

## A Scoping Study of PPP Guidelines

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### ABSTRACT

The Addis Ababa Action Agenda of the Third Conference on Financing for Development underscores sustainable and resilient infrastructure as a pre-requisite to sustainable development. Public-Private Partnerships (PPPs) are expected to deliver infrastructure in furtherance of this Agenda. In view of this expectation, twelve prominent PPP guidelines were reviewed for alignment with the Addis Agenda and key public governance factors. The research found that the PPP guidelines are not sufficiently aligned with the Addis Agenda, have insufficient sustainability content, and do not acknowledge the role of the public in PPPs. It recommends that the next generation of the guidelines address these aspects.

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## Executive Summary

### Background and Purpose of this Working Paper

Public-Private Partnerships (PPPs) are attracting renewed attention as a possible mechanism that helps deliver infrastructure services in furtherance of the major global agenda setting initiatives of 2015. The Addis Ababa Action Plan (the Addis Agenda) is a forward-looking framework for financing sustainable development, including the 2030 Agenda for Sustainable Development (the 2030 Agenda), and the means of implementation for the 17 Sustainable Development Goals (SDGs). Both Agendas place importance on sustainable and resilient infrastructure as a pre-requisite to achieving sustainable development.

Energized by these global agreements, national, regional, and global actors have already embarked on actions to fill the infrastructure gap, including a renewed effort to make PPPs work to this end. Although many civil society organizations consider PPPs as an overvalued and underperforming vehicle for infrastructure development, some may reevaluate the potential of PPPs if stronger public governance of PPPs can be ensured.

Are the current PPP models fit for purpose? If PPPs can be transformed to meet the expectations of the global community, what would they look like and what would drive the transformation?

This Working Paper reviewed twelve PPP guidelines published by major regional or international organizations to understand the drivers, motivations, experiences, and implications of PPPs in the context of the global Agendas. The guidelines were compared against each other and against a set of principles for PPPs extracted from the Addis Agenda. These principles are:

- Careful consideration given to the structure and use of blended finance instruments;
- Sharing risks and reward fairly;
- Meeting social and environmental standards;
- Alignment with sustainable development, to ensure “sustainable, accessible, affordable and resilient quality infrastructure”;
- Ensuring clear accountability mechanisms;
- Ensuring transparency, including in public procurement frameworks and contracts;
- Ensuring participation, particularly of local communities in decisions affecting their communities;
- Ensuring effective management, accounting, and budgeting for contingent liabilities, and debt sustainability; and
- Alignment with national priorities and relevant principles of effective development cooperation.

### Findings

- a. The Audience, Nature and Focus of the PPP Guidelines: The guidelines reviewed for this Working Paper generally aim to advise PPP practitioners and are usually advisory rather than prescriptive. They also serve the purpose of a reference or source book on respective PPP thematic areas, such as public governance, public sector financial management and budget transparency, risk sharing, disclosure of information, contract provisions, and PPP implementation from start to finish.

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- b. **Similarities and Differences:** Even though some assumptions, values and approaches converge, the areas of divergence outweigh areas of convergence, reflecting the complexity of PPPs. They contain divergent definitions of PPPs – some prefer a narrower approach while others tend to advocate for a broader definition, and may even include CSOs as partners. They also define key concepts, such as “value for money”, differently; while most focus on financial efficiency, a few others go beyond it, indicating that there is room to embed in the definition ideas about public benefit and public good.
  - c. **Gaps:** On the whole, the guidelines reviewed leave out the viewpoint of the public or non-commercial stakeholders and the need for PPPs to generate public benefit and public good for the country and its people, including communities impacted adversely from infrastructure projects. Too many of the guidelines dedicate their content to public financial management and facilitating the interest of commercial stakeholders, and fail to explain how other stakeholder groups, particularly the vulnerable ones, react to and are impacted by infrastructure. Transparency and accountability mechanisms do not cater to the needs of these stakeholders. Furthermore, the idea of sustainable development as a public good seems to have been left out altogether. The guidelines only partially incorporate environmental, social and governance dimensions of sustainability. Moreover, they are entirely silent on climate change issues. The target audience of the PPP guidelines deserves the most up-to-date advice on climate change and PPPs; for example, some experts consider the uncertain nature and extent of climate change would render PPPs ill-suited as a vehicle for infrastructure development.
  - d. **Drivers of Differences and Gaps:** Several factors seem to drive the noted differences and gaps. Even though several of the PPP guidelines are strongly influenced by the public governance theme, they are largely driven by a narrower view of public governance that omits a fuller acknowledgment of the role of the public. This approach could limit the ability of PPPs to generate public value through improved infrastructure decisions and delivery, and public good through enhancement of sustainable development. The latest guidelines are influenced by the SDGs and focus on the role of the public more explicitly. Yet all guidelines could benefit from a better articulation of sustainability and climate change considerations, if they are to evolve to the next generation of PPP guidance.
  - e. **Alignment with the Addis Agenda:** The PPP principles in the Addis Agenda are echoed in varying degrees in the guidelines reviewed but, overall, the guidelines need adjustments to fit the purpose of the Addis Agenda and the 2030 Agenda. “PPP structure and instruments” are only covered at a high level, as most of the guidelines do not act as PPP manuals but more as a source book. Most lack helpful guidance on the circumstances under which PPPs should be used or avoided. It is possible that PPPs are better suited for the more predictable and stable projects, and may not work well in projects with significant climate change risks. While there is good material on “risk sharing”, few examples illustrate “reward sharing.” “Social and environmental standards” are addressed in a patchy manner, and the guidelines are surprisingly silent on “sustainable development” and the idea of “accessible,” “affordable” and “resilient” infrastructure. “Transparency” and “accountability” coverage leaves out the public. For the most part, the PPP Guidelines fail to invite the participation of communities and groups likely to be directly affected by PPP decisions and actions. While most guidelines do talk about the importance of “proper management of PPP liabilities”, they are silent about debt sustainability with a couple of exceptions. Finally, the guidelines are not primarily concerned with “national priorities and development cooperation principles.”
  - f. **Impacts of Guidelines:** It is not clear whether the guidelines impact results on the ground since little data is available. Considering the renewed attention to PPPs in the recent years, it is possible that the

guidelines could influence public officials in charge of PPPs. At the same time, it is easy to imagine that time-constrained users would prefer shorter materials and interactive tools and shun the lengthy and dense guidelines. This Working Paper speculates that the value addition of the PPP guidelines may be maximized when expert institutions engage with countries or countries engage with each other and analyze and socialize the lessons learned in a holistic learning setting. Finally, if PPPs only work well in limited circumstances, one could question whether the time and resources that go into producing PPP guidelines should not be better directed to infrastructure more generally.

- g. Success Factors: The guidelines converge on several ex ante success factors but do not shed light on the possible indicators of PPP success that projects should identify, monitor and report on. Impacts and benefits measurement constitutes one of the greatest challenges of the new generation of PPPs. Impacts on people, including vulnerable groups, must be measured in a disaggregated manner. Indicators of public service delivery, such as access, pro-poor aspects, and quality of service, as well as public benefit and sustainability dimensions also must be measured, analyzed and reported consistently in all PPPs.

## Other Observations

- a. The multilateral development banks (MDBs) should ensure coherence in their policy and investment work and mainstream sustainable development and climate change considerations in all aspects of their work, including their guidance on PPPs.
- b. Hardly any transparency initiatives or accountability mechanisms exist for infrastructure and little caters to the interest of non-commercial stakeholders. Any effort to strengthen transparency should be mindful of the fact that transparency is not an end but a means to an end, which is accountability.
- c. Guidance on PPP contracts should balance the needs and interests of the public and private contracting parties, and should not be driven by bankability considerations alone. Moreover, guidance should also include pointers on contractual provisions that can enhance sustainable development, and to foster a more collaborative and flexible relationship between the contracting authority and the private operator to address sustainability and climate change challenges of long-term projects.
- d. The PPP guidelines are silent on the cross-border dimensions of PPPs. Complex mega-projects spanning countries are already today's reality, and the multiple challenges and blind spots could bewilder countries and international organizations, and lead to project delays and cost overruns. Appropriate guidance in this area is urgently needed.
- e. Sustainability considerations need to be fully reflected in the entire procurement process.

## Conclusion

To realize the vision of sustainable and resilient infrastructure for all, agreed in the Addis Agenda and the 2030 Agenda, we need a more holistic approach to infrastructure development and financing. In this context, we should remember that PPPs are but one tool in the infrastructure toolbox that is constantly expanding.

This Working Paper suggests that the PPP guidelines are rightly driven by some notion of “public governance” but they do not go far enough. The guidelines correctly assert the importance of public sector performance through good financial management and efficiency, because public value in PPPs flows from efficient public sector management and performance. Although taxpayers and citizens are the ultimate participants

and beneficiaries of public value in PPPs, the guidelines are mostly blind to them, and, as a consequence, miss the opportunity to underscore the positive role they play in legitimatizing decisions, and improving the delivery and quality of infrastructure. Also absent is the idea that PPPs should create public good by enhancing the environmental, social and governance dimensions of sustainability and identifying and managing climate change risks. These gaps in the PPP guidelines indicate that they do not yet address the full spectrum of public governance, and do not yet fully align with the Addis Agenda, the AAAA Principles, and the 2030 Agenda.

The next generation of PPPs should be driven by a fuller vision of public governance of PPPs. For this transition to occur, governments must consistently strive to realize broad public value and public good from PPPs. This means the public must be at the center of PPP deliberations, decision making and delivery. Governments must engage with citizens, weigh the socioeconomic costs and benefits of PPPs, and put in place appropriate institutional and accountability mechanisms, systems, processes, and capacity to achieve the fuller vision of public governance.

For the organizations that published the PPP guidelines, this is an opportune moment to take stock of areas of improvement in PPP guidance. This stocktaking should include a reflection on the true nature of PPPs and the role they should play in public value creation and promotion of sustainable development. The new guidance should clearly spell out the advantages and disadvantages of PPPs, together with full advice on available alternatives. In parallel, the new guidance should also explore innovative ways to evolve PPPs. For example, the next generation of PPPs could encourage a different kind of partnership, one that is more strategic and based on the willingness of parties to work proactively and flexibly toward equitable sharing of risks, costs and benefits, and to address sustainability and climate issues appropriately. Any future work on PPPs should not be at the expense of work in other modes of infrastructure development and finance. This will enable public sector officials to pursue a full range of infrastructure development and financing options, rather than focus narrowly on PPPs.

## Recommendations

Based on the findings, this Working Paper recommends a new set of guidance for the next generation PPPs. Such guidance could focus on public governance of PPPs that would explicitly incorporate climate change and environmental, social and governance aspects of PPPs alongside economic considerations, and purposefully embed the perspectives of non-commercial stakeholders throughout the life of the PPP.

Guidance should be created collaboratively with partners and build on existing guidance and available resources, as envisioned by the Addis Agenda. Instead of duplicating each other, the publishing organizations should work together to ensure that the sum of the guidance responds to all the challenges faced by those who must implement PPPs. Guidance could take the form of one or more documents, an interactive toolbox, a knowledge platform or a combination of these forms, and could be further strengthened by a self-assessment tool, a rating system, a certification mechanism, or a venue for sharing lessons or conducting peer review.

# Scoping Study on PPP Guidelines

## 1 Global Context

Public-Private Partnerships (PPPs) are attracting renewed attention as a possible mechanism that helps deliver infrastructure services in furtherance of the major global agenda setting initiatives of 2015. Once branded as a financial mechanism that hides expenditures off the public balance sheet, supporters and critics alike are taking another look at PPPs for a different reason – whether or not they can deliver results under the major global agenda setting initiatives on sustainable development.

