the table reproduced on the next page.

While the examples in this primer come primarily from the field of infrastructure, which is the most prominent type of PPP, it is important to be aware of the broad influence PPPs may exert over different aspects of society. Much research in this area remains to be done, though there is some work that seeks to fill this gap. For an overview of PPPs with a focus on food sovereignty—and which provides more examples of policy, capacity building, and economic development PPPs—see *Special Release: A Primer on PPPs in Food and Agriculture* published by the People’s Coalition on Food Sovereignty (PCFS). Another recommended resource that has helped orient parts of this primer is David Hall’s *Why Public-Private Partnerships Don’t Work: The Many Advantages of the Public Alternative* published by Public Services International Research.

Assessing Public-Private Partnerships

In assessing public-private partnerships (PPPs), it is important to emphasize that each of the actors, prior to the partnership, maintains an existing set of organizational purposes and priorities. For the public and private sectors, these starkly contrast with each other. The public sector is made of the bureaucracy and institutions of governance, which should serve the social benefit. The private sector, on the other hand, is distinguished by its orientation around private benefit. For a discussion on what is meant by private sector and its role in development, see the *IBON Primer on The Private Sector in Development: Privatization of Development Cooperation?*

These contrasting purposes and corresponding priorities produce an unavoidable tension within PPPs as a partnership modality. Two ways of broadly categorizing the problems with PPPs are immediately evident.

- The first problem concerns the *reorientation of government priorities towards private sector aims*, i.e., away from development concerns as such. Moreover, while government aims are reoriented by means of the partnership, private sector aims remain constant. This provides one indication of where the power lies in the relationship.

- The second problem can be described as the *biased allocation of costs and benefits* in the partnership: the private enterprise enjoys the most benefit, while, in the long run, the gains on the side of the government and people—especially the poor and marginalized—are far from clear. Furthermore, social costs are often very high, i.e., the people to whom the government is responsible face negative impacts ranging from reduced accessibility of formerly public services to outright displacement.

This section provides a summary of these problems. Further context for understanding them is provided in the subsequent sections.

Reorientation of Government Priorities towards Private Sector Aims

With respect to the government, it is possible to elaborate upon the first category of problems—which relates to the *reorientation of government priorities towards private sector aims*. Development actors have promoted PPPs in developing countries in ways that continue to involve conditionality and deepen existing relationships of dependency. PPP frameworks (including, among other things, an accompanying regime of regulatory reforms) and PPP implementation, furthermore, may compromise accountability and transparency in human rights as well as public budgeting. While there remains a dire need for further research, especially in the developing country context, there is already a significant amount of evidence showing that PPP promotion, frameworks and implementation in their current forms work to undermine democratic ownership and constitutes an obstacle to a focus on equitable and sustainable development results. This is in fact recognized, to varying extents, in the published reports of bodies ranging from the European Commission to various departments of the United Nations,⁶ despite their ongoing involvement in PPP promotion.

The reorientation of government priorities towards private sector aims are discussed here with the following emphases:

⁶ Cf. K.S. et al 2016.

- Policy Diffusion: Conditionality on Technical Cooperation and Project Finance
- Legal and Regulatory Framework: Mainstreaming Alternative Dispute Resolution
- Implementation Process: Guided by Anti-Social Performance Standards

Policy Diffusion: Conditionality on Technical Cooperation and Project Finance

In recent years, PPP promotion has found a more prominent place within international development via technical cooperation, among many other avenues. Although the exact quantity is difficult to measure, official development assistance (ODA) has been utilized in growing amounts for the provision of technical cooperation. Of this, an increasing share is related to PPPs.⁷ Common providers of technical cooperation, which include international finance institutions (IFIs) (e.g., the World Bank) and national development agencies (e.g., the French Development Agency), now commonly feature PPPs as a core area of emphasis cutting across many departmental areas.

Understanding how technical cooperation can contribute to dependency requires recognition of the context in which it is provided. The advisors, as expected from the nature of their work, come equipped with a high degree of technical knowledge, which government officials in partner countries often lack. This places these consultants in a relative position of authority and allows them to exert a high degree of influence as they make recommendations about national development planning.

As communicated in *The Reality of Aid 2016 Report*, the dramatic influence of technical cooperation, which has consistently prioritized donor interests and promoted PPPs, has been evident across countries as diverse as the Philippines, Sri Lanka, Kyrgyz Republic, India, and Japan. A case study in the Sri Lankan context illustrates some of the means commonly employed by institutions like the World Bank and Asian Development Bank (ADB) in their PPP promotion agenda.

⁷ The Reality of Aid 2016.

Box 1. World Bank and ADB Policy Diffusion through Conditionality in Sri Lanka

The World Bank and ADB have promoted PPPs and the privatization of water services in Sri Lanka over the course of 20 years, despite staunch resistance by communities. This has involved the deployment of consultants for project design, the planning and implementation of institutional reforms, and the drafting of policy and legislation.

The latest (October 2015) report of the World Bank, “Sri Lanka: Ending Poverty and Promoting Shared Prosperity—A Systematic Country Diagnostic,” advises the government to move away from food production aimed at fulfilling local food security and towards a more export-oriented strategy in the agricultural sector.

In this context, privatization has been seen as part of an effort to remove small-scale farmers from agriculture. The World Bank asserted that the production of rice paddy (which they considered as a low-value crop) was responsible for holding back growth in the sector. A pricing mechanism for irrigation was recommended with underlying motive of pressuring these farmers (currently with free access to water) to leave their land and move into the cities.

Technical assistance to advance this aim was funded in part through the Public Private Infrastructure Advisory Fund (PPIAF), which the World Bank maintains together with the ADB, among other partners.

There have so far been three approaches in the World Bank/ADB push for privatization.

Charging for water. In the early 1980s, after threatening to cut off irrigation funding, the World Bank succeeded in securing a declaration from the government affirming its intention to implement the pricing mechanism, and to move towards full cost recovery to attract private sector participation. However, the government did not implement these due to resistance by the farmers. The ADB in response imposed further conditionalities tied to an Agricultural Program Loan, which included closer policy dialogue with the World Bank, the establishment of new administrative systems and amendments to existing laws.

Devolution. The second approach of both the World Bank and ADB involved pushing for “participatory irrigation system management.” Under this scheme, farmer organizations could buy and sell water from private companies on behalf of members, could be converted into private companies, or else be taken over by existing private companies. Farmers strongly opposed this as well.

Policy and institutional reform. As the farmers consistently refused to participate in privatization efforts, the World Bank opted for a more top-down approach, stating in an internal evaluation that “investment in infrastructure needs to be accompanied by measures to reform the policy environment and to strengthen institutions. Water needs to be priced and irrigation operation and maintenance charges need to be recovered from farmers.”

Source: Summarized from The Reality of Aid 2016, 76-82.

The use of technical cooperation to influence government policy has been called a “soft conditionality.” This should be distinguished from more traditional forms of conditionality, the most prominent of which have been the requirements that governments must fulfill to obtain aid and loans. World Bank and ADB promotion of PPPs in Sri Lanka points to the fact that loan conditionalities remain an obstacle to the implementation of democratically determined national development policies.

It is often the case, that institutional arrangements amplify this influence of donors over development priorities by providing regular space from which to make these recommendations, as well as increasing leverage for pushing for changes in legislation and governance reform (which, as the Sri Lankan case also indicated, is now a high priority). Examples of formal arrangements include specialized PPP units, which may be established by governments themselves (frequently in accordance with recommendations by foreign donors),⁸ as well as local units engaged in PPP promotion undertaken by IFIs and development agencies.

