International PPP Centre of Excellence

Draft Guiding Principles on Good Governance in People-First Public-Private Partnerships for the UN Sustainable Development Goals

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on Good Governance in People-First Public-Private Partnerships (PPPs)
for
the UN Sustainable Development Goals (SDGs)

Avant propos

The interest generated by the role of PPPs in the implementation of the Sustainable Development Goals (SDGs) is considerable. SDG 17, for example, calls for the revitalization of the global partnership for sustainable development and expressly for: "Partnerships: public, public-private, civil society partnerships".[1] Many UN agencies, reflecting this interest, are now giving "innovative partnerships" the highest priority [2] and the Addis Ababa Action Agenda (AAAA) itself (in paragraph 48) calls for the elaboration of "Guidelines" on PPPs.

Accordingly, in view of this interest and request the following document sets out some guiding principles for what has been termed "People First Public Private Partnerships". The ambition and challenges contained in the UN 2030 Agenda for Sustainable Development (2030 Agenda) are enormous and a new model of PPP is needed. The Guiding Principles found below are therefore a departure from those 7 principles of Good Governance in PPPs that were agreed in 2008 and published in the UNECE Guidebook on Promoting Good Governance in PPPs.

The purposes of the guiding principles are the following:

1. To describe people first PPP as the new generation, need to meet the UN SDGs;
2. To outline the new practices and institutions that are needed to usher in this new generation of people first PPPs; and
3. To show ways in which the people first PPPs can be mainstreamed and their impact scaled up.

The Guiding Principles are organized as follows:

- Part I describes the partnerships needed for the 2030 Agenda;
- Part II outlines the Guiding Principles necessary to achieve the new partnerships; and
- Part III describes the ways in which people first PPPs can be mainstreamed so that their impact can be scaled up.

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[1] Other SDGs are relevant too: Goals 9, 7, 6 but particularly Goal 8 on inclusive and sustainable economic growth, full and productive employment and decent work for all (United Nations, 2015).
[2] Chief of the United Nations Development Programme (UNDP) called for new partnerships and innovative joint initiatives as a gateway to development progress (UNDP, 2013).

Part I - The UN 2030 Agenda for Sustainable Development and People-First PPPs

UN 2030 Agenda for Sustainable Development

The new 2030 Agenda agreed in 2015 and to be implemented up until 2030 is extremely ambitious and is nothing less than a manifesto for the future of the planet. Its aims are to eradicate extreme poverty in all its forms everywhere, to protect the planet for future generations once and for all and ensure prosperity for all as part of a new sustainable development agenda. Each of the 17 Goals has specific targets to be achieved over the next 14 years.

These 17 Goals build on the success of the Millennium Development Goals, while including new challenges such as the need to mitigate the risks of climate change, tackle global economic inequality, achieve gender equality and women's empowerment, bring about food security and protection of the ecosystem etc. They are addressed to all countries, and there is a call for implementation through the efforts of all: governments, the private sector and civil society.

One of the features of the United Nations Sustainable Development Goals (SDGs), adopted in September 2015, is infrastructure and public services. The leitmotif is not just to improve access to essential services in order to end poverty, but even more, to achieve universal access to these services by every person on the planet. In SDG 3, for example, there is a commitment to achieving access to universal health care. And similar commitments to making education available to all, safe and clean water and sanitation and give access to renewable energy and so on. This focus is logical as the limited access to these services critically hold back development and creates poverty. For example, in Africa limited access to electricity.

The financing required to achieve these ambitious goals is formidable. To meet these targets, an estimated USD 11.5 trillion will be required for meeting the goals in the entire world and for low and middle income countries, an estimated sum on an annual basis of USD 1.4 trillion will be needed. Investment will be required in health, education, agriculture and food security as well as transport systems to boost connectivity and in smart services for those living in the world's cities. To this end the goals call for a massive mobilisation of new investments in infrastructure and essential services – a new carbon future with a focus on renewables and the application of new technologies for wind, solar etc. and a series of investments in transport and trade facilitation.

A substantial amount of funding will come from public sources. At the same time, the private sector is envisaged to play a critical role as well to fill the gap. In the water sector, the current investment levels are just a third of what is needed. This funding by the private sector is not just to meet the shortfall in financing to achieve these social and environmental goals but also to ensure that the services are effectively delivered and reach their targets, notably the citizens and vulnerable groups in poor countries.

SDG 17 and the importance of partnerships

The preferred implementation vehicle to achieve the goals is set out in SDG 17 entitled the 'Revitalisation of the Partnership for Sustainable Development' where different forms of partnerships are encouraged and specifiable: public, public private; and civil society. Also encouraged are what is termed as 'multi stakeholder' partnerships[3]. This is the first time that private sector has been called upon to contribute other achievement of UN Goals. Indeed, the previous MDGs did not mention partnerships at all.

There is no strict definition of all the partnerships mentioned. As it concerns the term, PPPs are long term legal contracts, sometimes up to thirty years and longer, where a public infrastructure asset or service is provided by a private sector partner and often includes aspects of project financing. PPPs can be a diverse range of public private contractual arrangements; however, the most common forms include:

- A global contract or series of contracts for the Design, Financing, Construction and Operation of Public Building or Public Infrastructure which is the basis of a public service. This type of partnership can include Privately Financed Infrastructure (PFI) arrangements and PPP availability payment structures and payment is primarily linked to the construction and operation of the infrastructure.