In 2015, the international community in a remarkable show of solidarity identified global priorities for sustainable development that must be tackled urgently. The 2030 Agenda for Sustainable Development (the 2030 Agenda) embodies this community’s vision of sustainable development for the next 15 years. Under this agenda, both developing and developed nations must meet the 17 specific development goals - the Sustainable Development Goals (SDGs). Of particular relevance here are Goal #9 which mentions resilient infrastructure, and Goal #17 that encourages building on the experience and resourcing strategies of partnerships, including promoting effective public, public-private and civil society partnerships.

In advance of the adoption of the 2030 Agenda, 193 states came together to the United Nations Third International Conference on Financing for Development and agreed to the Addis Ababa Action Agenda (the

### Box 1

#### PPP guidelines reviewed for this Working Paper (the PPP Guidelines)

- ◆ Asian Development Bank (ADB) (2008). Public-Private Partnership (PPP) Handbook
- ◆ ADB, International Bank for Reconstruction and Development (IBRD)/World Bank and Inter-American Development Bank (IDB) (2014). Public-Private Partnership Reference Guide: Version 2.0
- ◆ European Investment Bank (EIB) and European PPP Expertise Centre (EPEC) (2011). The Guide to Guidance. How to Prepare, Procure and Deliver PPP Projects
- ◆ European Commission (2003). Guidelines for Successful PPPs
- ◆ International Monetary Fund (IMF) (2006). Public-Private Partnerships. Government Guarantees and Fiscal Risk
- ◆ Organisation for Economic Co-operation and Development (OECD) (2008). Public-Private Partnerships: In Pursuit of Risk Sharing and Value for Money
- ◆ OECD (2012). Principles for Public Governance of Public-Private Partnerships
- ◆ United Nations European Commission for Europe (UNECE) (2008). Guidebook on Promoting Good Governance in Public-Private Partnerships
- ◆ UNECE (2016). Promoting People first Public-Private Partnerships for the UN SDGs
- ◆ United Nations Economic and Social Commission for Asia (UNESCAP) (2011). A Guidebook on Public-Private Partnership in Infrastructure
- ◆ World Bank (2015). Report on Recommended PPP Contractual Provisions
- ◆ World Bank (2016). A Framework for Disclosure in Public-Private Partnership Projects

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Addis Agenda) (UNDESA, 2015). This is a forward-looking framework to finance sustainable development, including the SDGs. Under the Addis Agenda, sustainable and resilient infrastructure is a key thematic area, since investments in transport, energy, water and sanitation are a pre-requisite for achieving the SDGs. Infrastructure cross-cuts the seven Action Areas, including the public and private finance chapters of the Addis Agenda. Both traditional and new sources of financing – such as blended finance, defined as a combination of “concessional public finance with non-concessional private finance and expertise from the public and private sector” – must help fill the infrastructure gap. The Addis Agenda explicitly states that “[p]rojects involving blended finance, including public-private partnerships, should share risks and reward fairly, include clear accountability mechanisms and meet social and environmental standards” (UNDESA, 2015, p. 25).

Energized by these global agreements on sustainable development, countries and key regional and global actors have already embarked on actions to help fill the infrastructure gap, including a renewed effort to make PPPs work to this end. Indeed, under pressure from many channels, at least 117 countries have adopted PPP laws to guide their engagement (however, the degree of coherence of those laws with each other, and with other international guidance materials, including any of the PPP guidelines reviewed in this Working Paper has apparently not been thoroughly studied).

Continuing its long-standing commitment to infrastructure finance and development as key ingredients for strong growth, the G20 countries announced in China in 2016 that they intend to undertake new investments in sustainable infrastructure and will enhance infrastructure connectivity among countries through the new Global Infrastructure Connectivity Alliance (G20, 2016b). The G20 Action Plan on implementing the SDGs will require new investments in sustainable infrastructure (G20, 2016a, p. 4). PPPs are one option for delivering results.

In anticipation of the Addis Agenda and the 2030 Agenda, seven MDBs proposed a collective vision (“From Billions to Trillions”) to enhance development finance and to support states’ commitments under these global agreements (Development Committee (Joint Ministerial Committee of Boards of Governors of the Bank and the Fund), 2015). In terms of infrastructure financing and development, the MDBs pledged to explore taking specific actions to provide credit enhancement and risk mitigation for client governments, such as innovative financial products and other risk mitigation measures to ensure successful PPP transactions. The Addis Agenda calls on the MDBs to lead the Global Infrastructure Forum to improve alignment and coordination among established and new infrastructure initiatives, the MDBs and national development banks, United Nations agencies, national institutions, development partners and the private sector in support of sustainable infrastructure (UNDESA, 2015, p. 8).

Some civil society organizations (CSOs) warn against placing PPPs at the center of any attempt to achieve the SDG commitments (Powell, 2016; Romero, 2016). Many consider PPPs as an overvalued and underperforming vehicle for infrastructure development. Others argue that the PPPs are here to stay. If PPPs can refocus and prioritize on enhancing public benefit in a broader sense, they can become one of the tools for countries’ fulfillment of their commitments and goals on sustainable development. For this purpose, the CSOs say PPPs must be reinforced with stronger public governance elements, including consultation, access to information and transparency, measuring and controlling for public sector exposure, among other substantive and procedural safeguards.

Following the pioneering path of a few countries that initially created PPP frameworks and processes, over 130 countries have implemented PPPs in infrastructure (World Bank, 2014). Private participation in infrastructure dropped in 2013, rose again, then fell below the 2013 level in 2016 (World Bank, 2017).



At the same time, public investment continues to play a critical role in infrastructure. Indeed, the IMF noted “public infrastructure investment still dwarfs private, as infrastructure investment via public-private partnerships is still less than a tenth of public investment in advanced economies and less than a quarter of public investment in emerging market and developing economies.” (IMF, 2014) Although many predict that the private sector share of investments in infrastructure will rise in the near future, the public sector will continue to shoulder significant fiscal, financial and oversight responsibilities for the provision of infrastructure services. For this reason, PPPs should be seen in a context of a broader mix of options available to the public sector to deliver infrastructure services.

Meanwhile, PPPs continue to draw in many stakeholder groups with various perspectives. In addition to the explicit PPP focus of countries and intergovernmental organizations mentioned above, these perspectives include the rising expectation by the middle class for quality infrastructure services, the surging interest of long-term investors in infrastructure, and advocacy geared toward greater accountability for and public benefit from PPPs. This complex background may also be the reason why we now see a multitude of guidance documents on PPPs by countries and regional and international organizations.

With the Addis Agenda and the 2030 Agenda, and stakeholder hopes and concerns shining light on PPPs, can the current PPP model endure the spotlight? If PPPs can be transformed to meet the expectations of the global community, what would they look like and what would drive the transformation?

## **II** Background of this Study

The Addis Agenda refers to the \$1 – 1.5 trillion annual infrastructure gap in developing countries. As part of its commitment to facilitate development of sustainable, accessible and resilient quality infrastructure, particularly in developing countries, in the face of rising challenge of climate change and environmental and social sustainability, the Addis Agenda sets out several key underlying ideas for the effective use of blended finance and PPPs for infrastructure. Member States of the United Nations also committed to capacity building to enable them to undertake PPPs, and hold inclusive, open and transparent discussion when developing and adopting guidelines and documentation for the use of PPPs, build knowledge base, and share lessons learned.

Considering these stated commitments in the Addis Agenda and the intent behind them, the following principles (the AAAA Principles) for the effective governance of PPPs can be extracted from the Addis Agenda:

- Careful consideration given to the structure and use of blended finance instruments;
- Sharing risks and reward fairly;
- Meeting social and environmental standards;
- Alignment with sustainable development, to ensure “sustainable, accessible, affordable and resilient quality infrastructure”;
- Ensuring clear accountability mechanisms;
- Ensuring transparency, including in public procurement frameworks and contracts;
- Ensuring participation, particularly of local communities in decisions affecting their communities;
- Ensuring effective management, accounting, and budgeting for contingent liabilities, and debt sustainability; and
- Alignment with national priorities and relevant principles of effective development cooperation

The Addis Agenda refers to development cooperation effectiveness principles. These principles were not explicitly considered here, since the all the PPP guidelines reviewed for this Working Paper focus mainly on the transactional aspects of the relationship between the public and private sectors; however, several elements of such principles are implicitly reflected in the above AAAA Principles, for example, in terms of the promotion of sustainable development and the importance of transparency and accountability to citizens.

The Inter-agency Task Force on Financing for Development (IATF) is mandated to follow up on the Addis Agenda commitments, including in the area of PPPs. This Working Paper is an input to the analysis and proposed work programme of the Financing for Development Office of the Department of Economic and Social Affairs (UNDESA) and the IATF work stream on PPPs, and is an updated version of the draft paper presented to the expert group meeting of the IATF in 2016.

### **III Purpose and Methodology of this Working Paper**

The purpose of this Working Paper is to capture the drivers, motivations, experiences, and implications of the prevailing PPP guidance documents issued by key public organizations around the world in the last few years, as an input to the ongoing work by the IATF in this area.

UNDESA chose twelve PPP guidelines for review from a larger collection of PPP guidance documents around the world (see Annex 1). Box 1 lists all the guidelines reviewed for this Working Paper (collectively, the PPP Guidelines).

This Working Paper aimed to answer the following research questions with respect to the PPP Guidelines:

1. How coherent are the PPP Guidelines with each other? What are the similarities and differences in the overall approaches in the PPP Guidelines? What are the underlying assumptions and perspectives?
2. Are there issues or gaps that are not adequately addressed in the PPP Guidelines? What motivations are driving these issues or gaps?
3. How coherent are the PPP Guidelines with the AAAA Principles? Which of the AAAA Principles are effectively addressed in the PPP Guidelines and where are the gaps?
4. How do differences among the PPP Guidelines affect the PPP design and implementation choices?

What are the key criteria that help PPPs succeed? What are the necessary conditions for effectively selecting and implementing PPPs?

The author analyzed each of the PPP Guidelines, using a common template, to answer these research questions, and synthesized the answers and made recommendations. It should be noted that the answers to the research questions were drawn from the four corners of the PPP Guidelines. Some publishing organizations have additional guidance materials outside the PPP Guidelines that respond to the AAAA Principles or the research questions posed. Where possible, this Working Paper acknowledges such materials, but a systematic listing of all such guidance of the relevant publishing organizations is beyond the scope of this Working Paper.

## IV Findings

### a. The Audience, Nature and Focus of PPP Guidelines

The PPP Guidelines generally aim to advise PPP practitioners. Several explicitly target public sector officials or country clients (ADB, 2008; EIB and EPEC, 2011; European Commission, 2003; OECD, 2008; ADB, IBRD and IDB, 2014; and World Bank, 2016a), one targets private sector practitioners in addition (UNECE, 2016), while two mention staff of the relevant institutions as additional target audience (ADB, 2008; EIB and EPEC, 2011). Each of the PPP Guidelines also serves the purpose of a reference or source book on the chosen PPP thematic area, and some of them act as de facto repositories of case studies and comprehensive reference materials; for example, the EIB and EPEC (2011) guidelines link to over 130 case studies and reference materials, and the ADB, IBRD and IDB (2014) guidelines also contain numerous reference materials. Both seek to share “guide to guidance,” meaning a collection of “the ‘best of breed’ guidance currently available from PPP guidelines worldwide and selected professional publications.” (EIB and EPEC, 2011)

The PPP Guidelines are not intended to be prescriptive, other than the European Commission (2003) guidelines, which bind the recipients of EU grants. Those published by the MDBs – the ADB, EIB and the World Bank – are advisory in nature and do not bind staff or the MDB’s country or corporate clients. The World Bank (2015) guidelines on contractual provisions contain the following disclaimer: “they are not mandatory clauses for use in all PPP transactions which the World Bank Group financially supports.” The MDB rules of engagement, such as their own strategy, policies and procedures that apply when they support countries or corporations implementing PPPs, are not part of the PPP Guidelines.