Legal and Regulatory Framework: Mainstreaming Alternative Dispute Resolution

Alternative dispute resolution (ADR) is a term commonly used to refer to a set of practices intended to bring disputes (in this case, regarding PPPs) to settlement without recourse to litigation or the involvement of local/national courts. A description of some common mechanisms is provided below in *Box 2*. Such mechanisms have been controversial due to their strong bias in favor of corporate/investor interests. At the level of international arbitration, ADR circumvention of country legal systems has in fact posed serious threats to national sovereignty. With regard to PPPs, there are in general two ways by which ADR mechanisms may be incorporated into the process. The first way is via the PPP legal and regulatory framework. Secondly, ADR mechanism may be built into the PPP contract.

The first way of incorporating ADR in PPP implementation, which is via PPP legal and regulatory frameworks, arises as a result of the assertion by advisors promoting PPPs that effective PPP development and implementation requires adjustments in existing laws, or else the establishment of new laws, which may even be PPP-specific laws—as exist, e.g., in France, Mauritius,

⁸ A list is available here: <http://ppp.worldbank.org/public-private-partnership/overview/international-ppp-units>.

Box 2. Common Alternative Dispute Resolution (ADR) Mechanisms

Mediation – a third party gets involved to help resolve a dispute by recommending how the parties can settle their disagreements. Mediation is used in the hope of not having to enter formal arbitration.

Recourse to a sector regulator – for PPPs in sectors under the remit of an independent regulatory body, this regulator can be assigned responsibility for resolving certain disputes. This is a relatively simple and hence low-cost option, but can be risky for the private party, particularly in case of concerns over regulator independence or capacity.

Judicial system – generally, contractual disputes are subject to jurisdiction of the courts, and the same is typically true of PPP contracts. However, parties to PPPs often consider the court system as inappropriate for solving disputes, since it may be slow, or lack technical expertise—particularly in developing countries. Dispute resolution mechanisms of PPPs often try to avoid resorting to the court system as far as possible.

Panel of experts as arbiters – the PPP contract or law could designate a panel of independent experts, to act as arbitrators in case of dispute. Decisions could be defined as non-binding (in which case a further escalation of mechanism is required), or binding.

International arbitration – the last resort for many PPPs is international arbitration, which can be under a permanent arbitration institution such as the International Centre for Settlement of Investment Disputes (ICSID) or involve ad-hoc arrangements such as an international expert panel.

Source: Reproduced from World Bank Group 2015, 164.

Mexico, Peru, Puerto Rico, the Philippines, South Africa and Tanzania.⁹ These changes are implemented with the business perspective in mind—with the intention of conditioning the environment so that PPPs appear more attractive to private partners. Relatively less consideration is given to the impact that ADR mechanisms may have on the ability of country legal systems to hold actors accountable to citizens.

Box 3 illustrates how, in the Philippine context, ADR is accompanied in the legislative framework by restrictions on TROs and the undercutting of due process for franchising, licenses and permits. These all work together to exclude average citizens from development processes.

An example of ADR at work, also in the Philippine context, is the arbitration mechanism of the Metropolitan Waterworks and Sewerage System (MWSS), which is provided for in Section 12.2 of the concession agreement (CA). By design, again, average citizens are excluded: it is purposed only for the resolution of disputes between the MWSS and its concessionaires, with the Appeals Panel including at least one representative

⁹ World Bank Group 2015, 82.

Box 3. The Philippines' PPP Act of 2016

Prohibition of Temporary Restraining Orders

Section 15 of the PPP Act prohibits the court issuing, except by the Supreme Court, of a temporary restraining order (TRO) to intervene with regard to:

- a. Bidding, rebidding or declaration of failure of bidding of PPP projects, either national or local
- b. Qualification or disqualification or bidders
- c. Awarding of PPP contract
- d. Acceptance of any unsolicited PPP project proposal, even if not acted upon by the implementing agency concerned under Section 8 of this Act
- e. Acquisition, clearance, development of the right-of-way, site or location of any PPP project
- f. Construction, operation and maintenance of any PPP project
- g. Commencement, execution, implementation, termination or rescission of any PPP contract
- h. Undertaking authorization of any other lawful activity necessary for such PPP project or contract

As punishment for violating this prohibition, judges that issue a TRO, preliminary injunction or preliminary mandatory injunction "shall be disciplined by the Supreme Court and suffer the penalty of removal from office."

In the case of the Supreme Court, the only body with the power of issuing a TRO, Section 15 limits the TRO's duration to six months.

As far as citizens seeking to take the initiative, Section 26 (e) goes on to prohibit them from seeking judicial resolution for questions concerning PPPs: "No one shall in any proceedings before any court tribunal allege the invalidity of any PPP contract on the ground of non-compliance with the provisions of this Act or its IRR after a period of one (1) year has elapsed from the signing of the PPP contract."

Alternate Dispute Resolution

In Section 23 of the bill it is asserted: "All PPP contract shall include provision on the use of ADR mechanism. The contracting parties shall be given complete freedom to choose which venue and forum shall govern their dispute, as well as the rules or procedures to be followed in resolving the same."

Undercutting Due Process with regard to Franchises, Licenses and Permits

Typically, an operator or business must satisfy certain requirements, intended as a protection on the public interest and general welfare, in order to obtain franchising, licenses or permits. Section 12 of the PPP act undercuts this by mandating:

Once a PPP contract is duly executed, the regulator, licensing authority or LGUs shall automatically grant in favor of the said project proponent an administrative franchise, license, permit, or any other form of authorization required for the implementation of a PPP project.

Furthermore, upon failure of the regulator, licensing agency or local government unit (LGU) to grant a permit or franchises within a period of 30 working days of application, the application is to be deemed automatically approved.

Source: Summarized from IBON Foundation 2015, 8-9.

from each (prescribed by Section 12.3 of the CA). The IBON Foundation writes:

For major disputes such as on a Rate Rebasing exercise, the President of the International Chamber of Commerce (ICC) will appoint the Chairman. For minor disputes, the representative of the concessionaire and the RO in the Appeals Panel will designate the Chairman. Foreigners can be appointed as members of the Appeals Panel, including as Chairman.

Consumers are not represented in the Appeals Panel. They also do not have access to proceedings, which are behind closed doors.

The IBON Foundation points furthermore to the fact that, by Section 12.6 of the CA, arbitration costs must be shouldered by the public sector, i.e., using funds generated via taxation, fees and other charges levied on citizens. In 2015, the IBON Foundation estimated that such proceedings had already costs taxpayers in excess of ₱140 million (US\$2.8 million).¹⁰

Implementation Process: Guided by Anti-Social Performance Standards

A PPP process—especially for infrastructure projects—generally consists of six stages. Discussed in this subsection are the first three. The remaining three are elaborated upon below in the discussion of the second category of problems arising from PPPs: biased allocation of costs and benefits. The six stages of a typical PPP process are as follows:

- Identification
- Screening
- Structuring/appraisal
- Contract design
- Transaction management
- Contract management

At each stage there are opportunities for the private sector to shape aspects of the project. PPPs may be understood as one means of institutionalizing business-like performance standards within governments, an aim consistent with the neoliberal “new public management” paradigm.

¹⁰ IBON Foundation 2015, 9.

This set of business-like standards narrows the scope of permissible projects and, moreover, requires technical skills that government officials often lack. As discussed above, because they lack these skills, public officials are frequently over-dependent on, and over-influenced by, input from external consultants, especially from the private sector.

Accordingly, beyond merely institutionalizing business-like standards, PPPs institutionalize the business sector in government bureaucracy. This is immediately evident from an examination of the identification, screening and structuring/appraisal stages of the process.