- A global contract or series of contracts where the private sector is delegated public authority and may develop or redevelop infrastructure and/or services, however performance of the private partner is paid primarily by users, and upon satisfactory of delivery of those services to users, over the years. These delegated authority partnerships can include Concession arrangements and Lease or Delegation of Authority agreements in the French tradition.

These two main PPP "families", also have distinctive features in terms of their fiscal impacts and on the scope of service delivery.

(PFI/PPP availability payment)

Typified by recovery of the investment and associated operation costs incurred by the private partner from the public budget over the term.

More or less 2,000 projects
More or less €200 billion total investment

(Concession and delegation of authority PPPs)

Typified by recovery of the investment and associated operation costs incurred by the private partner from the individual users of the services (including sometimes an element of subsidy)

More or less 25,000 projects
More or less €1,000 billion total investment

[3] Multi-stakeholder partnerships are joint projects, alliances, or collective objectives that further shared and individual goals and utilize a combination of resources and capabilities from governments, private sector, civil society, not for profit organizations and other stakeholders, especially the beneficiaries, consumer groups, etc.

A new generation of PPP – People-First

Arguably, the PPP model can be adapted to suit the new challenges but as can be seen from the different perspectives in the Box below, PPP has its limits. And a strong case can be made for the promotion of a new type of PPP arrangements with a more proactive private sector promoting the process: What is needed is a new generation of PPPs, a new approach to PPP and a new mentality:

- The new generation of "PPPs for SDGs" will need to become far more social in its outcomes and motivations – focusing less on value for money (vfm) and more on jobs, vulnerable groups and women's empowerment etc;

- The private sector will need to be highly sensitive to doing business in new markets where up until now private investment in infrastructure has been scarce;

- The private sector will in entering new markets, have to accept a different risk reward ratio and move away from profit maximisation to a longer term perspective of developing the markets for future returns;

- The private sector will have to work more closely with civil society to deliver projects and build local capacity;

- The Multilateral Development Banks (MDBs) will also have to play a new role in supporting this new type of PPPs. MDBs are indeed essential for the new generation of PPPs to emerge for the UN SDGs;

- Civil Society also should play a critical role in PPPs and all partnerships. Trade unions, environmentalists, academics and other organizations are strongly involved in many partnerships in developing countries and transition economies. The SDG 17 indeed expressly calls for "civil society partnerships" to implement the UN SDGs. Moreover, in low income countries where there is weak governance and the public sector lacks capacity, civil society play already a major role in the delivery of infrastructure projects.

Such a transformation envisaged through PPP needs a 'rebranding' of PPP so that in the design of projects, people come first: hence the term 'people first PPPs' arguably is best to convey this new sense.

Box: Different perspectives on PPPs

PPP traditionally attracts huge interest and some controversy. Here is a collection of some perspectives.

- PPP can provide better value for money from infrastructure, by exploiting the efficiency and innovative potential of a competitive private sector to either costs, or achieve a better quality ratio (Public-Private Infrastructure Advisory Facility/PPIAF, 2009)

- The private sector may not take interest in PPP project due to perceived high risks or may lack technical, financial or managerial capacity to implement the project (UN ESCAP, 2011)

- PPPs are creating diversification in the economy by making the country more competitive in terms of its facilitating infrastructure base as well as giving a boost to its business and industry associated with infrastructure development (World Bank, 2016)

- PPP transactions can be classified as off the public sector's balance sheet where majority of risks of the transaction will have been transferred to the private sector (PWC, 2005)

- PPPs are supplementing limited public sector capacities to meet the growing demand for infrastructure development is a potential benefit of the PPP (World Bank, 2016)

- PPPs can improve projects on-time and on-budget (Commission of the European Communities, 2005)

- PPPs are used to conceal public borrowing, while providing long-term state guarantees for profits to private companies. Private sector corporations must maximise profits if they are to survive. This is fundamentally incompatible with protecting the environment and ensuring universal access to quality public services. (Public Service International Research Unit – PSIRU Report, 2009)

- The evidence suggests that PPPs have often tended to be more expensive than the alternative of public procurement while in a number of instances they have failed to deliver the envisaged gains in quality of service provision, including its efficiency, coverage and development impact (UN/DESA Working Papers, 2016)

- Government responsibility continues – citizens will continue to hold the government accountable for quality of utility services. The government will also need to retain sufficient expertise, whether the implementing agency and/ or via a regulatory body, to be able to understand the PPP arrangements, to carry out its own obligations under the PPP agreement and to monitor performance of the private sector and enforce its obligations (World Bank, 2016)

- PPPs change the nature of public services and investments, worsen the fiscal problems against which they are offered as solutions, expose fundamental faults in transparency and democratic accountability, and provide less efficient and costlier operations than they claim (The CSO Financing for Development Group, 2016)