#### Box 2

#### Sample Definitions/Descriptions of Value for Money

ADB, IBRD and IDB (2014, p 99): For most projects, assessing value for money means assessing whether the project is cost-benefit justified, and the least-cost way of achieving the benefits. When assessing a PPP, some additional analysis is needed – to check whether the PPP has been structured well, and will provide better value for money than public procurement.

EIB-EPC (2011. P13): A PPP project yields value for money if it results in a net positive gain to society which is greater than that which could be achieved through any alternative procurement route.

European Commission (2003, p.75): PPPs must demonstrate additional value for money over and above traditional procurement systems and must be designed to maximize benefits to all parties according to their objectives.

OECD (2008, p.24): Like any user of services, the government wants value for money, namely maximum quality and features that meet its specifications at the best possible price. Thus, to the government, value for money represents an optimal combination of quality, features and price, calculated over the whole of the project’s life.

UNECE (2008, p.113): ‘Added value’, also ‘value for money’, means higher quality for the same money or the same quality for less money. (Footnote 6, quoting *Public-Private Comparator*, The Netherlands Ministry of Finance.)

UNECE (2008, Glossary, p. 24): A concept associated with the economy, effectiveness and efficiency of a service, product or process, i.e. a comparison of the input costs against the value of the outputs and a qualitative and quantitative judgment of the manner in which the resources involved have been utilized and managed.

Each PPP Guidelines have a distinct thematic focus, such as public governance (OECD, 2012a; UNECE, 2008; and UNECE, 2016), public sector financial management and budget transparency (IMF, 2006), risk sharing (OECD, 2008), disclosure of information (World Bank, 2016a), contract provisions (World Bank, 2015), and PPP implementation from start to finish (ADB, 2008; EIB and EPEC, 2011; UNESCAP, 2011; and ADB, IBRD and IDB, 2014). The European Commission (2003) guidelines identify their own specific thematic areas that are particularly relevant for the purpose of grant making. The variety of focus areas in the PPP Guidelines makes a direct comparison across all of them challenging.

## b. Similarities and Differences

Even though some assumptions, values and approaches converge, the areas of divergence outweigh areas of clear convergence, reflecting the complexity and diversity of PPPs.

**PPP Definition:** PPPs sit in the middle of the continuum of public and private infrastructure financing modalities (see Figure 1 below). Some PPP Guidelines assign PPPs a relatively narrow space in the middle of the spectrum; for example, the OECD (2008) guidelines suggest excluding concessions. In contrast, the European Commission (2003) guidelines use a broader definition of a PPP as a partnership between the public and the private sector for the purpose of delivering a project or a service traditionally provided by the public sector. UNECE (2008) also favors a broader definition of joint ventures between public and private and contractual PPPs. The ADB, IBRD and IDB (2014) guidelines exclude information sharing mechanisms, voluntary initiatives, joint research and innovation projects, and financial leases, since they do not transfer enough risks. The definitional variance among the PPP Guidelines complicates any attempt to standardize, replicate, or evaluate PPPs. The situation is made more complex by each national PPP framework setting its own definition of a PPP.

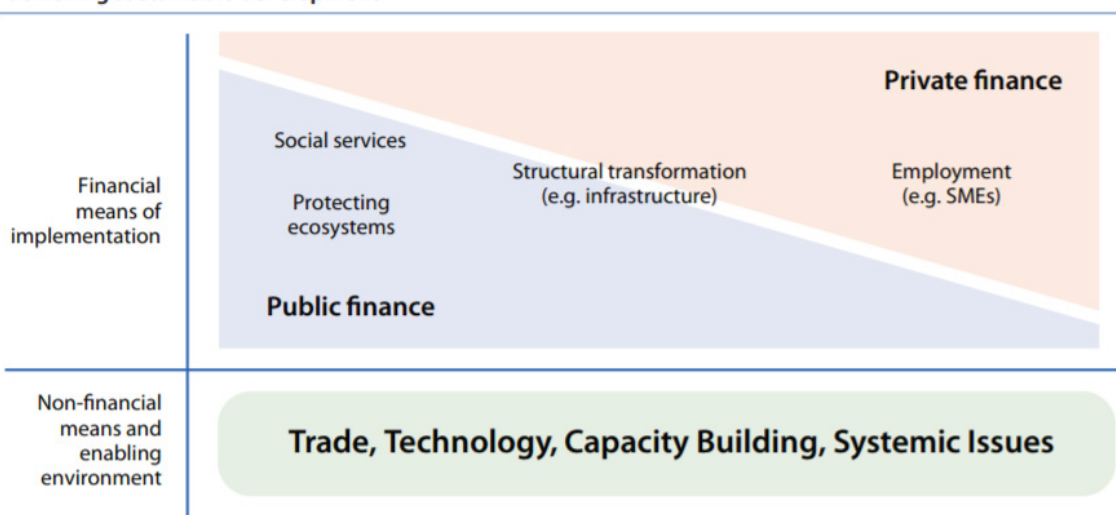
The PPP Guidelines broadly converge on what constitutes the core features of PPPs. EIB-EPEC (2011) guidelines explain the following features, many of which are echoed in other PPP Guidelines:

- a long-term contract between the public contracting authority and the private sector company for procurement of services, not assets
- the transfer of risks to the private sector, notably with regard to designing, building, operating and/or financing the project
- the specification of project outputs rather than inputs
- the application of private financing, and
- payments to the private sector for services delivered.

Another definitional variance can be found in the treatment of CSOs as possible partners in PPPs. ADB (2008) and UNECE (2008 and 2016) include CSOs while the OECD (2008 and 2012a) excludes them. Inclusion of CSOs as explicit partners in PPPs could extend the definition of PPPs to arrangements not traditionally understood as PPPs, such as social impact investment. While this may further complicate the task of standardizing PPPs, participation of qualified service delivery CSOs alongside the private sector in PPP operations could potentially improve responsiveness to and facilitation of non-commercial stakeholders' interests. In the area of green or climate finance, CSO participation may bring innovation and an ethical approach to investments.

From a simplification point of view, a narrower definition would be expedient. If PPPs should focus on simple, predictable and stable projects only, as discussed below, it may in fact make sense to define PPPs

Figure 1  
The continuum of public and private financing and the non-financial means for achieving sustainable development



\* The figure is for illustrative purposes only and size of boxes is not representative of magnitudes of flows

Source: UN/DESA.

narrowly. At the same time, keeping in mind the variety of self-identified PPPs already under implementation around the world, it may be beneficial for the PPP Guidelines to acknowledge a broader range of possible infrastructure arrangements, including those that include CSOs as partners. Such arrangements can potentially lead to innovative modes of governance, design and delivery of infrastructure services.

**Private Sector Efficiency, Risk Transfer and Value for Money:** The PPP Guidelines express a common expectation that the private sector will bring efficiency and speed to the financing, design, construction and operation of infrastructure. For example, the ADB notes that the public sector generally lacks such discipline, and concludes that “[I]f the PPP is structured to let the operator pursue this goal [of maximizing profit], the efficiency of services will likely be enhanced.” Accelerated project completion is frequently identified as one of the principal benefits in cost benefit analysis of a PPP project.

The value for money objective of the public sector can be achieved in part through risk transfer to the private sector. Exactly how much risk transfer is appropriate would depend on the type of risks and whether the public or private sector is better suited to managing the particular risk. The OECD (2008) guidelines consider “significant” risk transfer to the private sector is necessary in order for value for money to be achieved. The European Commission (2003) guidelines warn that the cost of risk transfer must not be neglected as, given the nature of PPPs, the achievement of value for money will often depend on the level and cost of risk transferred to the private sector.

Value for money is a central concept in PPPs. Several of the PPP Guidelines agree that a key, if not the principal, objective or rationale of PPPs is value for money (ADB, IBRD and IDB (2014); EIB-EP-EC (2011); European Commission (2003); OECD (2008); UNECE (2008); and World Bank (2016a)). (See also Box 2 below for various definitions or descriptions of the concept.) The OECD (2008) guidelines explain the role of value for money in PPPs: “[t]he main reason [to take up PPPs] is to improve service delivery – that is, to create better value for money compared to the case where a government

delivers the service.” Many of the PPP Guidelines accept that value for money is mainly about the public sector achieving financial value. Since the public sector represents the public, the financial value is meant to flow to the public. In this approach, the social, environmental and development costs and benefits are not explicitly factored in.

Box 3

**UNECE examples of sectors in which PPPs have been successful**

**Australia:** transport and urban regeneration.

**Canada:** energy, transport, environment, water, waste, recreation, information technology, health and education.

**Greece:** transport projects: airport and roads.

**Ireland:** road and urban transport systems.

**Netherlands:** social housing and urban regeneration.

**Spain:** toll roads and urban regeneration.

**United Kingdom:** schools, hospitals, prisons and defence facilities and roads.

**United States:** projects that combine environmental protection, commercial success and rural regeneration.

Source: UNECE (2008)

UNECE (2008, p.15) offers a possible historical reason for the financial efficiency perspective in value for money analysis:

Initially the PPP was considered to be a financial mechanism to place expenditures off the balance sheet. As a financial and technical issue, there was also a tendency not to consult the public and other stakeholders. More recently a shift can be detected from using PPPs for financial reasons to using them for greater efficiency or to create added value. Indeed, as ‘value for money’ objectives have become increasingly commonplace, it becomes increasingly clear that much more can be done so that PPPs can increase social, economic, and environmental development.

There are exceptions to the predominantly financial definition. The European Commission (2003) guidelines note that value for money must be achieved for the society, that value to government *and* the wider public is important. UNECE (2008) goes farther to explain that the PPP policy framework should fix clear economic and social objectives, not focusing on efficiency criteria alone but also exploring the best way to deliver public services that are basic to human well-being. For this purpose, it emphasizes public interest goals, such as social equity, inclusiveness, accessibility, transparency and accountability.

Another perspective suggests that blended finance (including PPPs) – using public funds to stimulate private sector demands – should explore full benefit to the public. Pursuant to this approach, the right balance is struck when the benefits to society exceed private returns; however, social benefits emerge slowly and are hard to trace. (Carter, 2015) For this purpose, the social benefits of investment not captured by private returns include “the creation of knowledge about production possibilities; the formation of economic networks and supply of intermediate inputs; and increased investments in human capital” (Carter, 2015, p. iv).

These ideas point to the possibility for a broader scope of value for money as the main objective of PPPs.

**Lifespan of PPPs:** Beyond the PPP definition, another difference concerns the life span of PPPs. While the PPP Guidelines tend to focus on core PPP activities such as weighing different delivery modes, project preparation, procurement, contracts, and contractual oversight, less information is offered on the upstream activities, and even less on the post-procurement stage of PPPs, especially the end phase.

At what point does a PPP begin? The national development planning stage? Sector reform? Consideration of PPP policy and law, or PPP options? The PPP Guidelines rarely mention the national development strategies and plans, with which PPPs should align. In ADB (2008), a PPP ideally begins with a sector analysis and sector reform planning.