In fact, the private sector influences the PPP process before it has even begun. The first stage, identification of projects, already anticipates the subsequent stages—screening and structuring/appraisal—and the criteria applied therein. Identification efforts are therefore focused on projects likely to pass these criteria, which are, in large part, oriented around business interests.

For example, the screening stage entails the preparation of the “business case.” In the case of the structuring/appraisal stage, furthermore, a core concern is “commercial viability—whether the project is likely to attract

Box 4. Costs of Direct Negotiation—Independent Power Tanzania

The Government of Tanzania and the Tanzania Electric Supply Company entered into contractual agreements with Independent Power Tanzania Limited (IPTL) of Malaysia for the supply of 100 megawatts of power over a 20-year period. This transaction was directly negotiated following an approach by the private investors during a power crisis. The transaction was contested by some government officials and by the international donor community and other interested stockholders, on the grounds that it was the wrong technology (heavy fuel oil instead of indigenous gas), that it was not part of the least-cost generation plan, that it was not procured on a transparent and competitive basis, and that the power was not needed.

The government ultimately submitted the case to arbitration. Under the final arbitral ruling, the project costs were reduced by about 18 percent. Even so, the costs remain well above international comparators. In the arbitration hearings the Government alleged that the contract award had been corrupt, but failed to produce evidence to satisfy the Tribunal of this. The government has not subsequently pursued the corruption investigation. However, legal disputes between the IPTL and the government continue.

Sources:

World Bank (2009), Deterring Corruption and Improving Governance in the Electricity Sector, Washington, DC: World Bank.

Anton Eberhard and Katharine Nawal Gratwick (2010), IPPs in Sub-Saharan Africa: Determinants of Success, Washington, DC: World Bank.

Reproduced from World Bank Group 2014, 197.

good quality sponsors and lenders by providing robust and reasonable financial returns.”¹¹

To return the discussion to the identification stage, it is not only the case that the influence of business standards is prevalent: private sector actors themselves may also be directly involved. It is frequently the case that the private sector initiates identification by means of unsolicited PPP proposals.

The World Bank asserts that the advantage of accepting unsolicited proposals from the private sector is that it “provides government with information about where commercial opportunities and the market interest lie.” Yet even the World Bank must admit the serious potential consequences of government negotiations with big business about service provision—especially since the balance of power sways towards the advantage of the private sector. The example illustrating this in *Box 5* comes from the World Bank’s *Public-Private Partnership Reference Guide*.

The influence of the private sector also pervades each of the remaining three stages: contract design, transaction management and contract management. This influence stands as a significant factor in one of the overriding concerns indicated in the Tanzania example: corruption. The matter of corruption is also elaborated upon in the discussion below of the biased allocation of costs and benefits commonly accompanying PPP projects.

The adoption of the “wrong technology” in the case of the Independent Power Tanzania (see *Box 4*) also further illustrates the consequences of a lack of technical capacity on the part of government officials, one of which is their overdependence on private sector assertions. It should not be surprising that these assertions contain a certain degree of bias. This results from the nature of enterprises to have the maximization of profit as their highest priority, which often stands in contention with the social concerns of citizens (i.e., the proper concern of government).

In Summary: PPPs Undermine Democracy and Accountability

The reorientation of government priorities that have accompanied PPPs—i.e., through conditionality, through private sector influence over

¹¹ World Bank Group 2014, 128.

Box 5. Legal Rights of Private Sector Partner Enforceable for Length of Contract

- **A cash subsidy to a project.** This can be a lump sum or a fixed amount on a per unit basis, and payments can be made either in installments or all at once.
- **A payment guarantee** by which the government agrees to pay in full in case of non-performance by the purchaser.
- **A debt guarantee** by which the government secures a private entity's borrowings in case of default, e.g., the government guarantees repayment to creditors.
- **A revenue guarantee** by which the government secures a minimum variable income for the private sector partner. This income typically comes from customer user fees and this form of guarantee is common in roads with minimum traffic.
- **Arrangement for a revenue stream,** such as charges levied by the private sector partner on the users of the facility or service, e.g., road tolls or water rates.
- **Step-in rights allocated to project lenders,** allowing the public sector to replace the private operator with another operator (that fulfills the original requirements of the initial bid) when the project is under-performing.

Source: Content drawn from Romero 2015.

implementation, and through adjustment of national law in order to establish an “enabling environment” for PPPs—suggests that PPPs as currently managed work to undermine democratic ownership over development. Even beyond what concerns development efforts, there is some suggestion that PPPs contribute to diminishing democracy in government institutions. This is perhaps most clear in cases where the PPP “enabling environment” includes the establishment of alternative dispute resolution mechanisms.

In fact, as concerns government institutions, an alarming statistical correlation between PPPs and low democratic accountability has been identified by Gallilea and Medda. The aim of their study was to measure factors that contribute to successful PPPs—“successful” here means only that the project has been undertaken to some level of completion, and does not indicate that the PPP has yielded positive development outcomes. In any case, the researchers find that “governments with lower democratic accountability are more successful in PPP projects.”¹² They conjecture that perhaps this is because less democratic governments “may potentially have more authority to support the PPP project than a more democratic government.” But this also means that citizens are less able to challenge

¹² Gallilea and Medda 2010, 107.

PPPs that may threaten their communities and livelihoods—as exemplified by the restriction on TROs as part of the PPP Act in the Philippines.

The fact that the performance standards guiding PPPs favor private business interests over social interests suggests that these standards must be revised. Given that those most knowledgeable of community concerns are the community members themselves, part of establishing development-oriented performance standards must involve capacitating them in taking an active and decision-making role in the process.

Biased Allocation of Costs and Benefits

With respect to both governments and people, one may summarize the second category of problems—which relates to the biased allocation of costs and benefits. PPPs entail higher costs for governments: they are generally more expensive than public procurement. PPPs are also very risky (both in the economic and political sense) for governments and people, despite efforts by PPP promoters to justify them by making false claims regarding the transference of risk to private partners. PPPs pose an even greater risk for people in the form of more limited access to services, and even diminished protection of human rights (e.g., as a result of alternative dispute mechanisms accompanying the institutionalization of PPPs in a particular context).

The biased allocation of costs and benefits are discussed here with the following emphases:

- Cost of Financing: Greater Expense and Citizens Bear the Burden
- Risks and Contingencies: Government and People in Crisis
- Corruption: Stealing from Taxpayers

Cost of Financing: Greater Expense and Citizens Bear the Burden

It is often argued that PPPs are the answer to the problem of insufficient public funds, i.e., that PPPs are a means of mobilizing private finance for development projects, particularly in infrastructure. This must be considered

in light of the above discussion on the relative differences in priorities between government and private enterprise. The argument proposing PPPs and private sector financing is misleading, especially given the following points:

- *Use limitation of private finance*: the willingness of the private sector to contribute to infrastructure financing is constrained by its profit-maximizing orientation.
- *Accountability for government spending*: public funds are purposed (at least in principle) for the social welfare of citizens and for this reason cannot be replaced by private sector funds tied to private interests.

Use Limitation on Private Finance: Relatively Small Contribution

Despite the PPP praise issuing from the business sector, and from international institutions over which it has significant influence, PPPs only make a very small contribution to infrastructure financing as compared to the public purse (which provides over 90%).¹³

The World Bank, which published a review in 2006 of private investment between 1983 and 2004, was of the opinion that:

PPI [private participation in infrastructure] has disappointed—playing a far less significant role in financing infrastructure in cities than was hoped for, and which might be expected given the attention it has received and continues to receive in strategies to mobilize financing for infrastructure . . . PPI is inherently limited in scope for financing urban infrastructure for the wide array of non-commercial infrastructure services cities need. Even for commercial services like water supply, subsidies are prevalent all over the world . . . Local governments need good sources of public finance to fund those services, and some form of government borrowing is needed for major investments in these areas to avoid inter-generational inequities.¹⁴

¹³ Hall 2015.