- PPP is not only an innovation of financing model, but also a design of regime, as well as a catalyst of promoting market reform in a larger perspective (An Wang, CIECC, 2016)

People first PPPs defined:

People first PPPs can be grouped under the following categorizations:

- Access and social justice
- Resilience and a green economy
- Economic effectiveness
- Replicability
- Stakeholder engagement

In detail these can be defined as follows:

- **Increasing access** and **promoting social (equity) justice**, this means that access to essential services, such as water and sanitation, energy etc. should be increased to people, especially to the socially and economically vulnerable, furthermore, people-first PPPs should aim to promote social justice and making essential services accessible without restriction on any grounds, e.g. race, creed etc. to all;
- **Developing a resilient infrastructure** and improving **environmental sustainability**, cutting CO2 emissions to move to a green economy;
- Improving project **economic effectiveness**: projects must be successful, achieve value for money and have a measurable impact by removing a barrier or creating a new mechanism by integrating groups into the global market place;
- **Be replicable** so that PPP project can be scaled up and achieve the transformational impact required by the 2030 Agenda. This criterion also needs to take into account whether the local staff and governments received necessary training to do similar projects going forward; and
- **Engaging all stakeholders** either directly involved in the PPP project or might be affected directly or indirectly in the short and/or long run.

And these categories of people first PPPs have specific goals and can be illustrated already by some case studies drawn from the UNECE Compendium of People First PPPs. The case studies are presented below under four sectors: (i) Water, (ii) Health, (iii) Renewable energy, and (iv) Smart and sustainable cities.

Water

Armenia

Description: Poor quality water and limited supply plagued the country until a series of PPPs increased supply, boosted the quality and lowered the price.

Outcome: From having water for just three hours per day the PPP scheme has increased water to almost 24 hours a day, at the same time reducing the risk of illness caused by poor quality water.

Evaluation: Many lessons have been learned during the 15-years of partnership between the public and private sectors. In particular, PPPs should be a part of a broader sector reform process, rather than being part of an isolated undertaking. The implementation of PPP contracts requires a strong political consensus and a continuous support from the government.

Health

Lesotho

Description: Women in Lesotho had to endure a disproportionately high number of their children dying at birth because of the lack of modern facilities. The Princess Elizabeth hospital was run down and modern treatment meant travelling to Johannesburg or Pretoria. The Lesotho Government realising that a bold move was needed and lacking alternatives in terms of increasing taxation to pay for services, established a PPP with a South African company. It covered not just the refitting of the building but the management of the hospital as well.

Outcome: The PPP brought modern curative services to all citizens where few had existed before. It increased efficiency. Women had been involved in the design of the service and as a result the maternal services greatly improved and child infant mortality began to decline.

Evaluation: While the project is criticized for taking a large part of the total health budget – the figures are a matter for discussion – the people first principle – especially in case of women and their new born children is undoubtedly respected in this project. The project improved access to essential services. In addition, the preventative services in primary care also received a boost from this hospital PPP as funding was generated under the terms of the agreement to set up four clinics in remote rural areas.

Philippines / Bangladesh

Description: National Kidney and Transplant Institute (NKTI) in the Philippines and the National Institute of Kidney Diseases and Urology (NIKDU) in Bangladesh are virtually identical projects: Bangladesh followed the example of its counterparts in introducing through a PPP new dialysis machines for the treatment of renal failure. The problem in both countries was that neither could afford the latest machines and this was having severe repercussion for the health of patients who were sometimes dying as a result of lack of modern facilities to treat their condition.

Outcome: Through a relatively simple and straightforward lease contract between the public entity and the foreign private technology provider, patients were provided with a vastly improved quality of life and a service that helped to save lives. The greater efficiency in the service in the Philippines attracted more patients and more revenues, which were used to pay for the care of patients who could not afford to pay.

Evaluation: The project improved access to an essential healthcare service and met the access criteria. The lesson is to develop standard models that can be replicated easily in low income countries so that real impact can be achieved.

Renewable energy

Brazil, the Amazon region

Description: Many indigenous tribes lacked electricity in remote areas of the Amazon region. Existing social services like education were hampered by schools having to close when it became dark. Cooking was difficult and dangerous as there was over reliance on biomass that caused dangerous smoke inhalation. A scheme supported by the Government (Ministero de Minas e Energia and National Electric Agency (ANEEL), setting clear targets and with local NGOs and Iberdrola enterprise launched a “Luz para Todoz” programme to provide light for all.

Outcome: Within the space of a few years the progamme had extended light to over a million people including marginal and vulnerable groups, alleviating poverty and liberating also women from some of the daily chores of wood gathering. According to the latest data published, the program has catered for the needs of 3,24 million families in rural Brazil, thereby enabling more than 15,6 million people to feel the benefits of having electricity in their households.

Evaluation: “Luz para Todoz” program has important socio-economic and environmental impact bringing clear benefits for all the communities where this program has been developed. However, the project is seen more like a public program, rather than a public-private partnership, as it was mainly financed by the government and executed by a private sector.