When does a PPP end? When the public sector steps in? At the termination of the PPP contract, or at the point of asset handover and termination payments to the private sector? Completion and publication of the ex-post evaluation? UN ESCAP (2011) ends with contract management and disputes resolution. EIB EPEC (2011) ends with the termination of the PPP contract and ex-post evaluation.

Due to the long-term nature of PPPs, we do not know enough about what happens at the end of PPPs. It is also possible that information on the end phase of PPPs tends not be collected or published. Additional research on how PPPs end their lives and whether the risks that arise at termination are properly allocated (for example, the exercise of step-in rights, appropriateness of termination payments, availability of alternative services, safe closure of facilities, impacts of closure and decommissioning on communities, etc.) can inform new and ongoing PPPs about risks and issues to anticipate two to three decades down the road.

### **c. Gaps – Stakeholder Perspectives and Sustainability Dimensions**

In contrast to the financial efficiency dimension of PPPs, which is the central concern of many PPP Guidelines, the sustainability dimensions – climate change, environmental and social considerations, and governance factors such as corruption – seem to receive only a peripheral treatment, if at all. The financial efficiency focus of the Guidelines also means that guidance is given for the benefit of the public sector and the commercial stakeholders, whereas the non-commercial stakeholders are often left out. The Independent Evaluation Group (IEG) of the World Bank Group (WBG) that looked at 130 PPP projects supported by the Group from 2002 to 2012 noted that stakeholder consultation received too little attention and not a single project tracked all of the aspects of public service delivery, i.e., access, pro-poor aspects, and quality of service delivery (World Bank, 2014).

#### ***Non-commercial Stakeholders***

Although all the PPP Guidelines acknowledge explicitly or implicitly that PPPs should ultimately benefit the public, this idea remains elusive throughout the Guidelines. Some suggest that, so long as the PPP option is cheaper than a public sector option, there will be value for money, which will eventually benefit the public. Others mention the interests of stakeholders when they actually have commercial stakeholders' interests in mind. References to people come across cursory or partial in many of the PPP Guidelines. Yet it goes without saying that people as stakeholders have many faces and complex profiles. They are the infrastructure users with needs and preferences; taxpayers; the communities and workers negatively affected by infrastructure projects; and those who are poor or vulnerable and ill-served or left unserved altogether. In cross-border PPPs, people in neighboring countries are easy to forget and may not be accounted for in cost benefit analysis.

People are not just stakeholders – they are also rights holders. In addition to their entitlements under the international human rights legal framework, increasingly regional treaties and national constitutions and laws also protect their rights explicitly.

The ultimate objective of public benefit from PPPs cannot be completely fulfilled if the rights and interests of non-commercial stakeholders in PPPs are not placed at the center. In public governance, people play an important role in giving credibility to decision making, and even improving decisions and outcomes. Yet, too many of the PPP Guidelines dedicate their content to public financial management and facilitating the interest of commercial stakeholders. Too many of the PPP Guidelines define concepts such as value for money, cost benefit analysis, and affordability narrowly from the point of view of public sector financial management and efficiency and not sufficiently from the viewpoint of creating public good for the country and its people. The idea of sustainable development as a public good seems to have been left out altogether.

The typical utilitarian approach to cost benefit analyses used by economists makes it challenging for social and environmental issues and externalities to be costed and fully factored in such analyses. But the discipline of cost benefit analyses must evolve to include these issues, so that the analysis factors in more than speedy project completion as a benefit and the cost to those who will bear direct impacts. It would be useful to bring different disciplines together for a broader, more holistic cost benefit analysis and other preliminary analyses.

Lessons and innovation from pragmatic country practices as well as experts and academic communities should also be captured.

Not all PPP Guidelines neglect the perspective of non-commercial stakeholders. The OECD (2012a) and UNECE (2008 and 2016) guidelines stand out with its unique exploration of the role of the public. UNECE (2008) offers six principles of good public governance of PPPs, the first of which is “participation” or “the degree of involvement of all stakeholders.” And the following statement appears as the first of the twelve principles of public governance of PPPs offered by the OECD (2012a):

The political leadership should ensure public awareness of the relative costs, benefits and risks of Public-Private Partnerships and conventional procurement. Popular understanding of Public-Private Partnerships requires active consultation and engagement with stakeholders as well as involving end-users in defining the project and subsequently in monitoring service quality.

UNECE (2016, p.2) goes a step further and offers a vision of putting people first in PPPs. It advocates that the purpose of PPPs should be on:

improving the quality of life of communities, particularly those that are fighting poverty and by creating local and sustainable jobs. Projects should fight hunger and promote wellbeing, promote gender equality, increase access to water, energy, transport, and education for all, and promote social cohesion, justice and disavow all forms of discrimination based on race, ethnicity, creed and culture.

The rest of the PPP Guidelines miss the opportunity to fully bring the interest of non-commercial stakeholder within their scope. When non-commercial stakeholders are mentioned, it is often in the context of risk management – stakeholder engagement is necessary because failure to address adverse impacts on communities and workers impacted by infrastructure, or opposing views of users or taxpayers, can delay projects and result in cost overruns. By treating citizens as a nuisance factor that must be managed, the PPP Guidelines fail to explore how benefits to non-commercial stakeholders can be created and improved, often *with their input*.



The PPP Guidelines also fail to explain how different stakeholder groups are impacted by and react to infrastructure, such as women, children, the elderly, the disabled, the poor, the urban and rural communities, the minorities, and others who are marginalized or vulnerable. The World Bank's work on gender and transport (World Bank, 2010) is not referenced in any of the PPP Guidelines published by the World Bank. The ADB (2008) guidelines stand out for dedicating a chapter on pro-poor aspects, though the onus is placed on the donor community to support them.

### ***Climate Change Considerations***

Although the Addis Agenda emphasizes the need for “sustainable and resilient” infrastructure, none of the PPP Guidelines mentions the relevance of climate change in relation to economic infrastructure. Climate change considerations can potentially affect many stages of a PPP life cycle, from project selection, feasibility study and cost benefit analysis, procurement, to dispute resolution. At a more fundamental level, the uncertain nature and extent of risks that climate change poses to long-term projects could render PPPs quite ill-suited as a vehicle for infrastructure development. There is an urgent need to engage experts on the implication of climate change risks in PPPs, and embed climate related advice in the PPP Guidelines, or at least cross-reference them.

In 2016, the World Bank's Public-Private Infrastructure Advisory Facility (PPIAF) issued a report (World Bank, 2016b) urging the international development community to build in climate risk and resilience in economic infrastructure PPPs early on in the project cycle. A separate PPIAF Issues Brief (Sundararajan & Suriyagoda, 2016) questions whether PPPs can even address climate change issues at all: whereas PPPs require deterministic contracts, a much more flexible and iterative approach will be needed to deal with the uncertain nature of climate change risks. The Brief suggests other global sources of climate finance, such as the Green Climate Fund, Climate Investment Funds, and green bonds, can also finance climate-smart infrastructure.

In terms of project selection, climate factors are relevant in multiple ways. First and foremost, PPPs (and national infrastructure plans) should be consistent with countries' Nationally Determined Contributions (NDCs) under the Paris Climate Change Agreement. Within the boundaries of national plans, PPP officials should update the national PPP framework to reflect references to climate change, and look for projects or project components that help with mitigation as well as adaptation to climate change, including disaster risk management. Furthermore, contracting authorities and investors need guidance on ways to avoid locking in old technology, underperforming asset and costly investment in long-term contracts spanning over two or more decades.

Preliminary studies, such as feasibility studies, and cost benefit analyses, must take climate considerations into account, especially in dams, power plants, roads and water treatment plants. At the project level, due diligence must look into the risks that climate change can pose to a project, as well as the risks that a project could pose to the local climate in the life of the project. Although it is commonly assumed that lack of data limits such assessment, data availability and modeling techniques improved exponentially over the last few years. We can also benefit from technical specifications by sector to help the world stay on the 1.5 to 2 degree warming trajectory. While at least one CSO plans to take on the arduous task of proposing sector specifications, it may also be helpful for the MDBs to either lead or collaborate in the creation of sector-specific guidance that can be used consistently across the MDBs and other financial institutions.

In terms of risk allocation, experts predict that the standard force majeure definition in a typical PPP contract will have to be rethought completely, and that if the private sector would not assume most of the climate change risks, then PPPs may become too expensive for the government. Change in law provisions must also be drafted carefully to ensure that the contracting authority will be able to issue climate policies

and regulations consistent with the NDCs, without having to pay compensation to the investor for the cost of compliance, or being subjected to legal proceedings under investor-state dispute resolution mechanisms.

The PPP Guidelines should either incorporate the key points of the PPIAF guidance document above (and any similar guidance available in the future) or at least prominently cross-reference them. Furthermore, MDBs should demonstrate leadership in embedding climate change considerations in PPPs. Anecdotal evidence suggests that staff and management of some MDBs do not offer any assurance about the compatibility of a proposed infrastructure investment with the Paris Agreement, and the MDB boards do not ask for such assurance either.

### ***Environmental, Social and Governance Dimensions of Sustainability***

Environmental, social and governance (often bundled together as ‘ESG’) sustainability and human rights standards largely define the society’s expectation for how projects should avoid, minimize, manage or compensate for impacts to people and the environment. Furthermore, ESG sustainability forms an important element of public governance of PPPs, and is consistent with the Addis Agenda. But the PPP Guidelines are reticent on ESG issues.

Reflecting the breadth of ESG issues that infrastructure projects can trigger, the PPP Guidelines’ coverage of this area varies significantly. Many mention compliance with environmental regulations, while a few highlight risks associated with labor (for example, ADB (2008) and OECD (2008)), land acquisition, resettlement and general project site issues (the UN ESCAP (2011) guidelines have the most coverage on site issues), and archeological (or cultural heritage) issues (European Commission (2003)). The OECD (2012a) mentions the importance of responsible business conduct of the private sector, and several mention corruption risks (for example, UNECE (2008) and OECD (2012a)). There is no mention of the gender dimensions of infrastructure in any of the PPP Guidelines. The MDBs do not mention their own environmental and social safeguard policies; however, the ADB, IBRD and IDB (2014) guidelines do mention the Equator Principles, which are based on IFC’s Performance Standards. The World Bank (2015) guidelines on contractual provisions do not provide advice on how to allocate and document the responsibility to manage environmental and social risks of PPP projects. Overall, the PPP Guidelines do not adequately explain the need for the public and private parties to work together to ensure ESG risks identified in an earlier assessment phase are allocated and managed throughout the life of a PPP.

#### **d. Drivers of Differences and Gaps – Different Aspects of Public Governance**

Several factors seem to drive the differences and gaps described above. As noted, a number of the PPP Guidelines are strongly influenced by the public governance theme. Yet the role of the public, and the government’s responsibility to solicit and account for public feedback, are conspicuously absent, implying that the PPP Guidelines are largely driven by a narrower view of public governance. Likewise, sustainability and climate change considerations, an integral part of public governance, are absent. This narrow approach to public governance could limit the ability of PPPs to generate public value through improved infrastructure decisions and delivery, *and* public good through enhancement of sustainable development.