¹⁴ Quoted in Hall 2015, 11.

Although they actively promote PPPs as a catch-all, “cross-cutting” solution, even the World Bank (at least in the occasional publication) recognizes the inherent limitation of private finance as a development tool. Yet this recognition does not appear to significantly inform institutional practice.

Accountability for Government Spending: Financing via PPP Increases the Burden on the Public Budget—i.e., on Government or on Taxpayers

One reason for PPPs being, in general, more expensive than the public alternative is that the cost of private borrowing is higher than government borrowing. In truth, this partially explains why the private sector maintains such a strong interest in PPPs in the first place. Hall writes:

The financial crisis has made it very difficult for private companies to raise finance except at very high interest rates. Although most countries have reduced official interest rates to very low levels in order to stimulate the economy, banks are insisting that private companies pay much higher interest rates than governments because of perceived risk and general economic uncertainty. Banks are also less willing to offer long-term loans. As a result, the difference between corporate and government interest rates has grown larger. By mid-2009 companies had to pay interest rates about 4 percent higher than governments.

Left to market forces, PPPs would have become prohibitively expensive, even for their greatest supporters. But the adoption of austerity policies means that governments are constrained from borrowing or spending more: so, in order to build infrastructure, PPPs remain an attractive way of concealing the long-term public liabilities. The result is a very expensive contradiction: instead of scrapping PPPs and using cheaper public finance, governments and international public sector bodies are supporting PPPs through substantial state aid, in the form of privileged access to guarantees or public finance.¹⁵

Discussed in the quote is the second reason that PPPs are more expensive than public procurement: “privileged access to guarantees or public finance”

¹⁵ Hall 2015, 13.

Box 6. Some Examples of Contingent Liabilities

- Public bank financing
- Public-private partnership arrangements
- Public pension schemes
- State-owned enterprise's borrowing
- Debt arising from privatization programs
- Lawsuits (e.g., vulture funds)
- Subnational borrowing
- Tariff guarantees
- Insurance schemes
- Opportunistic politicians
- Ecological issues

Source: Reproduced from Elmers and Hulova 2013, based on a compilation in Musa 2013.

serves to satisfy the private sector's profit aims. This access often takes the form of legal rights built into the contract. *Box 6* displays some of the rights commonly enjoyed by the private partner. These rights are enforceable for the entirety of the contract's duration.

This state subsidization of the private sector has increasingly been supported by official development assistance (ODA), although it remains a very small portion of the total.¹⁶

To reiterate, the combination of these two features of PPPs place greater burden on the government and on taxpayers:

- Higher private sector borrowing cost
- State provision of guarantees and public financing to support private sector profit-making

This undermines the constantly repeated claims of PPPs being a more cost-efficient option for the provision of traditionally public goods and services.

¹⁶ Tomlinson 2016.

Box 7. Risks and Contingencies in the Queen Mamohato Memorial Hospital in Lesotho

The 18-year PPP contract for the Queen Mamohato Memorial Hospital in Lesotho was signed in 2009 and was presented by the International Finance Corporation (IFC) as marking the beginning of a new era for private sector involvement in African healthcare.

The new era unfortunately revealed itself to be one of unprecedented burden for the Lesotho Ministry of Health. By 2015, more than 51% of its budget was tied up in subsidies provided to the underperforming private enterprise—Tsepong—charged with the construction and management of the hospital. This was to cover the gap between the actual and the contract-stipulated amount of profits (a return of 25% and total projected cash income 7.6% higher than the original investment). Accomplishing this required the diversion of funds from primary healthcare services in rural areas (where ¾ of the population live). The subsidies provided to Tsepong necessitated a 64% increase in government health pending over 2014-2017 (83% of this accounted for the budget line covering PPP allocations).

Cost Escalation during the Final Stages of Contract Negotiation

Oxfam writes:

It is very common in health PPPs for the contractor to increase its costs once it has entered the *preferred bidder stage*. At this point, the public sector is in a weaker negotiating position and the private sector can “hold-up” the public sector, pushing up prices and reducing the extent of risk transfer to themselves. The Government of Lesotho was especially vulnerable in these negotiations due to the significant lack of competition in the bidding process—there were only two bidders. It is clear that Tsepong succeeded in increasing the baseline annual unitary fee [discussed below] to US\$24 million (excluding VAT)—42 percent above the value originally agreed as “affordable” by the Government of Lesotho and the IFC. Other changes must also have taken place to explain the faster than expected fee escalation. As transaction advisor, at that point, the IFC should have recognized and acted on the future serious financial risks of the PPP for the government.

No Solutions Apparent within the PPP Framework

Due to the great expense of the Queen Mamohato Hospital, the government is considering building a new district hospital to cater to excess patients, which is seen as more cost-efficient than having them treated by the private partner.

In addition to cost escalation during the final stages of contract negotiation, Oxfam identifies the following factors contributing to the rising costs of the PPP arrangement:

- ***Flawed indexation of the unitary fee.*** This is a subsidy (adjusted according to inflation) paid by the government to cover the private concessionaire’s capital repayment and service delivery costs—in the case of the Queen Mamohato Hospital it is indexed to the much higher medical inflation rate of South Africa rather than Lesotho’s.
- ***Costs incurred for extra patients.*** IFC-commissioned estimates (based on the old public hospital) are believed by some in the Ministry of Health to be too low. As a result, the count of patients was in excess of hospital maximums—by 17% for inpatients and 21% for outpatients. This translated into an additional cost to government of US\$4.2 million.
- ***Increase in referrals to South Africa.*** Although part of the motivation behind the PPP was to reduce patient referrals to South Africa, these have increased 61%.
- ***Extra services.*** As responsibilities of the private concessionaire change to meet evolving health needs, contract renegotiation is required. The balance of power in these renegotiations seem to have been strongly in the favor of Tsepong

- **Poor management and oversight.** Because the government has lacked sufficient expertise in hospital operations, financial oversight/analysis and system analysis, it has been unable to adequately ensure the appropriate performance and upholding of responsibilities of the private concessionaire.
- **Late payment and loan default interest charges.** The ministry of health has been unable to keep up with the pace of the hospital's cost escalation. Late payment incurs penalty charges: estimated at US\$755,000 as of the release of the Oxfam report.

Source: Summarized from Oxfam 2014.

Risks and Contingencies: Government and People in Crisis

Contingent liabilities are private debts that come with a government guarantee whether explicit or implicit. These hidden fiscal deficits can be several times the volume of government debt or even, as Eurodad points out,¹⁷ several times the volume of national GDP. In Europe, contingent liabilities—particularly those of failed banks requiring bailouts—have arisen as a significant problem for governments. This testifies to the need for regulation in order to protect the public sector, which means also the citizens and taxpayers. Yet public monitoring of contingent liabilities is a challenge. This is, in part, because they are not clearly defined. However, it is also because governments may have strong incentives not to fully reveal them (e.g., for fear of public reprisal).

PPPs represent an especially volatile class of contingent liability. CAFOD points out that the terms of PPP contracts can place governments in a relationship of debt bondage to private firms. Of the Bujagali Dam project in Uganda, CAFOD commented “that the greatest share of economic risks lies with the power purchaser . . . [whilst] the lenders especially but also the investors are held harmless against all or most eventualities.”