Tajikistan

Description: The eastern part of Tajikistan in Central Asia suffered severe outages of power throughout the day causing huge inconvenience to governments, businesses and social services. The people were however too poor to pay for electricity at market prices and there was no incentive for companies to take on the challenge of providing services to remote areas of the country. The Government working with the Aga Khan Fund, advised by the ITC of the World Bank, IDA and IFC created the partnership with a private company and the Swiss Economic Cooperation Office providing a cash subsidy to cover the cost of electricity for those unable to meet the new charges.

Outcome: Within a few years the PPP had ended power outages ensuring 24 hour and seven days a week supply to even the most remote areas of the country. This has also positively affected the work of the small and medium enterprises who can run their business throughout the whole year.

Evaluation: The project can be easily replicated. The PPP has been extended in the western part of the country and recently to Afghanistan brining power to poor people in rural areas without power. The project is evidence of a long-term partnership that created a shared value for numerous direct and indirect stakeholders, which also has contributed to achieving the UN SDGs. It meets all five criteria in the definition of the People-first PPP.

Poland

Description: Everbright of China and Novago of Poland joined forces in August 2016 to introduce one of the first wastes to energy projects in Poland and the largest. Waste to energy is by far the cleaner solution to dealing with waste than landfills. The EU for one, has instigated a programme to phase out landfills. Yet, up till now the extra cost associated with such technology has been a barrier to the wider use of the technology. Now through investment in new technologies, companies like Everbright are reducing the cost considerably and making them more affordable to countries, including the low income countries and even now in Africa.

Evaluation: These models need be further disseminated and used which will be good news for the future of the planet.

Ghana

Description: The Republic of Ghana was suffering from severe national power shortages, across major industries and homes, which were major constraint with direct impact on quality of life and economic growth. However, the financing contracts prevented the Government of Ghana from exclusively financing its public infrastructure. AFC, a development financier focused on economic infrastructure for Africa, led the development and financing of a 340MW multi-fuel, Combined-Cycle Gas Turbine Plant, to be operational by Q1 of 2018.

Outcome: The Cenpower Generation Company Limited, an SPV, in Ghana significantly boosted power supply by 13%, provided up to 600 jobs, contributing to the local economy and employment opportunities – especially as 90% of the labor personnel were sourced from within 30 miles' radius of the company.

Evaluation: The project was structured pursuant to the international project finance standards, ensuring risks are allocated to parties with the capacity and best incentive to bear them. The Combined-Cycle Gas Turbine Plant will be amongst Ghana's most fuel-efficient thermal power stations. Most importantly, the Cenpower deal presents an innovative blueprint for future power deals in Africa and shows the potential for collaboration and implementation of deals in the energy sector, which is most vital for the continent's economic development and growth. The project meets all the criteria contained in the definition of a People-first PPP.

Smart and sustainable cities

China

Description: Faced with rapid urbanization and associated problems of high rates of air pollution, China has introduced smart green cities through PPPs. For example on the outskirts of Beijing a private company now operates as a PPP "green city"[4] having been given the land by the state, to build homes and factories, promote investment in infrastructure and public services.

[4] The PPP model is the result of cooperation between The China Fortune Land Development Co., Ltd., (CFLD) and Guan County of Hebei Province (Southern part of Beijing)

Outcome: Today, Guan City has more than 400 manufacturing companies attracted to the enhanced and pleasant surroundings, providing jobs for more than 100,000 people, as well as homes, with top class public facilities and services, such as schools, hospitals and sport complexes.

Evaluation: The smart city concept is being developed for export to other countries notably Indonesia and India. The project meets all the criteria contained in the definition of a People-first PPP.

Some general conclusions for designing the governance to implement people first PPPs

These are some selected case studies and more will follow: Governments, the private sector and civil society will be invited to submit examples of People First PPPs that can be used for capacity building and motivational support for agencies getting started.

The task is not only to start projects but also to drive a momentum forward in countries for a general change in strategy and thinking towards PPP: both for low income countries and for countries with mature PPP programmes.

The projects above are good exemplars of people first PPPs, either meeting all or many of the criteria mentioned at the beginning of the section. There is though within countries still much to be done to make People first PPP projects mainstream. Transformational PPPs are still uncommon and far too rare. A programme of support is also needed to support the implementation of People first PPP.

Therefore, it is also important to mobilize support within countries by launching people first PPPs based on reforms and new people first approaches (such as holding round-table consultations with participation of champions from Governments , IFIs, NGOs, advisers, private sector, to create advisory reform support panels within a country or group of countries at a regional level , online sub sectors such as on water support and training networks, and to hold more possibilities for extensive sharing of national experiences in promoting people first PPPs , etc..

Part II. The Guiding principles for People-First PPPs for the UN SDGs

Introduction

The importance of a strong more resilient infrastructure for the success of the UN SDGs cannot be over emphasized: to overcome poverty, to secure the future of the planet against climate change and to build a more prosperous economy – People, Planet and Prosperity. It is furthermore indisputable that there is a close correlation between a robust and resilient infrastructure and economic growth; and hence the absence of sufficient investment in infrastructure services needs to be overcome if the UNSDGs are to be achieved. The infrastructure gap is keenly felt in low income countries and it is calculated by most sources as being upwards of several trillion USD per annum.