To be sure, the PPP Guidelines generally address many public governance principles; however, they do so mostly with a view to encouraging the public sector to discharge its fiscal and financial management mandates (for example, IMF (2006) and OECD (2008)) and best meet the commercial interest of the private sector. In the PPP Guidelines, the interests of non-commercial stakeholders may get acknowledged but do not receive the same attention as commercial stakeholders. They define concepts such as value for money, cost

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benefit analysis, and affordability narrowly from the point of view of public sector financial management and efficiency, as discussed elsewhere in this Working Paper.

The OECD (2012a) guidelines illustrate a hybrid type of guidance that seems to straddle between a narrower approach to public governance driven by fiscal sustainability and the fuller approach that embraces the public at the center of PPPs. The preamble to the OECD (2008) Principles is instructive in understanding why the OECD found it necessary to focus states' attention on public governance in PPPs. It mentions several drivers of the Principles, such as the fact that democracy and rule of law depend on sound regulatory frameworks to promote fiscal sustainability, and that the ongoing financial crisis makes transparent and prudent management of contingent fiscal liabilities particularly necessary. It is in this context that the first principle under the heading of "clear, predictable and legitimate institutional framework supported by competent and well-resourced authorities" mentions the importance of public awareness of costs, benefits and risks of PPPs, as well as active consultation and engagement of stakeholders and involvement of end-users.

All the PPP Guidelines do recognize to some extent that participation, transparency, and accountability are foundational principles of public governance, and that they need strong institutions and policy and procedural underpinning to become real and tangible to people. When it comes to details, however, the recommended methods for information disclosure do not identify affected communities or consumers as key audience (for example, ADB (2008); ADB, IBRD and IDB (2014); and EIB-EPEC (2011)), even though these stakeholders are universally interested in who is responsible for service provision and oversight. With respect to accountability, while all PPP Guidelines identify PPP units and various internal and external oversight mechanisms as necessary accountability mechanisms for PPPs, they largely serve the purpose of political and administrative accountability. Some mention the need for a mechanism for commercial complaints that arise during or after the bidding process. Only the European Commission (2003) guidelines mention consumer watchdog associations, and the ADB, IBRD and IDB (2014) guidelines briefly mention grievance mechanisms for users.

The most recent UNECE guidelines were driven by a different driver, the SDGs. These guidelines make an interesting observation about the progression of PPPs: "The first generation of PPP. . . was largely done as an accounting exercise to put assets 'off the country's balance sheet'; and a second generation of PPP was developed as a means of providing better services at an overall lower cost than through traditional public procurement, giving tax payers 'value-for-money'. Currently, a third generation of PPP is emerging. . . ." (UNECE, 2016, p. 3) The UNECE has challenged governments and the private sector to produce "people first PPPs" that are "compliant" with the SDGs.

In summary, this Working Paper attributes the differences and gaps in the PPP Guidelines mainly to different approaches to public governance. The most neglected elements are non-commercial stakeholders' perspectives, sustainable development, and climate change. All the PPP Guidelines must endeavor to include appropriate guidance on these areas, if they are to help PPPs evolve.

### **e. Alignment with the AAAA Principles**

This Working Paper now turns to the AAAA Principles, which present another mix of principles of public governance in blended finance, and examines how the PPP Guidelines align with these Principles. As indicated by the foregoing sections that described gap areas and drivers of such gaps, the AAAA Principles are addressed in varying degrees or not at all in the PPP Guidelines. The following analysis indicates that PPP Guidelines need adjustments to be compatible with the Addis Agenda and the 2030 Agenda.

**Careful consideration given to the structure and use of blended finance instruments:** The Addis Agenda sets out two components of this principle: 1) the importance of proper structuring of PPPs; and 2) the need to ensure the ‘right’ circumstances for PPPs, as opposed to other financing structures, such as public or private finance. The PPP Guidelines function as informational tools and do not offer specific structuring advice or circumstances under which PPPs are preferred over other modalities. Even the more implementation-oriented PPP Guidelines, such as ADB (2008); ADB, IBRD and IDB (2014); EIB-EPEC (2011); and UN ESCAP (2011), which explain the entire PPP process from start to finish, only include generic structuring options at the outset. It is difficult to extract from the PPP Guidelines consistent structuring details or advice on when to use PPPs.

The PPP Guidelines do not seem to offer advice on whether a PPP model is more suitable for particular types of infrastructure. They do not take a position on whether PPPs work better for economic infrastructure than for the social ones. Although UNECE (2008) offers some insights on countries that applied a PPP model to specific sectors (see Box 3 below), the examples are from developed countries only, and besides, no pattern emerges from the collection of sectors, other than that PPPs appear to have worked well in transport and road projects.

UNECE (2012) emphasizes the need for low income countries to choose the PPP models that suit them rather than use models taken from developed countries. Case studies that illustrate such models in developing countries and instances of South-South cooperation and learning would be extremely useful. However, systematic data on PPP implementation in developing countries is still quite scarce.

IMF (2006) offers an incisive observation on PPPs. It notes that PPPs are “well-suited to situations in which the government can clearly identify the quality of services it wants the private sector to provide and can translate these into measurable output indicators” and “tend to be better suited to cases where service requirements are not expected to vary significantly over time and where technical progress is unlikely to radically change the way in which the service is provided.” This advice seems sensible but could significantly limit the type of PPPs.

The OECD (2012b) offers advice on when governments should consider public versus private sector options, and raises the following criteria for consideration prior to decision making:

- a. The size and financing profile of the investment - e.g. a large initial investment followed by significant operating and maintenance needs could indicate advantages to bundle the construction, operation and maintenance of the assets in a single contract.
- b. The potential for cost recovery from users or land value capture - e.g. for investments in sectors that have a non-excludable nature, user fees will not be practicable and the project will need to be funded via government spending.
- c. The extent to which quality is contractible – e.g. when quality is difficult to specify and monitor, then contracts are likely to be costly and time consuming to develop, and will be highly vulnerable to renegotiation.
- d. The level of uncertainty – e.g. many of the most catastrophic infrastructure investments are the result of poor assumptions, often made worse by excessive optimism. In sectors where change is highly unpredictable (e.g. where technology is in flux), preferred modes of delivery should be adaptable, not locked.

- e. The ability to identify, assess and allocate risk appropriately – e.g. are we sure which parties should carry what risks?

Although not specific to PPPs, the foregoing criteria can set some boundaries on when public/private sector options are feasible.

Items iii, iv and v above are consistent with the expert view described above on the implications of climate change risks on PPPs: when infrastructure projects are potentially subject to significant climate change risks, PPPs are not likely to be a good vehicle for infrastructure development and financing, unless a highly adaptable relationship can be forged between the public and private sectors (but such a relationship does not fit the deterministic nature of PPPs).

**Sharing risks and reward fairly:** One of the hallmarks of PPPs is risk transfer to the private sector, which will usually assume the risks of designing, building, operating and/or financing the project. Due to the fluid nature of risks and rewards allocation and sharing, the right equilibrium is far more challenging to strike and maintain in practice than in theory.

The PPP Guidelines generally agree that PPPs should allocate risks to the party best suited to assume them while leaving the remaining risks to the other party. The OECD (2008) guidelines argue that sufficient transfer of risk to the private partner is necessary to ensure efficiency and value for money. The public sector is not only responsible for transferring risks to the private sector and managing risks it retains (e.g., political risk), but it must also support the private sector through both financial and nonfinancial means. In terms of mechanisms to support the private sector, many PPP Guidelines discuss guarantees and subsidies, but the UNECE (2008) guidelines are the most thorough in exploring the full range of support mechanisms, from financial (subsidy, loans/equity, or guarantees) to nonfinancial measures (tax breaks, customs exemption, waiver of competition laws, and ensuring security interest, etc).

In the process of going back and forth on risk allocation, if the private sector demands an “excessively” high return because it views risks as excessively high, it may not make sense for the public sector to attempt to subsidize this risk. This is particularly the case with climate change risks, which the private sector is not likely to carry without significant compensation. Instead, the public sector could consider financing the project directly, or in the case of significant climate risks, resort to other climate finance mechanism. Of course, valuing and putting a price on risk is often difficult, which may be one of the reasons why PPPs are not always appreciated as the best instrument to deliver important public services.

The flip side of risk sharing is reward sharing. Generally speaking, in PPPs, the reward for the public sector is risk transfer, while reward for the private sector is profit-making. In terms of *sharing* rewards, the European Commission (2003) guidelines require the absence of “disproportionate” remuneration on capital by the private sector, though they do allow for and welcome the private sector generating additional revenue (e.g., through use of spare capacity or disposal of surplus assets), thereby reducing the public sector’s responsibility for subsidy. The UNECE (2008) guidelines ask whether the project upsides (such as those from an interest rate reduction on a project loan following project completion, which rewards the PPP project entity for eliminating the construction risk) should be shared with the public sector. Other than these suggestions, the PPP Guidelines do not mention reward sharing between the public and private sector actors, or sharing of any upside with users (perhaps in the form of rebates) or taxpayers.

Even if the parties to the PPP strike the right balance on risks and reward at the outset, a subsequent renegotiation on the deal could upset the balance. According to Queyranne (2014), renegotiation is common

and tends to favor private sector operators, and the concessionaire could also go bankrupt and request relief from the government. In such cases, governments must step in and assume the unfulfilled obligations. These events are negotiated on a case-by-case basis, confidentially, and without public scrutiny.

**Meeting social and environmental standards:** Section IV. c. of this Working Paper already discussed the general shortcomings of the PPP Guidelines when it comes to the ESG dimensions of sustainability. The new generation of PPPs should address this area to ensure consistency with the AAAA Principles and the 2030 Agenda.

**Alignment with sustainable development, to ensure “sustainable, accessible, affordable and resilient quality infrastructure”:** Surprisingly, the PPP Guidelines are silent on these key concepts in infrastructure provision, other than the idea of quality infrastructure,<sup>1</sup> which is mentioned in most of the Guidelines, and the idea of affordability, which tends to be in reference to the public sector, rather than users.

**Ensuring clear accountability mechanisms:** Accountability in the PPP public governance context means responsibility for the relevant government agencies to account to each other, as well as to those they govern. Transparency, discussed above, is one means to this end, but there are other elements of accountability, such as fiscal discipline, institutional setting and capacity, policies and procedures, prevention and remediation.

The idea of accountability discussed in the PPP Guidelines mostly centers on political, administrative or operational accountability. All PPP Guidelines comment on the importance of fiscal discipline, PPP policy, regulatory framework, and specific procedures for PPP implementation. In terms of institutional settings, they invariably point to PPP units as one accountability mechanism, without much elaboration. While the OECD (2008) suggests that these PPP units should only provide PPP oversight without any hand in decision making, others suggest that PPP units can take on a large variety of work, including liaison, promotional, or program management support roles, which could potentially create conflicts of interest. Most discussions on PPP units do not acknowledge the potential of these units to: perpetuate a bias for PPPs;<sup>2</sup> waive freedom of information laws; enhance opportunities for corruption; exceed budgetary constraints; or other problems raised by civil society (see Powell (2016) and Romero (2016)). The PPP Guidelines do not address how multiple PPP units should work together in cross-border PPPs (see below).

Beyond PPP units, several PPP Guidelines suggest a dispute resolution mechanism for commercial stakeholders in relation to procurement. As for the non-commercial stakeholders, the European Commission (2003) guidelines suggest consumer watchdog associations, whereas ADB, IBRD and IDB (2014) briefly mentions a grievance mechanism for users, which could play a role in both prevention and remediation of grievances.<sup>3</sup>

1 The concept of quality infrastructure is central to the Ise-Shima Principles for Promoting Quality Infrastructure Investment, announced by the G7 in 2016. Available at: <http://www.mofa.go.jp/files/000160272.pdf>

2 ADB, IBRD and IDB (2014, p.25) guidelines acknowledge the problem of both anti-PPP and pro-PPP biases: “Sometimes PPP Units are specifically given the task of promoting the use of PPP. This can help overcome initial anti-PPP bias at the early stage of new PPP programs. However, it can also risk distorting the public investment planning process—pushing forward projects because they appear to be doable as PPPs, rather than because they are public investment priorities. Instituting a clear PPP process with appropriate approvals. . . helps overcome this risk.”