In PPP projects, this biased distribution of risk can be disastrous. In addition to direct debt servicing, potential public costs include lost budget revenue for the length of the contract, which can last decades.

Europe has shown that the crisis potential of PPPs is high. The countries of the Eurozone with the largest PPP projects are those that experienced the highest surge in sovereign debt over the past few years. According to the

¹⁷ Elmers and Hulova 2013.

Box 8. The Unease of the EU and the IMF

A 2003 report of the European Economic and Monetary Union (EMU) expressed its great unease with PPP implementation:

There is the risk that the recourse to PPPs is increasingly motivated instead by the purpose of putting capital spending outside government budgets, in order to bypass budgetary constraints. If this is the case, then it may happen that PPPs are carried out even when they are more costly than purely public investment.

In October 2005, PPPs were again being treated with suspicion:

Monetary Affairs Commissioner Joaquin Almunia accused national governments of using 'tricks' to artificially cut budgetary deficits, as member states try to be seen to be following the Eurozone's rules . . . He particularly referred to so-called Public-Private Partnerships (PPP), which share the financial burden of large infrastructure projects. According to Mr. Almunia, it has become increasingly difficult for the EU executive, in charge of monitoring member states' budgetary performance, to look through such tendencies and figure out the real height of the countries' deficits . . . The commissioner stressed that Europe should avoid the situation where public accounts imitate the creative accounting of some companies in the past.

The dilemma was solved, for supporters of PPPs, by a ruling of Eurostat (the Statistical Office of the EC) that the assets involved in a PPP should be classified as non-government assets, and therefore recorded off balance sheet for government, as long as the following two conditions hold:

- a. The private partner bears the construction risk
- b. The private partner bears either availability or demand risk.

The IMF was, however, unimpressed with this ruling, seeing this as an invitation to creative accounting to avoid the fiscal rules. In March 2004, it described the Eurostat decision as "problematic," declaring that the

recent Eurostat decision on accounting for risk transfer gives considerable cause for concern, because it is likely to result in most PPPs being classified as private investment . . . Since most PPPs involve the private sector bearing construction and availability risk, they will probably be treated as private investment, even though the government bears substantial demand risk (e.g., when it guarantees to the private operator a minimum level of demand for the service provided through the PPP) [. . .] the recent decision [. . .] thus could provide an incentive for EU governments to resort to PPPs mainly to circumvent the Stability and Growth Pact (SGP) fiscal constraints.

Source: Adapted from Hall 2015, 9.

EIB, the countries impacted the most at a macroeconomic level by PPPs are Greece, Portugal, the United Kingdom, Spain and Ireland.¹⁸

Hidden costs in PPPs have been cause for significant concern all over the world, and have been debated much within the European Commission (*Box 8*).

¹⁸ Kappeler 2010.

The hidden costs that can accompany PPPs entail greater consequences for developing countries, whose governments operate under significantly tighter budget constraints.

Corruption: Stealing from the Taxpayers

Corruption associated with PPPs contributes to the biasedness of cost and benefit allocation. The incentive for corruption comes from the great benefits awarded in PPP contracts and their long duration (often 25-30 years in the case of infrastructure PPPs).

In the energy sector, long-term power purchasing agreements have often been associated with corruption. Enron investments in Nigeria and India stand out as prominent examples, but it would be impossible to create an exhaustive list of actors involved in corrupt activities. Speaking of corruption in India more generally, a United Nations body has found “public-private partnerships or PPP projects in India’s roads and power sectors are most prone to corruption, with private partners’ evasion of revenue-share due to the government emerging as the biggest menace.”¹⁹ However, as of late, perhaps the most striking cases of PPP-related corruption have garnered attention in Latin America (see *Box 9*).

Corruption robs citizens of funds to which they have a right as taxpayers and as a constituency to whom the state must be responsible in order to maintain legitimacy. As Gallilea and Medda remind, corruption can “distort the composition of government expenditure, shifting the expenditure of public resources from socially desirable projects to projects where it is easier to extract large bribes.”²⁰

¹⁹ Quoted in Hall 2015.

²⁰ Galilea and Medda 2010, 103.

Box 9. Odebrecht Scandal in Brazil

Over 16 years, Brazilian conglomerate Odebrecht paid nearly US\$800 million in bribes in connection with contracts for more than 100 construction and engineering projects in a dozen countries. Yet the case of Odebrecht was not unique. Other Brazilian construction companies have engaged in similar sorts of activities.

As *The Economist* reports, the “main method was to win contracts by making low bids and then corruptly secure big increases in costs through addenda—in some cases when the ink on the contract was barely dry. This applied especially to contracts involving public-private partnerships (PPPs), which have become fashionable in the region and are typically used for big, complex projects, from highways to hydroelectric schemes.”

A study by José Luis Guasch finds that 78% of all transport PPPs in Latin America has been renegotiated. There were, on average, four addenda per contract and a cost increase of US\$30 million per addendum. “Thus, the cost of a road linking Brazil and Peru rose from US\$800 million to US\$2.3 billion through 22 addenda.” Guasch identifies these contract changes “fertile grounds for corruption.”

Source: Summarized from Bello 2017.

CHAPTER 2

Promotion of Public-Private Partnerships

The promotion of public-private partnerships (PPPs) reflects, above all else, powerful corporate interests and ideologies that exert strong influence over a network of global institutions. The urgency behind the promotion arises from a number of problems that PPPs confront. In addition to the backlash against privatization discussed above in the introduction, Hall lists the following as factors:¹

- “The market” for PPPs is slowing down in the global north (e.g., the UK is ending its Private Finance Initiative, or PFI, scheme).
- The private sector is fighting to obtain a higher share of public spending on profitable contracts (e.g., infrastructure design and construction) given current austerity policies following governments’ declining use of fiscal stimulus after the 2008 crisis (as western economies stabilize).
- The credibility of western governments and multinational corporations has declined in the wake of the crisis.

The promotion effort saw the establishment of specialized PPP units prompted by national governments, and *global* institutions such as the World Bank, the Group of 20 (G20), and the Global Partnership for Effective Development Cooperation (GPEDC). PPPs have also received strong

¹ Hall 2015, 12.

promotion in connection to the Sustainable Development Goals (SDGs) and through the UN Financing for Development (FfD) process.

At a *regional* level, there is a significant effort to promote PPPs through institutions such as the United Nations Economic Council for Europe (UNECE), the Asian Development Bank (ADB) and the Inter-American Development Bank (IADB).

Global PPP Promotion

Group of 20

As Hall reports, the Group of 20 (G20) has been especially active with its PPP promotion since 2010, which is at the center of its “financing for investment” program. He summarizes the main arguments of a 2012 policy paper jointly published of G20, World Bank, OECD, IMF, UNCTAD and UN-DESA:²

- PPPs have to be central to financing infrastructure because austerity limits public borrowing and IFIs have limited funds.
- Governments have to make their laws and institutions friendlier to PPPs.
- Pension funds and insurance companies are “a major additional source of long-term capital” and hence a key source of funds for private infrastructure finance.

The financing of infrastructure remained a core focus of the Asia-Pacific Outreach Meeting on Sustainable development in June 2014. At the meeting of Finance Ministers and Central Bank Governors in 2015 in Ankara, Turkey, the G20 put a further important input into the global PPP promotion: approval of the “WBG PPP Guidelines and the OECD/WBG PPP Project Checklist.” Observers assert that World Bank is the *de facto* consultant for the G20 on the matter of PPPs.

² Hall 2015, 17.