At the same time, there is a consensus that the challenge is not necessarily the lack of funding – the available finance in capital markets around the world is of a huge scale – rather it is the lack of a pipeline of bankable projects. People first PPPs are thus high on the agenda: to create a world where poverty is eradicated and where private companies can partner with public utilities and earn sufficient returns while promoting social goods.

Defining People first PPPs

This section turns now to identifying the guiding principles for good governance in pursuit of both social goods and reasonable returns on investment in the form of people first PPPs. These are defined above in general terms with overall characteristics as having:

- Least impact on the public budget (as low income countries have not the stock of tax payers' money which richer countries have);
- A transformational impact (to respond to the scope and scale of the ambition contained in the UNSDGs); and
- A focus on essential public services (whose availability is critical for eradicating poverty)[5].

Specifically, as it concerns the project itself, people first PPPs:

- promote access to services and social justice;
- have the quality of being fairly easily replicable, thereby scaling up impact and promoting transformative change;
- contribute to environmental sustainability and a resilient infrastructure,
- include in their design stakeholder participation; and
- are economically effective, successful and of high value.

All People first PPPs have either one or all of such characteristics.

The following section sets out first the overall principles that are necessary for People first PPPs and then the specific ones for each of the five criteria mentioned above.
These principles and recommendations are addressed to all stakeholders – governments, private sector and civil society.

[5] L'approche des PPP promue par le centre d'Excellence, Bonnes Pratiques, Lois et Institutions, Paris France

Overall considerations

The UNSDGS are a transformative action agenda that require integrated solutions at multiple levels – local, regional, national and international. It is above all a program of action and this must be borne in mind in the following recommendations:

(i) A central infrastructure agency to supervise people first PPPs

Governance challenge: there are little institutional discussions within countries on the future of infrastructure and strategic ways of its development. There is also often a lack of joined up decision taking within governments on addressing infrastructure challenges.

Recommendation

A single body or highly centralized and coordinated effort, with the adoption of the UN SDGs, now needs to be established. It should have the remit for promoting and taking decisions with respect to people-first PPPs for the UN SDGs. Such a body or effort should consist of representatives of all stakeholders and would set targets and time-lines for achieving the same.

Much has been talked about the need for collaboration between all stakeholders but the precise model for such collaboration needs to be elaborated. Suffice it to mention that meetings of the body to be created, should not consist of conferences but rather be carefully prepared meetings, identifying the challenges, the points of views of different groups and follow up programmes and the launching of action plans.

An overall policy framework is also necessary. PPPs are not self-contained mechanisms for delivering infrastructure assets and/or services, so enabling them will require creating market conditions for their demands, as well as the supply chains for their delivery. That means high-level actions within the government and its institutions, as well as bottom up activities at the subnational level: local, regional and transnational communities.

Such a body or effort should also be responsible for leadership, mobilization and communication; it should for example, prepare a ‘value proposition’ around campaigns for people first PPPs for UNSDGs in order to attract the largest amount of participants from all stakeholders in support of this programme.

One of the first tasks to be done by stakeholders in such an effort might be to bring together Government, private sector and civil society to discuss People first projects and the priorities for action; then together to discuss the nature of the skills needed. This would then be followed up by targeted capacity building with the involvement of all stakeholders.

Governments, the private sector and civil society should declare their support of people first PPPs for the UN SDG’s on their websites and in their reports. They should use the people first PPP model as benchmarks for alleviating poverty and improving the environment to evaluate the added value of proposed projects.

(ii) Business model innovations

Policy makers at different levels (including local authorities, national and international levels) should provide incentives for and facilitate the development of business model innovations, flexible and open arrangements.

At national level, policy makers can request the introduction of a business model innovation clause in PPPs to include local or marginalised people/stakeholders. Local authorities can build local capacity in environmental and social entrepreneurship. This can take the form of support for social and environmental initiatives or cooperation with PPP companies in meeting local needs. Business model innovations often have an element of experimentation (the freedom to deviate from business-as-usual) and this can be facilitated at multiple levels (including by regulators, financiers etc.).

Innovative Business models will use new processes for the creation and capture of value. This for example could include the use of open book arrangements between different suppliers in the PPP supply chain; the introduction of social innovations (such as local environmental and social groups/partnerships) etc.

For example, a newly built school or hospital could include the development of/ or the integration within a local supply network (for heat and electricity) which creates direct links with local energy users, local energy and heat sources (such a geothermal, renewables like wind and solar, or waste to energy facilities) and results in arrangements for greater environmental benefits (less carbon emissions) and social benefits (cheaper running costs in the long run; greater participation of users in balancing the network etc.).

(iii) Developing the appropriate legal and regulatory framework [6]

Legal impediments and uncertainties regarding the public-private partnership model affect both the public and the private sectors. The focus must be on establishing a legal framework and regulations that are characterized by simplicity, integrity, accountability and certainty, while providing guidance, predictability, and enforcement during the implementation of transformation strategies.[7] Moreover, developing a mechanism to involve relevant stakeholders across urban domains in the regulation formulation process will help the move towards a practical design of legal and regulatory frameworks.