3 The private sector operator should establish an operational grievance mechanism to respond to grievances of affected stakeholders. Such a mechanism is required in IFC Performance Standard 1 and also in the Equator Principles. These grievance mechanisms are a means to accessing remedy under Chapter III of the UN Guiding Principles on Business and Human Rights. Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

The UNECE (2008) guidelines explicitly acknowledge the need for public officials tasked with PPPs to build capacity through training. Some agencies that issued the PPP Guidelines offer online courses and certification programs, and others provide technical assistance to countries to build their capacity in managing aspects of PPPs.<sup>4</sup>

Non-commercial stakeholders have different needs, and the directly affected stakeholders in particular will need an accountability mechanism that is tailored to their circumstances.<sup>5</sup> A variety of accountability mechanisms may be needed for different phases of the PPPs. This is one of the more challenging areas of public governance that must be tackled in the near future.

**Ensuring transparency, including in public procurement frameworks and contracts:** Most of the PPP Guidelines acknowledge that a PPP life cycle faces several transparency challenges, such as policy and regulatory transparency, fiscal and budget transparency, transparency in the procurement process, contract transparency, monitoring and reporting, etc. Meeting these challenges should fill the informational needs of the public and private sector actors. But little guidance is available on disclosure techniques to respond to the informational needs of affected communities, workers, users, and other non-commercial stakeholders, even though the PPP Guidelines acknowledge their informational needs in theory. This is the case with the newly released World Bank (2016a) guidelines on disclosure frameworks. The World Bank attributes this asymmetry in part to the fact that little information is available on the detailed profile of users as well as uses of information.

The World Bank (2016a) guidelines and a few others mention the unsolicited PPP scenario<sup>6</sup> and make the case for an even higher level of information disclosure in unsolicited projects to promote consistency with the national planning process and sound project decisions, and to deter corruption. Some countries have explicit procedures to encourage transparency in unsolicited bids. Nonetheless, national frameworks tend to guard any commercially sensitive or proprietary information, and readily waive part or all of disclosure obligations. Anecdotal evidence suggests that, despite national disclosure frameworks on paper, some countries end up releasing very little PPP information in practice when PPPs start off as unsolicited projects. The risks of unsolicited proposals exist not only at the start of a PPP but also at the end, when there is a strong incentive to simply extend the infrastructure service without any competitive process. Generally, these risks do not receive sufficient attention in the PPP Guidelines.

**Ensuring participation, particularly of local communities in decisions affecting their communities:** This Working Paper noted in Section IV. c. above that the PPP Guidelines tend not to promote the participation of certain stakeholder groups, notably the non-commercial ones. For the most part, the PPP

<sup>4</sup> For example, UNESCAP offers PPP training and certification. See <http://www.unescap.org/our-work/transport/financing-and-private-sector-participation/public-private-partnership-course/obtain-certification> EPEC provides PPP institutional strengthening programs See <http://www.eib.org/epec/wbif/index.htm>

<sup>5</sup> For direct impacts of PPP operations, affected communities may have access to accountability mechanisms of multilateral or bilateral financial institutions (for example, the World Bank's Inspection Panel, IFC's Compliance, Advisory and Ombudsman, or the Independent Complaints Mechanism shared by some European bilaterals) or the OECD export credit agencies (the OECD National Contact Points).

<sup>6</sup> ADB, IBRD and IDB (2014, p.195) define an 'unsolicited proposal' as: a proposal made by a private party to undertake a PPP project, submitted at the initiative of the private firm, rather than in response to a request from the government. Accepting – and encouraging – unsolicited proposals also create challenges that mean they risk providing poor value for money, particularly if the government chooses to negotiate a PPP directly with the project proponent. Also see: PPIAF (2014). Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs. Available from: <http://ppp.worldbank.org/public-private-partnership/library/unsolicited-proposals-%E2%80%93-exception-public-initiation-infrastructure-ppps>

Guidelines fail to encourage the participation of communities and groups likely to be directly affected by PPP decisions and actions. Implementing such procedural safeguards can be time consuming and delay inducing, hence they are increasingly maligned by some governmental officials and some members of the public. Yet, failure to place the public at the center of a PPP project could cause PPP officials to miss an important opportunity to involve citizens in PPP decision making and validation. Taking advantage of such opportunities could ultimately contribute to speedier project completion; moreover, public officials could also benefit from valuable community feedback on how to improve service delivery and quality.

**Ensuring effective management, accounting, and budgeting for contingent liabilities, and debt sustainability:** Many of the PPP Guidelines mention the problem of governments' failure to manage their financial liabilities arising from PPPs, which is a serious failure in public governance. The IMF (2006) and OECD (2008) guidelines give the most in-depth treatment on the topic. To address this failure, the OECD explains that governments must operate PPPs within their budgetary constraints, and that affordability of PPPs must be seen within such constraints. Governments must not view PPPs as a financial mechanism to place expenditures off the balance sheets; instead, they must scrutinize, account for and report on the fiscal and financial commitments in relation to PPP projects (OECD (2008)).<sup>7</sup> However, even if governments are willing to engage in transparent practices, they will be challenged by the absence of a universally accepted fiscal accounting and reporting framework for PPPs. Responding to this problem, the EIB-EPEC (2011) guidelines mention debt and deficit treatment of PPPs under the Eurostat accounting rules. More recently, the IMF and the World Bank developed the PPP Fiscal Risk Assessment Model or PFRAM, an analytical tool to assess the potential fiscal costs and risks arising from PPP projects (IMF and the World Bank Group, 2016). In due course, differences in methodologies should be reconciled so that disclosure is consistent across the board.

The IMF (2006) guidelines analyze the problem of countries taking on current or future PPP costs from payment of services delivered and honoring calls on guarantees provided to the private sector. This could cause countries, particularly low-income countries, to exceed sustainable levels of public debt.<sup>8</sup> IMF discusses how debt sustainability analysis is complicated by the uncertainty on how to account for contingent liabilities arising from provision of guarantees to the private sector. ADB, IBRD and IDB (2014) also briefly mentions debt sustainability.

**Alignment with national priorities and relevant principles of effective development cooperation:** As mentioned in Section IV. b. above, the PPP Guidelines for the most part do not appear to be concerned with the need for PPPs to align with national priorities, development plans, or principles of development cooperation (which are elaborated in paragraphs 50 to 78 of the Addis Agenda). Instead, some of the PPP Guidelines give the impression that projects can be justified on the basis of cost benefit analysis alone. A country's predetermined priorities, sustainable development plans, or NDCs under the Paris Agreement are normally driven by a national process, and should be the legitimate starting point in the deliberation of

<sup>7</sup> Notwithstanding such advice, the OECD internal survey presented at a meeting of the IATF indicated that budget documentation or other published materials continue to lack sufficient information on the status of any contingent liabilities in relation to PPPs. See also OECD (2016), p.67. Figure 3.9 indicates that of the 25 countries surveyed, 16 responded in relation to the question of whether the budget documentation or other published material contain an assessment with respect to contingent liabilities derived from PPPs and concessions. While eleven countries responded that contingent liabilities are listed and priced, four said they are listed but not priced, and one responded that they are not.

<sup>8</sup> According to Kaiser (2016), 108 developing countries are in a more or less critical debt situation today – this is 25 more than last year. See also: Aizawa (2016).



project selection. The PPP Guidelines should acknowledge explicitly the need for coherence with national processes, and country ownership of national sustainable development and climate change strategies.<sup>9</sup>

## f. Impact of PPP Guidelines

Do PPP officials and practitioners - the intended core audience of most of the PPP Guidelines - use the PPP Guidelines? If so, what do they glean from them? What specific actions do they take or refrain from taking based on the PPP Guidelines? Do the approaches advocated by the PPP Guidelines or omissions in them produce specific outcomes?

Research conducted for this Working Paper found that those who publish the PPP Guidelines do not put out information on usage by the intended audience, let alone how they influence project outcomes or benefit society. The publishing organizations are likely to track the number of hits on the relevant websites but such data can hardly respond to the complex questions about usage and consequences of the PPP Guidelines.<sup>10</sup> MDBs typically conduct evaluations of their investment portfolio, though the past evaluations on PPP projects financed by the ADB, EIB and the World Bank do not offer much information about the usage of the respective PPP Guidelines.

In 2005, the EIB published an evaluation of 15 PPP projects financed by the EIB between 1990 and 2001. (EIB, 2005) This evaluation predates the EIB-EPEC (2011) guidelines. It tracked EIB's performance as well as performance of PPPs against some basic parameters.

The ADB evaluated its assistance in PPPs and reported on the results in 2009. (ADB, 2009) Although it found that ADB's overall performance was "successful" it also found that the impact/additionality of the public sector operation was "modest" and that its role in bringing about PPP transactions and additional private infrastructure investment in Asia has been limited so far. While the ADB (2008) guidelines are mentioned in several places, the evaluation does not suggest any relationship between the guidelines and ADB performance, except for the fact that ADB carried out a "formidable" staff training program and published the guidelines. The evaluation recommended even more internal capacity building in the future.

170 projects financed by the WBG over a decade were reviewed by the IEG (World Bank 2014). This evaluation found that:

- The WBG's approach to PPPs has been based on the assumption that involving the private sector is a good thing. Public sector comparators – systematically comparing PPPs against the public sector for value for money to justify private sector involvement – were not a part of the WBG activities.
- Contingent liability of the WBG-supported PPP projects is rarely fully quantified.
- Most of the upstream work aims at sector reform but it failed in almost half of the cases.
- Advice on how to manage fiscal implications from PPPs is rarely given.
- While the PPP projects achieve development outcomes, as self-defined by the WBG, not a single WBG project tracks all of the aspects of public service delivery: access, pro-poor aspects, and quality of service delivery.

<sup>9</sup> For additional perspectives on the role of development cooperation supporting the strengthening of national capacities, see DESA (2016a).

<sup>10</sup> The OECD has indicated that it surveyed Member Countries on their awareness of the OECD (2012a) guidelines, and whether any reform has been undertaken in view of recommendations under the guidelines.

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Since the publication of the IEG evaluation occurred in the same year as the publication of the ADB, IBRD and IDB (2014) guidelines, it is not clear whether the guidelines had a chance to incorporate the findings of the ADB or IEG evaluations.<sup>11</sup>

Considering the renewed attention to PPPs in the recent years, it is possible that the PPP Guidelines have some direct impacts on ongoing and planned PPPs. Perhaps there is a better likelihood that those Guidelines with technical thematic focus, such as fiscal management or disclosure of information, rather than generic guidelines, could more readily influence public officials seeking technical information. At the same time, it is easy to imagine that time-constrained users would prefer shorter materials and interactive tools and shun the lengthy and dense guidance (many PPP Guidelines exceed 100 pages, the longest being 231 pages). With the wealth of information available on the relevant PPP websites (e.g., the PPI (Private Participation in Infrastructure), PPIAF, and other World Bank Group websites), including user-friendly briefing notes, data sets, and tools, some of which are interactive, it is possible that the PPP Guidelines are mostly an object of academic research.