It is cause for concern that the G20 has recently made the decision to encourage “transformational” projects, which means large-scale or megaprojects. These are known for their high failure rate and massive costs. Speaking in economic terms, Flyvberg describes an “iron law of megaprojects” in two parts:

- a. Nine out of ten projects have cost overruns, which are commonly up 50% and not uncommonly over 50%.
- b. Benefit shortfalls of up to 50% are common and above 50% not uncommon.³

Of course, it must be remembered that the social costs are still higher than those that can be allotted a monetary value, especially since such projects frequently entail the displacement of entire communities.

World Bank Group

The World Bank Group (WBG) plays a driving role in the promotion of PPPs. Between 2000-2012, the WBG increased support for PPPs from US\$ 0.9 billion to US\$ 2.9 billion, and plans further increases with PPPs taking a central place in its advocacy agenda as a “cross-cutting solution” to development challenges.⁴ This is in fact the formal name of its PPP Group, “PPP Cross-Cutting Solutions Area,” which works to increase the presence of PPPs among the WBGs “global practices” (GPs).

The 14 GPs are grouped into three categories: sustainable development; equitable growth, finance and institutions; and human development. Most striking, however, is the fact that, despite such high commitment to PPPs as a solution, there remains little substantial evidence that PPPs contribute to positive outcomes in these areas. Most studies proclaiming the success of the PPP model do so on the basis of business metrics that do not necessarily indicate equitable and sustainable development results.

Romero divides the WBG’s PPP promotion, targeting both public and private sector actors, into two types: “upstream” and “downstream.”

³ Flyvbjerg 2014.

⁴ Independent Evaluation Group 2014 (cited in Romero 2016).

- Upstream promotion is focused on policy and institutional issues, i.e., influencing actors' organizational priorities.
- Downstream promotion is focused on project finance and execution.

The *upstream* activities are undertaken primarily by the World Bank itself, together with the PPP Group, and the Public-Private Infrastructure Advisory Facility (PPIAF). A variety of promotional publications have resulted from this, including a PPP reference guide.

The brunt of the work *downstream*, meanwhile, is performed by the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). The latter is the WBG's political risk insurance arm. It provides loan guarantees for developing country private sector projects: guarantees, e.g., against foreign currency transfer restriction, expropriation, breach of contract, war and civil disturbance.

The IFC, on the other hand, is the WBG's private sector funding arm, which promotes PPPs, among other means, through its newsletter, *Handshake*. In what is a clear conflict of interest, the IFC advises national and local governments on how to improve their "investment climate," while at the same time promoting private sector interests.

Over the last 20 years, the IFC has worked on more than 350 PPPs in 99 different countries. It has been active across many sectors, ranging from education, to "consumer services," to water and energy. The Queen Mamohato Hospital in Lesotho (described in *Box 7*) is an example of problems that have arisen in IFC-involved projects. There are many more, which include striking cases of human rights abuse.⁵

The WBG has released documents that serve as important touchstones in the global PPP discourse including: PPP Guidelines, a Framework for Disclosure (discussed below in "Safeguarding Democracy and Accountability in the Face of Public-Private Partnerships"), and a PPP Toolkit. However, none of these provide guidance that adequately addresses the social consequences that have resulted from PPPs.

⁵ Oxfam 2015.

Global Partnership for Effective Development Cooperation

The Global Partnership for Effective Development Cooperation (GPEDC) grew out of the OECD's concern with aid effectiveness after 2011's Fourth High-Level Forum (HLF4) in Busan. It has been a site for PPP promotion since the beginning, which is apparent in a description of the HLF4 by Mawdsley:

It seemed to many that [the private sector] kept to themselves, that they followed a series of sessions on the private sector development, and the private sector discussions focused on public-private partnerships rather than the myriad of other ways that the private sector could and does engage in “development.”⁶

In 2016, with the GPEDC's Second High-Level Meeting (HLM2) in Nairobi, the emphasis on PPPs has become stronger. The Nairobi Outcome document included special mention of PPPs in “Part Two: Our Shared Purpose.” Partner countries receiving support are committed to “promote public-private partnerships for decent work for women, migrants, people living with disabilities and other vulnerable groups working in the informal sector.”⁷

Given the tendency in PPPs to privilege dominant business actors, limit democratic ownership, diminish accountability to communities, and entail other negative social and environmental costs, this commitment bears a tenuous relationship to the principle of “mutual learning, mutual benefit and mutual accountability” described elsewhere in the document.⁸

As a share of ODA, support for PPPs has grown from US\$84.8 million in 2005 to US\$700.7 million in 2014 (measured in 2014 constant dollars). Of these PPP disbursements, five donors account for more than 85%—Belgium, Denmark, the Netherlands, the UK and the US. This remains a small share of ODA overall (1.3% of the five donors' ODA), but its continual growth provides some measure of the PPP promotion campaign. Most attention has been granted to social sectors (40% of ODA devoted to PPPs), in which PPPs tend to produce the most complications.⁹

6 Mawdsley 2014, 34.

7 GPEDC 2016, §64c.

8 GPEDC 2016, §5.

9 Tomlinson 2016, 194.

Regional PPP Promotion

United Nations Economic Commission for Europe¹⁰

The United Nations Economic Commission for Europe (UNECE) is one of the regional bodies under the Economic and Social Council (ECOSOC), which brings together 56 countries in the EU, non-EU Western and Eastern Europe, South-East Europe and the Commonwealth of Independent States, and North America—mostly developed countries. UNECE has been working on PPPs for more than 15 years. UNECE’s Committee on Innovation, Competitiveness and Public-Private Partnerships is tasked to work on PPPs.

In June 2014 (before a financing for development conference), UNECE began “acting on behalf of the UN system and other UN Regional Commissions” to produce international PPP standards.¹¹ The standards cover specific sectors and topics, and are intended to guide governments in PPP implementation. This work is supported by the “PPP Centre of Excellence” and the “Team of Specialists on PPPs.”

The PPP Centre of Excellence is the body charged with producing the PPP standards. It is comprised of “project teams” working on particular sets of standards, “specialist centres” that help in the preparation of the best practice guides, and a “Business Advisory Board” made up of private sector representatives.

The Team of Specialists on PPPs includes “government experts, in particular those working in national PPP units, as well as experts from the business community, relevant research and academic institutions and NGOs.”¹² It is supervised by a Bureau, which consists of 10 members, each representing a single country: the United States, Germany, Russia, Moldova, Morocco, the Netherlands, Belgium, Turkey, Canada and Japan.

The Bureau of the Team of Specialists approves proposals and draft standards coming from the PPP Centre of Excellence. Once endorsed by the Bureau, the draft standards have to be endorsed by the Team of Specialists itself. The last session took place in June 2015 in London, with over 150

¹⁰ This section has been adapted with slight changes from CSOs for Financing for Development 2015.

¹¹ Adamo 2014.

¹² UNECE 2007.

participants representing national government agencies, the private sector, academic institutions and international organizations in attendance, but where only 38 countries were represented. Most of the power lies with the Executive Board of the Committee on Innovation, Competitiveness and PPPs. This Board ultimately has to sign off draft standards that have been endorsed by the Team of Specialists on PPPs and its Bureau. It only consists of the US, EU, Russia and Belarus.¹³

The UNECE process has a clear problem of legitimacy and representation. The points above show that a selected group of UN member states makes key decisions: only 10 countries sit in the Bureau of the Team of Specialists, few countries are represented in the sessions of the Team of Specialists, and only four countries/regions are represented in the Executive Board of the Committee on Innovation, Competitiveness and PPPs. This contradicts the “inclusive, open and transparent discussion” on PPPs that UN Member States commit to in the Addis Ababa Action Agenda (paragraph 48).