<u>Specific recommendations for specific criteria for people-first PPPs for UNSDGs</u>

(i) Improving access and social (equity) justice

Governance challenge: The UNSDGs brings, almost for the first time, the word ‘social justice ‘together with PPP. Accordingly, adjustments need to be made to expand the PPP model in this direction. The interests of the poor for example, need to be taken into account in People first policy, law and institutions:

Challenge: need to protect the poor.

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[6] For a full description of the building blocks needed to create a legal and regulatory framework for PPP concessions see the <u>International Centre on Law, Policy and Institutions</u>, Paris France.
[7] Legal framework for PPPs WEF submission to Habitat III October 2016

(a) Affordability: Governments should recognize that all citizens must have their rights to essential services protected. This will mean that in these new types of projects in subsectors such as water and sanitation, electricity distribution, and rural electrification should include a component of subsidy in order to achieve threshold rates of return required by the private sector.

Challenge: Need to protect the poor as well as the position of low income countries – where private companies seek sometimes to earn high returns in compensations for the perceived high risks of investing in such countries

(b) Specific clauses in PPP contract:

To counter the risk of private sector making too much money from projects that deliver essential public services, it is proposed that the concession contract should contain a clause limiting the amount of profits a private company can earn from the project.

(c) New Approaches to allocating risk in PPP contract agreements

Challenge: The current behavior of the private sector when entering high risk economies is to seek a high return commensurate with such risks.

Recommendations: The parties to the project need to get away from seeing risk allocation as a part of a negotiated settlement and rather as a project involving a social good with the overall objective of delivery and achievement that is a concept of a "value-sharing".

(ii) Replicability

(a) Standards

Challenge: There is an urgency to accelerate the development of sustainable infrastructure projects and to scale them up. In order for this to be achieved standardization in PPP is a high priority. Standards are especially important for small and medium sized enterprises (SMEs) in sectors such as renewable energy, where the aim is to reduce the time of project preparation and due diligence and lower transaction costs. International PPP Standards are needed that contain essential packages of information that can reduce the time and resources necessary for public entities SMEs to collect. [8]

Governments should:

- *Simplify and standardize PPP contracts and processes*. Use existing models and contractual elements that can lower transaction costs, accelerate delivery, and assist the public sector in its negotiation with private partners in PPP contracts.

[8] UNECE is currently producing international PPP standards both in policy, law and institutions and in specific industrial areas, such as water and sanitation, renewable energy, transport, etc. which are model templates designed specifically to address the UN SDGs**.** International centres of excellence set up in specific countries provide the project teams developing the standards with data and cases studies.

- *A people first PPP model law* should be elaborated taking account of international legal best practices. Such a model law should be responsive to gender. It should also allow for redress where citizens' rights are negatively affected by PPP projects.

(b) Capacity-building and knowledge sharing:

Challenge: Capacity building for People first PPPs needs to be massively scaled up, especially for government officials at different levels. Capacity building needs to address the scale of the challenge itself.

Recommendations
Capacity building at only one level or scale is not enough. There is needed a new approach to capacity building and the creation of a knowledge sharing approach platforms across scales, between public and private and society (lessons can be learned from the Low Carbon Energy Fund in the UK, where learning from one project was disseminated to all other projects funded through the LCNF). Coordinated measures and reforms will also need to take place cross policies, institutions and practices in financial markets.

Capacity building should also be based on good data and the collection of people first case studies. A good database could be established to collect such case studies.

(iii) Stakeholder engagement

In order to improve stakeholder engagement jurisdictions oblige stakeholder engagement sometimes by law and sometimes through the procurement. For example, ccertain PPP laws can afford stakeholder input through public hearings or other consultative opportunities at certain stages of the project and/or before a tender board or high level PPP entity approves a project. In the absence of those 'legal' requirements, some jurisdictions and projects make consultation a condition of the procurement, or, of the contract to be awarded. [9]

A number of other specific proposals to improve stakeholder engagement can be made:

(a) Bottom up approaches

In some development projects governments should oblige developers to consult with stakeholders in the locality affected. Legally this can be done through memoranda under which the developer is obliged to 'sit down 'with local parties and discuss their issues and establish grievance and dispute resolution mechanisms.

Such approaches however should be well managed and incorporated in an efficient way or else the public sector objectives/project can be significantly delayed or negatively impacted. Stakeholder input needs to constructive and improve the project/public service being delivered, but should not be a surrogate for stopping the project.

[9] For example, that consultation can be early between the public entity and the impacted stakeholders (and flow into the tender documents and/or public contract), or it can occur during the tender/procurement process itself as a function of identifying the specifications for the contract, or it can be focused later in the contract itself and the consultation and stakeholder input is a condition of the performance of the contract.

(b) Consultations before a project has started

Recommendation

In particular, before project decisions are taken, the public should be consulted as to: (a) what the problem is; (b) governments' ideas as to the options available to solve the problem; and (c) what alternatives might the public suggest instead, followed up with a balanced and genuine dialogue, supported by independent expert advice.

(c) *Information disclosure*

Challenge: PPPs are viewed as suffering from a lack of transparency and more information on projects needs to be released.