This Working Paper speculates that the value addition of the PPP Guidelines is maximized when expert institutions engage with countries or countries engage with each other and analyze and socialize the lessons learned in a holistic learning setting. Of course, if the MDBs finance PPPs explicitly in accordance with its own advice contained in the PPP Guidelines, this could also have tangible impacts on the ground that could be measured and analyzed in the future.

Finally, if PPPs are in fact unsuitable for all but the simplest projects, as suggested by the IMF, one could question the practical value of the PPP Guidelines and speculate that time and resources could be directed more productively elsewhere, for example to all public and private sector options to develop and finance infrastructure, rather than only on PPPs.

## **g. Success Factors**

Many PPP Guidelines do offer generic ex ante success factors for good PPPs. These include good regulatory framework; appropriate risk allocation to the private sector; presence of competition before and after procurement; institutional capacity; budget transparency; and political support, among others. Naturally, these success factors are tied to the focus areas of PPPs as articulated by the respective PPP Guidelines. While most PPP Guidelines mention stakeholder engagement from a risk management point of view, good engagement with stakeholders is not captured as a success factor; neither do they offer any reference to the realization of public benefit and public good.

What are the possible indicators of PPP success that projects should identify, monitor and report on? Impacts and benefits measurement constitutes the greatest challenge of the third generation PPPs, on par with embedding public governance principles and creating public benefits. To begin, success of PPPs should not be measured by financial factors alone, if PPPs are to evolve and mature. The IEG evaluation mentions three indicators of public service delivery: access, pro-poor aspects, and quality of service delivery. As suggested by the UNECE (2008) guidelines, public interest goals, such as social equity, inclusiveness, accessibility, transparency and accountability, can also be converted to indicators and tracked. Furthermore, it is important

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<sup>11</sup> ADB, IBRD and IDB (2014) guidelines were updated in 2017 with new collaborators (EBRD, Global Infrastructure Hub, Islamic Development Bank, OECD, UNECE and UNDESCAP. It has new guidance in areas such as stakeholder communication and engagement, environmental and social studies, and climate change. Available from: <https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-3-0>

to measure the impacts on citizens, positive and negative, such as impacts on job creation/loss; livelihoods; direct project impacts, including impacts on the environment, communities and workers; affordability to users; impacts on taxpayers; and impacts on women, the poor, and the vulnerable and marginalized; on a disaggregated basis. Impacts from corruption in PPPs should also be monitored.

## Other observations

**MDB roles and contributions:** Several MDBs provide guidance on PPPs, and this Working Paper reviewed those published by the ADB, EIB, and World Bank. The MDB's position on PPPs in the respective PPP Guidelines seems both conflicting and incomplete. On the one hand, these PPP Guidelines are clearly intended to be comprehensive for the benefit of their intended audiences. They suggest that following their advice leads to good outcomes. Through these Guidelines, the MDBs can publicly demonstrate their support for PPPs, and respond to pressure from other international organizations and national governments to do so.

On the other hand, the Guidelines tend to avoid clear cut answers to pressing questions. This gives the MDBs flexibility to tailor their advice to country and corporate clients, but the MDBs miss an opportunity to satisfy the broader audience, including countries, companies and commercial banks, and increasingly, long-term investors (such as private equity, insurance or pension funds, or sovereign wealth funds) that look to the MDBs for guidance on when to choose PPPs and how to structure and operationalize them.

The Guidelines are also silent about the MDBs' own rules that contribute to good public governance of PPPs, such as those on environmental and social safeguards, disclosure,<sup>12</sup> anti-corruption, and procurement. These policies can be useful risk management tools, but are maligned by some countries as conditionalities. The body of work that the World Bank carried out on gender and road transportation (World Bank, 2010) is not referenced in any of the World Bank guidelines reviewed in this Working Paper. Experts also point out that the World Bank Group's significant resources dedicated to climate change due diligence is significantly underutilized (Micale, et al., 2013).

In 2016, the MDBs signed a Joint Declaration of Aspirations on Actions to Support Infrastructure Investment (AfDB et al., 2016). In addition to quantitative commitments, they vowed to support projects that consider climate resilience, job creation, environmental and social impacts, capacity building for local communities, and other lofty goals. The MDBs should follow through on their commitments and ensure coherence in their policy and investment work by mainstreaming sustainable development and climate change considerations in all aspects of their work.

**Closer alignment of transparency and accountability mechanisms:** The infrastructure sector tends to lag the extractives sector when it comes to initiating and adhering to transparency and accountability standards. The extractive sector successfully participates in their own initiatives, such as the Extractive Industries Transparency Initiative and Publish What You Pay. Other initiatives of broader application, such as the Open Contracting Partnerships that apply to public contracting generally, do not seem to have motivated the infrastructure sector to embrace them. Ironically, the Construction Sector Transparency Initiative, dedicated to the construction sector and described as "a country-centred initiative that drives better value from

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<sup>12</sup> For example, paragraph 53 of IFC (2012) encourages either IFC or its private sector clients to disclose key information of projects involving the final delivery of essential services, such as household tariffs and tariff adjustment mechanisms, service standards, investment obligations, and the extent of government support.

infrastructure by increasing transparency and accountability in its delivery,” is also not as widely embraced by the intended target sector.

The CSO-driven transparency and accountability initiatives in the extractive sector managed to create deep collaboration in transparency practices among governments, extractive industries, and CSOs. The quest for transparency also led to examination of ways to hold public officials accountable for revenue management and ultimately the public governance of natural resources. The sector’s experience shows that transparency initiatives can be effective, but transparency in and of itself will not ensure accountability, which requires deliberate advocacy. The infrastructure sector has a long way to go to reach sector-wide consensus on the value of transparency and accountability initiatives. The PPP Guidelines should not be timid in advocating for transparency and accountability in PPPs and greater uptake of the relevant initiatives, and provide concrete guidance in these areas.

**PPP contracts:** Although all PPP Guidelines mention the importance of PPP contracts, and some have limited guidance on how to allocate and record risks in contractual provisions, the World Bank (2015) guidelines are exclusively dedicated to PPP contracts. Consistent with other PPP Guidelines, the World Bank guidance is driven by commercial and lender considerations and does not adequately acknowledge public policy debates on PPP contracts or sustainability dimensions of PPPs. As a consequence, the guidance does not serve the interest of the client countries of the World Bank Group, and their citizens.

In some places, the guidance unfairly favors allocation of risks to the contracting authority, so that they end up bearing the financial consequences arising from labor unrest or the operation of stabilization or change in law clauses. Some issues are entirely omitted; for example, there is no allocation of responsibilities for environmental protection, labor issues (other than force majeure/change in laws), community health, safety and security, or resettlement and related issues, some of which may not be regulated under local law. Dispute resolution provisions tend to favor the operator, who can terminate or renegotiate the contract with relative ease. Frequent comments on bankability of PPP projects have the effect of encouraging parties to maintain a business-as-usual approach to PPPs. On the positive side, the guidance does not rule out contract transparency, though it is naturally very sensitive to confidentiality concerns of the private sector. A closer alignment with other sector-specific transparency initiative would be desirable.

These World Bank (2015) guidelines are a highly visible guidance document issued by a MDB and submitted to the G20’s Investment and Infrastructure Working Group in 2015. These guidelines can benefit from more diverse perspectives on PPP contracts, including ESG sustainability issues and the ongoing debate on how climate change considerations should be reflected in force majeure and change of law provisions. Above all, contractual guidance should include pointers on how to foster a more collaborative and flexible relationship between the contracting authority and the private operator to address difficult sustainability and climate change challenges of long-term projects.<sup>13</sup>

**Cross-border PPPs:** One of the G20 initiatives on infrastructure, the Global Infrastructure Connectivity Alliance (the Alliance), aims to link regional infrastructure master plans around the world, and is focused on energy, transport, water, and information and communications technology. Implementation of

<sup>13</sup> The World Bank (2015) guidelines were replaced by the 2017 edition of the Guidance on PPP Contractual Provisions. It is available from [http://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Guidance\\_%20PPP\\_Contractual\\_Provisions\\_EN\\_2017.pdf](http://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Guidance_%20PPP_Contractual_Provisions_EN_2017.pdf) For a legal critique of the 2017 edition, see Summary Comments on the World Bank Group’s 2017 Guidance on PPP Contractual Provisions, available from: <http://us.boell.org/categories/finance-development-g20>

this vision means cross-border PPPs of mega-projects with coordination challenges of unknown magnitude.<sup>14</sup> In the absence of international standards or protocols for PPPs, the projects initiated under the regional master plans will have to cope with inconsistent policy and regulatory frameworks of multiple countries. If PPP units already struggle to coordinate across agencies in a single country, how will they coordinate and ensure good public governance across countries and numerous subprojects? How will cross-border projects cope with divergent expectations of stakeholders from multiple countries?

The PPP Guidelines are silent on the cross-border dimensions of PPPs. Complex mega-projects spanning countries are not some isolated occurrence but are already the reality today, and the blind spots could cause project delays and cost overruns. Appropriate guidance in this area is urgently needed.<sup>15</sup>

**Sustainability in the procurement process:** Although some PPP Guidelines mention the need for environmental and social criteria to be included in output specifications or in the private sector bids, no Guideline follows through on how ESG sustainability issues should be considered from the beginning to the end of the procurement process (and beyond). On the assumption that the public sector carries out the initial environmental and social impact assessment (ESIA) (or perhaps in some cases strategic impact assessment):

- The ESIA findings will have to be converted into broad requirements and included in the request for proposals
- The relevant ESG qualifications should be included in the pre-qualification stage
- The private sector bidders must propose a specific ESG mitigation and management plan consistent with the ESIA
- The bids must not be judged on the lowest cost consideration alone
- The ESG performance criteria must be included in the PPP contract
- The ESG performance criteria must be monitored to the same extent as monitoring on other contractual provisions, and subjected to ex-post evaluation

Numerous guidance documents on sustainable procurement exist and some countries already have their established practice in this area.<sup>16</sup> The PPP Guidelines should not bypass these important sustainability considerations in the procurement process.

## Conclusion

To realize the vision of sustainable and resilient infrastructure for all, agreed in the Addis Agenda and the 2030 Agenda, we need a more holistic approach to infrastructure development and financing. In this context, we should remember that PPPs are but one tool in the infrastructure toolbox that is constantly expanding.

It takes a herculean effort to implement a PPP. All the hype on PPPs today aside, guidance on PPPs proliferates because PPPs are notoriously difficult to implement. PPPs demand the public sector to have capacity it does not yet have, such as multidisciplinary competency and ability to coordinate across agencies when the incentives of agencies do not always align. PPPs do not fit the public budget process easily and lack the universal accounting tool for disclosure of liabilities. The financing and legal issues are complex and

<sup>14</sup> The Belt and Road Initiative by China is expected to cross 65 countries, involving 4.4 billion people, with several hundred sub-projects.

<sup>15</sup> ASEAN (2014, Chapter 5) contains some guidance on the cross-border dimensions of PPPs.

<sup>16</sup> For example, see: Perera, et. al (2014).

professional services in these areas are often shockingly expensive. After all the effort, the private sector may still fail to do its part, or demand additional compensation or renegotiation. Even worse, the anticipated public benefit may not materialize. To preempt these failures from occurring, the PPP Guidelines in one way or another urge improved public governance of PPPs.