Asian Development Bank

PPP is seen an important modality of private sector support and “Strategy 2020” emphasizes PPP promotion in all of the ADB’s core operations. “This approach is aligned with the Group of 20 perspective that multilateral development banks need to promote project financing in cooperation with the private sector, especially where partial or full cost recovery is possible.”¹⁴

The ADB’s extensive involvement with PPPs is based on four pillars that cover the entire PPP implementation process outlined above in “Implementation Process: Guided by Anti-Social Performance Standards.” These four pillars are as follows:

1. *Advocacy and capacity development:* Regional departments will play a leadership role in advocating for PPPs within their developing member country (DMC). Regional departments may partner with existing initiatives such as the Multilateral Public-Private Partnership

¹³ According to UNECE, the Committee also sends the standard for peer review to all UNECE members, CSOs, non-UNECE members, other UN agencies, World Bank Group, Multilateral Development Banks, and 65 focal points all over the world. Stakeholders can also share feedback and make suggestions to improve standards after adoption during a “maintenance period.”

¹⁴ Asian Development Bank 2012, 5.

for Infrastructure Capacity Development (MP3IC) and the Asia PPP Network

2. *Enabling environment:* Regional departments will strengthen assistance to DMCs to develop the overall enabling environment for PPPs
3. *Project development:* Regional departments will actively encourage PPP and enhance DMCs' abilities to carry out project identification and meet subsequent development needs
4. *Project financing:* ADB's Private Sector Operations Department will enhance its non-sovereign products and their application, and commercial co-financing to enable it to leverage assistance and catalyze change through greater private investment in the DMCs. Regional departments may offer sovereign products to support PPP financing.

The concrete practices by which the ADB plans to advance this agenda include:

- Incorporating the PPP development program and options in the country partnership strategy and country operations business plan
- Supporting capacity development, creating awareness and an enabling environment for PPPs
- Providing hands-on support for the development of PPP projects
- Creating an initial pipeline list of privately financed and PPP projects
- Structuring PPP projects with private sector financing and public sector financing (if needed).

Strategy 2020 prescribes efforts “to make fully private-financed projects, followed by PPPs, the preferred option before resorting to public (sovereign)-financed projects.” Yet, as discussed above in “Assessing Public-Private Partnerships,” public and private modalities of service/good delivery tend toward differing balances of priorities. Institutionalizing a preference for private-financed projects and PPPs also means the normalization of

business performance standards, rather than those that better reflect social concerns. The ADB is clearly conscious about the fact that its PPP promotion translates into placing business concerns over social concerns. It states that “PPP interventions should be informed by the overall goals for PSD [private sector development], as the two are integral.”¹⁵

Inter-American Development Bank

A number of Inter-American Development Bank Group (IDBG) documents discuss the importance of PPPs with regard to infrastructure and suggest possible roles for the IDBG promotion of them. A 2016 report from the IDBG Office of Evaluation and Oversight identifies the PPP promotion activities:

- IDBG provides PPP advisory assistance (both remunerated and informally)
- IDBG supports the implementation of PPP project cycle
- Cooperation between IDBG and public windows
- IDBG supports PPP policy reform dialogue with client country
- Cooperation/co-financing with other DFIs

These activities are then divided into PPP support categories, which are similar to those of the WBG and the ADB:

1. *Support to strengthen enabling environments*—“upstream” activities including policy reforms, capacity building and institutional strengthening
2. *PPP project preparation*—including project identification; feasibility studies; definition of procurement strategy (e.g., bid/auction); environmental, social and governance assessments (ESG); and design of PPP contracts

¹⁵ Asian Development Bank 2012, VI.

3. *PPP financing and implementation*—supporting final project cycle stages with legal, technical, market, environmental and social due diligence; providing finance, financial structuring, and closing; supervision and monitoring during construction and operations; and dealing with any PPP implementation issues

Speaking enthusiastically about the Bank's role at the CEO summit of the Americas, the World Trade Organization (WTO) and the OECD report:

The Inter-American Development Bank has spearheaded an initiative to promote public-private dialogue between governments and the private sector in Latin America through special high-level summits organized in collaboration with host governments, where participants discuss the dynamics and future prospects of trade and investment opportunities within Latin America. The initial CEO Summit of the Americas, organized in collaboration with the Colombian government in Cartagena in 2012, attracted approximately 700 business leaders and 12 heads of state, who exchanged views and ideas with one another in a series of interactive panel discussions. The follow-up 2015 Summit in Panama City reinforced its role as a platform for high-level exchange on regional trade and investment issues, and broadened the scope of the dialogue to also include priorities for the social and economic development of the Americas.¹⁶

¹⁶ OECD/WTO 2015, 222.

CHAPTER 3

Conclusion: Safeguarding Democracy and Accountability in the Face of Public-Private Partnerships

No Patchwork Solutions

In 2015, the WBG released a draft of its Framework for Disclosure in Public-Private Partnership for public comment. CSOs took the opportunity to raise concerns. The exchanges between CSO representatives and the WBG (see Table 2) exposed the limit of patchwork solutions, of which this Framework is an example, along with the European Commission's 2003 Guidelines for Successful Public-Private Partnerships.

It is clear from the WBG reactions to CSO concerns—which included social and environmental impacts, especially poverty reduction, respect for human rights and inclusiveness—that addressing these concerns requires action far beyond the scope of those proposed by guidelines and frameworks of this sort.

Public Sector Leadership¹

In many countries, whether North or South, the state has and still does efficiently and accountably provide public goods and services to its population

¹ Adapted from IBON International 2014.

Table 2. Selected Exchanges from the Public Consultation Concerning the World Bank Group's PPP Disclosure Framework

| CSO concern: pro-poor development impact | WBG point-by-point reaction |
|---|--|
| <ol style="list-style-type: none"> 1. An important consideration for public and users of PPP services is ongoing disclosure of expected and actual development impact. The framework must explicitly recommend such information is disclosed, and suggest criteria for evaluating pro-poor impact. In particular, projected and actual information about the number of poor people reached; the relative breakdown of beneficiaries by income quintile, gender, rural-urban, etc.; and the number of people displaced are of significant relevance to the public. The guidelines must also recommend disclosure of the amount of additional funding generated by PPPs. 2. Since evidence on PPPs' impact is still emerging, governments and the private sector should invest in rigorous research and evaluation mechanisms to assess PPPs' impacts, including the emphasis on a theory of change regarding their impact on poverty—and disclose this information. 3. To ensure that all aspects of PPP arrangements are inclusive and take into account the diversity of users and affected communities, we feel that the guidelines should strongly recommend proactive disclosure to local communities and marginalized groups, and invite their engagement with PPP design and implementation. | <ol style="list-style-type: none"> 1. The framework recommends disclosure of performance evaluation studies. It also recommends disclosure of the financing and funding of the PPP. 2. This is a very important area related to disclosure of information. It is expected that with better disclosure, there will be better scope for research and evaluation of the impact of projects on poverty and other economic indicators. 3. The Framework recommends disclosure to all. The most commonly used method of disclosure that has the widest reach is through the Internet. However, in many developing countries, Internet density is low. Although the Framework does not go into the technology of disclosure in a substantive way, the limitations are understood and we will mention in the introductory part of the Framework the desirability of disclosure to specific affected communities in a more direct way. |