Recommendations

Based on the strong premise that as PPP projects in water health and energy are critical for human life there is a strong obligation – even as a human right – to fully notified and informed about the project. This is further premised on the view that the information can empower people to influence and have a "say" over the terms and conditions contained in the contract.

There is however a need to be sensitive to commercial secrecy as well as to the private sector's own intellectual property Governments need to inform their citizens of the project at the right time and such information should include, *inter alia*:

- Information on the employment impact (how many staff will lose jobs; how many will need retraining etc.);
- Pricing of the service;
- Information on the impact on poverty and on mitigating the effects of climate change; and
- How the project contributes directly to achieving the SDGs?

The UNECE Aarhus Conventions lays down the statutory obligation of Governments, who are signatories of the Convention, to inform their citizens on the environmental consequences of projects and involves them in decision- taking.

(c) Zero tolerance to corruption

Challenge: Complicated projects can lead to opportunities for corruption. Furthermore increasingly such opportunities for corruption arise not only at the time when the decisions are being made in the selection of the partner to an investment, but also when the project is being designed, for which consultants are hired and at the other end during the construction and operation of the project.[10]

[10] The development in many markets over the last 20-30 years of the use of private capital to invest in such assets, e.g. PPP, 'PFI 'etc. has added to the complexity of, and opportunity for, corrupt practices, introducing subsequent demands for probity and raising questions of the morality – with public acceptance or not – of tax avoidance and evasions, multi layered and opaque corporate structures and the use of tax havens by investors and lenders to public service utilities. Many of the tax practices once informed to the public have led to actions by indignant consumers, with some choosing not to buy the services and products of the companies behaving in such a manner. However, with public utilities,

Corruption moreover is also a tax on the poor and totally contrary to the SDGs, while the continuation of such practices will prevent the transfer of funds for PPPs to countries which need them so much.

Recommendations

With many major infrastructure and public service projects, some conflicts of interest invariably arise, increasingly through the role of personnel working on the project, or as advisors to the venture. If conflicts of interest do arise, they need to be publicly identified and if necessary, controlling measures taken accordingly.[11]

The yardstick in procurement for public services assets, whether with public or private bidder entities, should be that any possible opportunity for a conflict of interest needs to be declared, no matter how distant it may seem. Open declaration leads to mutual trust and respect which in turns leads to successful partnerships.

Accordingly, at the outset of each major investment project:

- There should be made available (via the internet) a Register of all parties (i.e. owners or beneficiaries) including the sponsors and the bidders, plus their advisers (technical, legal and financial, including the auditors) as to the bid date, and updated, as required, thereafter throughout the project; and
- Failure to register conflicts could lead to disqualification of bids or contract annulment.

Governments and private sector should inform the UNECE of how it is implementing the recommendations contacted in its zero tolerance to corruption recommendation in PPP procurement.

(iv) Environmental and resilient infrastructure

Challenge: Economic growth is still occurring too much at the expense of the environment and is therefore threatening the future of the planet. While PPPs are needed more and more for the transformational impacts that are required, these should not come at the expense of the environment.

Climate change raises the question of whether new infrastructure projects are required or whether it is better to optimize existing infrastructures and make them work better. In the case of transport, the need is to reduce Co2 emissions and this objective leads to a strong commitment to multimodal transport systems where all the branches of transport – road, rail port etc. – work together and at the same time lowering the carbon footprint.

Governments often lack the resources and technologies necessary to make their infrastructure resilient.

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especially in the water supply industry, which is a natural monopoly public service in most countries, there is usually no choice. Hence the demand for probity by the utility or public service provider is paramount.

[11] Conflicts of interest are becoming a major problem in complex PPPs – even more prevalent that illicit payments.

Undertaking projects can sometimes conflict with citizens' rights to their own traditions, culture and environment.

Recommendations

- Partnerships are needed to mitigate the effects of climate change and climate adaptation and resilience to extreme weather and natural disasters. Private sector has to offer in the areas of IT to make such resilience smarter;
- Many partnerships in solar energy and wind power are delivering energy to utilities at low prices and more projects are needed based on sound models that are well balanced and respect the rights of stakeholders;
- Governments need to provide in some cases incentives to the private sector in return for their technologies and practices they provide to the projects such as land. The private sector can use these assets to generate income;
- Governments should protect the ideas and knowledge of the private sector concerned in projects;
- PPPs should promote environmentally sustainable long term solutions and resilience. This means respecting communities' rights to their lands, resources and a clean environment; and
- Companies might wish to hire 'Community Ambassadors' so that the environment is protected and local traditions are honoured. Such Ambassadors can act as intermediaries between the private sector project owners and the community. These people are employed by the private sector.

(v) Economic effectiveness

Challenge: People first projects need to create quality infrastructure that can be defined variously as improving energy efficiency, safety, sustainability etc. [12]concerning sustainability, sustainable development is only useful if it leads to the improved welfare of people.