This Working Paper suggests that the Guidelines are rightly driven by some notion of “public governance” but they do not go far enough. The PPP Guidelines correctly assert the importance of public sector performance through good financial management and efficiency, because public value in PPPs flows from efficient public sector management and performance. Although taxpayers and citizens are the ultimate participants and beneficiaries of public value in PPPs, the PPP Guidelines are mostly blind to them, and, as a consequence, miss the opportunity to underscore the positive role people play in legitimatizing decisions, and improving the delivery and quality of infrastructure. Also absent is the idea that PPPs should create public good by enhancing the ESG dimensions of sustainability and identifying and managing climate change risks. These gaps in the PPP Guidelines indicate that the Guidelines do not sufficiently address the full spectrum of public governance, and do not yet fully align with the Addis Agenda, the AAAA Principles, and the 2030 Agenda.

The next generation of PPPs should be driven by a fuller vision of public governance of PPPs. For this transition to occur, governments must consistently strive to realize broad public value and public good from PPPs. This means the public must be at the center of PPP deliberations, decision making and delivery. Governments must weigh the socioeconomic costs and benefits of PPPs and put in place appropriate institutional and accountability mechanisms, systems, processes, and capacity to achieve the fuller vision of public governance.

For the organizations that published the PPP Guidelines, this is an opportune moment to take stock of areas of improvement in PPP guidance. This stocktaking should include a reflection on the true nature of PPPs and the role they should play in public value creation and promotion of sustainable development. The new guidance should clearly spell out the advantages and disadvantages of PPPs, with full explanation of available alternatives. If PPPs are in fact unsuitable for only a subset of infrastructure projects, the parameters must be made clear.

In parallel, the new guidelines should also explore innovative ways to evolve PPPs. For example, the next generation of PPPs could encourage a different kind of partnership, one that is more strategic and based on the willingness of parties to work proactively and flexibly toward equitable sharing of risks, costs and benefits, and to address sustainability and climate issues appropriately. Such partnership could be open to the third sector, such as foundations and civil society, which can play a role in enhancing the PPP governance, design, and service delivery and quality with the input of the public as the ultimate beneficiaries. Some CSOs are beginning to add another “P” to PPPs – the new “P” stands for “producers” or those who are indigenous and have inherent ownership stake in projects. More broadly, this “P” also stands for local communities, users, and people generally.

Any future work on PPPs should not be at the expense of work in other modes of infrastructure development and finance. This will enable public sector officials to pursue a full range of infrastructure development and financing options, rather than focus narrowly on PPPs.

## **V** Recommendations for Future Work

Based on the findings, this Working Paper recommends a new set of guidance materials for the next generation of PPPs. Such guidance could focus on public governance of PPPs that would explicitly incorporate climate change and environmental, social, and governance aspects of PPPs alongside economic considerations, and purposefully take on the perspectives of non-commercial stakeholders.

Guidance should be created collaboratively with partners and build on existing guidance and available resources, as envisioned by the Addis Agenda. Instead of duplicating each other, the publishing organizations should work together to ensure that the sum of the guidance responds to all the challenges faced by those who must implement PPPs. Guidance could take the form of one or more documents, an interactive toolbox, a knowledge platform or a combination of these forms, and could be further strengthened by a self-assessment tool, a rating system, a certification mechanism, and/or a venue for sharing lessons or conducting peer review.

The updated PPP guidance could address the following items (listed in no particular order of priority and not intended to be exhaustive):

### ■ General Considerations

- ◆ Provide guidance on when and how to invite non-commercial stakeholders' participation in and feedback on project selection, design, risk avoidance, as well as service delivery and quality, when and how to disclose information that would be meaningful to such stakeholders, where and how to receive, respond to and account for grievances of such stakeholders, and how to account for the PPP performance to such stakeholders.
- ◆ Include adequate guidance on climate change, such as: (i) integrating climate resilience into a national PPP framework; (ii) ensuring climate resilience of PPP projects early on and throughout the project life cycle; (iii) mitigating any risk that a PPP project may pose to the climate, particularly the local climate; (iv) enhancing positive externalities and climate co-benefits where possible; and (v) building in fair climate risk allocation and flexibility in PPP contracts.
- ◆ Collect case studies on the various phases of a PPP life cycle, such as the threat of unsolicited proposals at the start and finish of PPPs, and risks associated with winding down PPPs, to examine the types of risks and rewards and whether they are properly allocated between the parties.
- ◆ Consider including monitoring indicators in PPP arrangements, including indicators for public benefit, ESG sustainability and climate change considerations, as well as indicators of public service delivery, such as access, pro-poor aspects, and quality of service delivery.

### ■ Aligning with the AAAA Principles

- ◆ Provide guidance on how to enhance each of the AAAA Principles. For example:
- ◆ Provide guidance on how to enhance participation, transparency and accountability in PPPs.
  - Articulate appropriate environmental and social considerations to be embedded throughout the PPP process, including a clear allocation of risks and responsibilities in impacts assessment and management, procurement, and contracts.
  - Articulate circumstances under which PPPs could be undertaken (e.g., projects with no significant service variables), and those under which PPPs should be avoided (e.g., projects with potentially different service requirements in the future, and those with significant climate change risks). Clearly point to pragmatic alternatives to PPPs.
  - Provide guidance on and examples of fair sharing of risks and reward.

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**■ A broader definition of value for money**

- ◆ Explore a broader definition of value for money that would incorporate climate, environmental, social and governance benefits and costs alongside financial and economic ones.
- ◆ Create new (or adjust any existing) ex ante methodologies for establishing value for money, consistent with the broad definition of value for money, through public impact assessment, social benefit analysis or other appropriate analytical process, with an explicit focus on impacts on citizens. These include impacts on job creation/loss and livelihoods; direct project impacts, including impacts on the environment, communities and workers; affordability to users; impacts on taxpayers; and impacts on the poor and the vulnerable, on a disaggregated basis. Consult on such methodologies with external experts and the relevant UN agencies.
- ◆ Pilot such methodologies in collaboration with an MDB or other agency or organization that supports PPP projects.

**■ Sustainable procurement**

- ◆ Provide appropriate guidance or cross reference existing guidance on how to incorporate environmental and social sustainability considerations in the procurement process.

In addition, the following areas potentially merit some follow up actions or engagement:

**■ The role of MDBs: The MDBs should:**

- ◆ Clearly cross-reference in their PPP guidelines their own institutional policies and procedures that promote public governance of PPPs, such as climate, environmental and social safeguard, disclosure, procurement, and anti-corruption policies, in order to signal to other financial institutions the importance of these issues and the need for ESG due diligence;
- ◆ Share any existing screening and due diligence tools on climate change considerations in PPPs, and agree on a consistent approach. There is also room to create new sectoral guidance to ensure consistency of PPP projects with the Paris Agreement;
- ◆ Disseminate broadly its research outcomes on sustainability issues in PPPs, such as research papers, methodologies, and evaluations alongside their PPP guidelines; and
- ◆ Implement the Joint Declaration of Aspirations on Actions to Support Infrastructure Investment.

**■ Capacity building**

- ◆ Further work is needed to identify the best methods to build capacity of public sector officials tasked with implementing PPPs. The PPP Guidelines contain valuable information but they tend to be lengthy and dense, with no clear guidance on potentially contentious issues that officials and practitioners will have to face. Case studies are useful but the value of PPP Guidelines will be enhanced greatly through a process of sharing lessons, peer reviews, or some other form of socialization and interactive learning.
- ◆ Civil society, the press and parliamentarians would also benefit from capacity building on PPPs.



## Annex 1

# Long List of PPP Documents Identified by UNDESA

## General Guidelines

- ◆ ADB. Public-Private Partnership Handbook.
- ◆ ASEAN (2008) ASEAN Public-Private Partnerships Guidelines.
- ◆ European Commission (2003). Guidelines for successful Public-Private Partnerships.
- ◆ EPEC/EIB. The Guide to Guidance. How to Prepare, Procure and Deliver PPP Projects.
- ◆ IMF (2004). Public-Private Partnerships. Prepared by the Fiscal Affairs Department.
- ◆ OECD (2012), Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships.
- ◆ UNECE (Under Development). Achieving the SDGs through PPP standards.

## Governance

### a. Governance, Transparency, Information Disclosure, Anti-Corruption

- ◆ WBG, OECD et al (2016). A framework for disclosure in Public-Private Partnerships.
- ◆ UNECE (2008). Guidebook on Promoting Good Governance in Public-Private Partnerships.
- ◆ OECD. Principles for the public governance of Public-Private Partnerships.

### b. Regulatory and Legal Framework

- ◆ European Commission (2003). Guidelines for successful Public-Private Partnerships.
- ◆ ASEAN (2008) ASEAN Public-Private Partnerships Guidelines.
- ◆ ESCAP (2011) A Guidebook on Public-Private Partnership in Infrastructure.

## 1. Project identification:

### a. Project selection and definition

- ◆ Govt of Hong Kong Guidelines (2008). An Introductory Guide to PPPs.
- ◆ WBG (2016). Prioritizing Infrastructure Investment. A Framework for Government Decision Making.

### b. Assessment of the PPP option (affordability and risk allocation)

- ◆ ADB. Public-Private Partnership Handbook.
- ◆ OECD (2008). PPPs: In Pursuit of Risk Sharing and Value for Money.
- ◆ Infrastructure Australia (2008). Partnership Victoria Guide Material: Risk Allocation Guide.
- ◆ World Bank (Timothy Irwin). Government Guarantees. Allocating and Valuing Risks in Privately Financed Infrastructure Projects.

- ◆ European PPP Expertise Centre (2011). State Guarantees in PPPs, A guide to Better Evaluation, Design, Implementation and Management.
  - ◆ WBG (2010). Understanding Options for Public-Private Partnerships in Infrastructure
  - ◆ GIH (2016). Allocating risks in public-private partnerships.
  - ◆ IMF (2004). Public-Private Partnerships. Prepared by the Fiscal Affairs Department.
  - ◆ IMF (2006). Public-Private Partnerships, Government Guarantees, and Fiscal Risk.
  - ◆ UK Treasury (2006). Value for Money Assessment Guide.
  - ◆ European Commission (2003) Guidelines for successful PPPs.
  - ◆ Govt of Hong Kong Guidelines (2008). An Introductory Guide to PPPs.
- c. Inclusion in public sector balance sheet.**
- ◆ European PPP Expertise Centre (2010). Accounting and Statistical Treatment of PPPs.

## 2. Project preparation

### a. Establishment of team and governance structure

- ◆ Infrastructure Australia (2011). National PPP Guidelines, Volume 2: Practitioners Guide.

### b. Establishment of team of advisers

- ◆ PPIAF/World Bank (2001). Toolkit on Hiring and Advising Managers for Private Participation in Infrastructure.
- ◆ HM Treasury. How to Appoint and Manage Advisers to PFI Projects.

### c. Project plan and timetable.

- ◆ Australian Government-Infrastructure Australia (March 2011). National PPP Guidelines, vol 2, Practitioners Guide.

### d. Studies

- ◆ PPIAF-World Bank (March 2009). Toolkits for PPPs in Roads and Highways.

### e. Detailed design of PPP arrangement

- ◆ European Commission (March 2003). Guidelines for Successful PPPs.
- ◆ Ministry of Economy and Finance of Greece (2006). Guide for Implementation of PPPs in Greece.
- ◆ Govt. of Hong Kong Guidelines (2008). An Introductory Guide to PPPs.
- ◆ Infrastructure Australia (2011). National PPP Guidelines, Volume 2: Practitioners Guide.
- ◆ EPEC/EIB. The Guide to Guidance. How to Prepare, Procure and Deliver PPP Projects.

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