| CSO concern: safeguards for social, environmental and human rights | WBG point-by-point reaction |
|---|--|
| <ol style="list-style-type: none"> 1. The framework currently lacks a thorough section on why and how governments should continually disclose information and promote disclosure of information about E&S risk assessment and impact. We think the proposition to “carry out a preliminary examination of the social and environmental aspects of the project and identify and disclose potential deal-breakers or challenges as early as possible” deserves more emphasis than briefly mentioning in the footnote of the template. 2. Bidders should be held accountable for any anticipated social and environmental risks associated with a PPP project before entering into contracts, and they should also be held accountable for disclosure of ongoing E&S risk assessment information once contracts are signed. 3. Disclosure of E&S risk assessment and impact is also of interest to CSOs, local communities, and users of PPP services, which is not aptly mentioned in the document. The proposed framework does not effectively describe why and how users of PPP services and the general public would benefit from disclosure, and thus, also appears to overlook the fact that members of the general public are directly and indirectly affected by any PPP arrangement. | <ol style="list-style-type: none"> 1. The framework recommends disclosure of performance evaluation studies. It also recommends disclosure of the financing and funding of the PPP. 2. This is a very important area related to disclosure of information. It is expected that with better disclosure, there will be better scope for research and evaluation of the impact of projects on poverty and other economic indicators. 3. The Framework recommends disclosure to all. The most commonly used method of disclosure that has the widest reach is through the Internet. However, in many developing countries, Internet density is low. Although the Framework does not go into the technology of disclosure in a substantive way, the limitations are understood and we will mention in the introductory part of the Framework the desirability of disclosure to specific affected communities in a more direct way. |

| CSO concern: safeguards for social, environmental and human rights | WBG point-by-point reaction |
|--|------------------------------------|
| <p>4. In order to demonstrate its concern for members of the public and users of PPP services, the guideline needs to: (1) state that the public will be interested in disclosure of all information in the template, including but not limited to risks related to laws and regulatory frameworks, E&S risks, tariffs, pricing strategy of PPP services, and value-for-money; (2) elaborate on the benefits of disclosure of the public and affected stakeholders; (3) articulate how the information will be used to inform decisions on PPPs; and (4) recommend that governments disclose how E&S information was integrated into cost-benefit analyses. It would even help to mention examples from jurisdictions in which disclosure of specific information was useful to different members of the public.</p> | |

Source: World Bank Group 2016b.

without the need for the intervention of the private sector. In doing so, the state provides jobs for its citizens. Development policy and development aid should rediscover the strategic value and substantial experience of state-owned enterprises, derive lessons, and draw best practices.

Ensuring universal access to basic public services in developing countries should remain the central responsibility of their governments, as part of their human rights duty to their citizenry, and should not be left to the private sector alone.

In many developing countries where privatization and PPPs have been imposed through aid and loan conditionalities, and have been assessed as problematic, such arrangements should be modified in favor of more public control or revert outright to their original state-owned and -operated character.

Partnerships between the state and the private sector should not undermine the state's principal role of steering national development—in coordination with CSOs and other development actors—and being an accountable provider of essential public goods and services.

Regulatory Mechanisms²

While recognizing that the private sector has positive potential in development, the state should exercise its regulatory functions and accountability mechanisms, to ensure that these positive roles are maximized and any negative impacts promptly addressed.

Already existing international and domestic policy and regulatory standards must be enforced to ensure that the private sector, especially foreign business firms, adheres to the guidelines on business and human rights, including those established in the UN Code of Conduct for Transnational Corporations. Initiatives towards the establishment of international guidelines for development effectiveness of private sector actors are crucial. These must focus precisely on those areas that, for example, the WBG framework fails to address: pro-poor development and safeguards for social, environmental and human rights. This may mean that PPPs in areas that are particularly problematic for these rights must be banned outright, as has recently occurred in Slovenia with regard to water provision, which the Slovenian state chose to protect as a human right (see *Box 10*).

Transparency and Accountability³

High standards for transparency and accountability must apply equally (if not more so) to private sector engagements for development. These engagements must involve broader citizen participation in development decision-making, better data reporting and dissemination, and ampler public access to information about aid and other public resources connected to PPP projects.

² Ibid.

³ Ibid.

Box 10. Trade Unions and Civil Society Welcome the Introduction of the Human Right to Water into the Constitution of Slovenia

November 18, 2016

Last night the National Assembly of Slovenia passed an amendment to its Constitution to include a new article that recognizes the Human Right to Water. The amendment affirms water should be treated as a public good managed by the state, not as a commodity, and that drinking water must be supplied by the public sector in a non-for-profit basis. It is a great success for Slovenian activists and people.

“Citizens from across the EU and Europe have successfully mobilized to have the right to water and sanitation recognized as a human right – as decided by the United Nations – and have this put into EU law. The European Commission continues to ignore nearly two million voices of the first-ever successful European Citizens Initiative. Commissioner Vella should listen to citizens and follow the Slovenian example as soon as possible,” said Jan Willem Goudriaan, EPSU General Secretary.

Water is a controversial topic in Slovenia, as foreign companies from the food and beverage industry are buying rights to a large amount of local water resources. The Slovenian government has raised concerns about the impacts of free trade agreements like CETA (between Canada and the European Union) in its capacity to control and regulate these resources (1).

“Trade agreements and investor-state dispute settlement mechanisms can limit the ability of states to take back public control over water resources when foreign investors are involved, as it is the case in Slovenia. To guarantee the right to water and the control over this key resource, the European and the Slovenian Parliaments should reject CETA when it comes to a vote in the coming months,” said David Sánchez, Director of Food & Water Europe.

The amendment is the result of a citizens’ initiative that collected 51.000 signatures to propose a constitutional amendment (2).

We welcome the introduction of the human right to water in the Slovenian constitution, as the great result of a citizens’ initiative. Now civil society should be vigilant to guarantee a democratic and transparent management of the integrated water cycle founded in the participation of citizens and workers,” said Jutta Schütz, spokesperson at the European Water Movement.

Notes:

(1) *The Slovenian government raised concerns about the ambiguity of terms like “commercial use of a water source” in CETA, how the agreement applies to existing water rights and the future ability of national governments to put limits on concessions already granted without being subject to claim under ICS, among others. The document can be found here: http://europeanwater.org/images/pdf/Slovenia-questions-on-Water_14-9-2016.pdf.*

(2) *More information about this citizen’s initiative can be found at their website: <http://voda.svoboda.si/>.*

Source: Reproduced from European Public Service Union 2016.

Ensuring Additionality⁴

Development partners should agree on priority outcomes relating to eradication of poverty and inequalities, and ensure that private sector initiatives greatly contribute to such outcomes without being hindered by excessive consideration of profitability and risk. Public investments to the private sector should translate into priority outcomes and concrete results in terms of sustainable livelihoods, creation of decent work, observance of labor rights and standards, and general improvement of social and environmental conditions. This goes hand-in-hand with support for small-and-medium enterprises and developing domestic industries so as to increase the capacity for self-reliance and stability of national economies.

Development partners should agree on indicators that can serve as accurate tools to assess the financial requirements and other costs needed to meet a broad range of development concerns. They should also agree on eligibility criteria that measure the track records of various private sector actors in delivering development results.

⁴ Ibid.

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Public-private partnerships (PPPs) have gained popularity especially since the failure of privatization programs initiated by the World Bank, the International Monetary Fund (IMF), and other bi- and multilateral institutions. Yet, in some ways, they pose an even greater challenge to sustainable and people-oriented development.

Rather than privatization outright, PPPs are privatization with added benefits. Not only does private business secure profits, these profits as well as potential risks are subsidized by the state. PPP contracts establish flows of public resources into private hands. PPPs, furthermore, reorient government priorities in ways that undermine democratic ownership over development.

The current trend towards the use of development resources for PPP implementation must be replaced with greater and more democratic public sector leadership, and the enforcement of regulatory mechanisms—including those concerned with transparency and accountability—that ensure the development contribution of private sector actors.