Recommendations

- People first PPPs should generate decent jobs that provide a living wage, social protection and worker rights;
- Companies should hire locally: where employees are brought from outside the countries the company should train local people in these skills to eventually take over;
- Companies should be sensitive also in areas suffering from high unemployment and help especially the young into well paid jobs in their own companies;
- Companies can undertake actions to promote women especially in countries where there are cultural and even legal impediments entering the work force for finding funds to set up their own companies;
- Companies are encouraged to develop 'markets of good 'where they actively engage with women – who generally play an unequal role in economic activities - to hire them in their companies and/or enter into supplier arrangements with women led enterprises. These relationships between large infrastructure companies and women's groups and organizations are sometimes the first steps for women into the formal working economy.

[12] On the subject of quality infrastructure see the G7 Ise-Shima Principles for Promoting Quality Infrastructure Investment

Part III Mainstreaming People first PPPs and scaling up impact to achieve real transformation

The challenge after setting up the governance framework for people first PPPs is to mainstream more and more people first projects. The critical second stage in the process is to find adequate funding and mainstream good PPPs, especially in low income countries. It is highly relevant in this discussion to explore promote and scale up the international impact investing community in support of People first PPPs for the UN SDGs. And in doing so a number of strong favorable current trends can be highlighted:

- There is a large international effort underway to develop and scale up innovative financial products and services aimed at addressing complex global problems of poverty, climate change and disease;
- There is a growing number of businesses too that embrace a core business model that takes into account the impact of their activities and openly promote sustainable corporate practices. New ESG reporting obligations give further momentum.[13] LDCs adopting the above mentioned Guiding Principles and other international PPP SDG related Standards will generate interest from this pro-active business community as well as from a new class of financiers;
- The World Bank in particular is prompting new innovative forms of financing in order to make a difference; and
- Impact Finance is also slowly demonstrating with growing volumes every year, that investors, private and long term institutional, national wealth funds are keen to make a difference, accept “very high country risks” profiles whilst still earning returns that are enviable in the current very low, if not negative rate, environment.

The following actions now are needed – both on the supply side and the demand side - to scale up the financial effort to put people first PPP on the right track and to achieve the social and environmental outcomes - not to mention the financial returns from projects – on a more prominent scale.

Supply side

<u>Need for evaluation, metrics, and performance information</u>
This is a new subject area (began by the Rockefeller Foundation in 2007) and the track record of projects is completely lacking. There is a dearth of data on investment performance that could help inform future investment behavior. Even established impact investing funds produce little data on realized returns across sectors and regions. This picture though is changing gradually.

<u>Need for impact investing products for scale</u>
One of the biggest challenges is the ability to deploy capital at a scale that dwarfs the size of most individual transactions occurring in the impact investing space today. Institutions seek investment opportunities of sufficient size so that the costs of due diligence and completing a deal are commensurate to the size of the deal – at the moment, apart from clean tech, microfinance and social housing sector, there is a lack of projects that operate at that scale.

[13] Environmental, Social and Governance

Demand side

Generating a pipeline of projects
The major challenge on the demand side is generating a sufficient number of suitable projects. Governments lack the capacity to design bankable projects and training is a long term task.

UNECE work on standards in people first PPPs
To address this lacuna, the UNECE is preparing international standards based on PPP best practice, covering a wide range of SDG compliant sectors – water and sanitation, waste to energy, health etc.

Conclusion and Follow up

ANNEX I

Concessions versus PFI for the UN SDGs:

Which PPP models are more appropriate for low income countries and emerging markets?

One expert argues that the concession model is more appropriate because it:

- Limits the fiscal impact on national budgets**.** (Most budgets of low income countries and emerging markets are not able to absorb large, long term financial liabilities).
- Can create large scale **"**transformational" effects by reducing poverty and contributing to economic growth. (leading to an increase in future tax revenues)
- Focuses on essential Infrastructure services (highways, bridges, railways, ports, airports, power plants, renewable energy, water and waste, urban services, etc.)
- Has contract conditions that are "People First PPP" in that they call for:

  - A service that adapts to the needs and the capacity of the people
  - A service which will remain adapted to the needs and capacity of the people over the lifetime of the project
  - A service that encourages equal treatment and continuity of service
  - A service that inherently limits abuse and profiteering
  - A service that ultimately is developed in real partnership with the people without compromising the right of the private partner to make a reasonable return on their investment
  - A service that benefits from a robust set of international best practices and contractin knowledge

Source : M. Frilet, International PPP Centre of Excellence on Policy, Law and Institutions, Paris, France 2016

PPPs in China

PPPs in China are increasing and making the country more sustainable, more prosperous and alleviating poverty. The main driver has been the lack of resources faced by local governments and the need by central government to place hard budget constraints on their expenditures. Most PPPs are partnerships between these public authorities and state owned enterprises (SOEs). At the same time, such PPPs lack competition, can be unclear as to their deliverables, while most importantly, they are not structured to attract non- public sources of financing.

Accordingly, the Chinese have become very interested to reform the SOEs and develop financially sustainable, genuine, public – private partnerships as well. The newly created Tsinghua University PPP centre is investigating good practice PPPs that can guide policy makers in China and in the rest of the world.

China has also developed its “one belt one road” initiative to build routes across large areas of land and sea and because of the vast sums of money required for all types of infrastructure – road, rail, ports and sea ports etc. - PPPs in large numbers will be needed.

Source : City University, Hong Kong 2016

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