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Public Private Interfaces in Development Financing

Issue Paper to inform the Financing for Development Process

This paper is written by the PPI Task Group of the CSO for FfD Group[1]

Abstract

The paper defines a wide array of practices in the areas as public private interfaces (PPIs) in response to the rise of new types of instruments that have introduced private sector actors to variable degrees for the delivery of public services and public infrastructure. A great deal of recent attention in the interaction between the public and private sector actors in development financing has focused on Public-Private Partnerships (PPPs), which are long-term contractual agreements whereby the private sector is involved in variable degrees of the building, operating, financing and maintenance of public goods and services. However, the term Public-Private Partnerships (PPPs) is too imprecise, and the term is being used in a flexible manner to cover very diverse types of public and private sector arrangements that requires a broader frame of analysis. This is why a PPI is thus defined more broadly as a private sector involvement that may take different shapes ranging from long-term contracts to regulatory and legislative benefits, subsidies or concessions with the aim of ensuring that the private sector has an impact on both sustainable development and human rights frameworks.

This issue paper aligns with the UN Financing for Development follow-up, review and monitoring process. It seeks to engage in a consultative process in two main phases: Phase I will focus on engaging an expert working group to create a consultation document (Phase I report), which will be accompanied with a survey to be sent to different stakeholders in identifying PPIs. After the Phase I report is launched and the survey goes live we enter a consultative period (July 2017 to December 2017), during which we gather databases of PPIs in different sectors. The result of the scoping and research exercise will be then presented in a Phase II report, which will have the role of identifying gaps as well as good practices in the current landscape. These results will be taken to the FfD Forum in 2018 as a basis for launching a normative discussion about PPIs.

Key words: Public-Private Interface, Public-Private Partnership, Civil Society, accountability, governance, Addis Ababa Action Agenda, sustainable development.

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1. Introduction: What are the Public Private Interfaces

Here we analyse two key assumptions in light of the UN Financing for Development agenda related to public and private interfaces. **The first assumption is that private sector actors bring greater economic efficiency and innovation** – a hypothesis often based on the argument that the private sector is better placed to deliver services than the public sector due to greater efficiency. **The second one is based on assumption that public and private sector interfaces are mostly win-win situations** where little conflict of interest or indeed power imbalances exist. It is the combination of these assumptions that has led to the promotion of a greater extent of private sector involvement in the delivery of public goods and services, but both assumptions need closer scrutiny. To examine both of these assumptions, **this paper aims to capture such fast-evolving dynamics by framing them within the analytical term of what are defined as public-private interfaces**.

Public-Private Interface (PPI) is understood to exist where the public sector provides a legal, regulatory or contractual benefit, subsidy or concession to private sector entities with the intent of achieving sustainable development outcomes, human rights impact or other public objectives.

This wider definition of a PPI captures some of the key dynamics concerning the role of the private sector in the Addis Ababa Action Agenda (AAAA) of the recently concluded Third International Conference on Financing for Development (Addis Ababa, 13-16 July 2015). These include a commitment on improving public procurement, whereby "[w]e will establish transparent public procurement frameworks as a strategic tool to reinforce sustainable development" (paragraph 30, AAAA). The AAAA also recognised a shift towards new types of public-private interfaces (PPIs) in committing "to holding inclusive, open and transparent discussion when developing and adopting guidelines and documentation for the use of public-private partnerships, and to build a knowledge base and share lessons learned through regional and global forums" (paragraph 48, AAAA). The commitment reflects the basic principles of public procurement in terms of accountability, transparency, openness and good use of public money. This can be compared with the First International Conference on Financing for Development (Monterrey, 18-22 March 2002) resulting in the Monterrey Consensus (MC), which focused on promoting technical assistance to improve public procurement in order to "enhance recipient countries' input into and ownership of the design, including procurement, of technical assistance programmes; and increase the effective use of local technical assistance resources" (paragraph 43, MC).

However, the extent of different public-private interfaces that benefit from public subsidies, tax exemptions or regulatory concessions does not end at the PPPs. The phenomenon is much wider and thus requires a broader discussion in the development financing debates. The recognition that using regulatory tools to align private sector actors with sustainability tools includes "incentivizing the private sector to adopt sustainable practices" (paragraph 36, AAAA). This also involves creating "enabling domestic and international conditions for inclusive and sustainable private sector investment" (paragraph 36, AAAA). This means that we are talking of a much wider phenomenon of public-private interfaces. The implicit incentivisation of the private sector is somewhat new in comparison to the Monterrey Consensus where "an enabling domestic environment is vital for mobilizing domestic resources, increasing productivity, reducing capital flight, encouraging the private sector, and attracting and making effective use of international investment and assistance." (para 10, MC).

The emphasis on a business enabling environment in the MC was also more on small and medium-sized enterprises (para 24, MC). Indeed, there is an implicit recognition of this tension between incentivising business and ensuring that human rights and labour standards are met in paragraph 37 of AAAA: "We will foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements, such as the Guiding Principles on Business and Human Rights and the labour standards of ILO, the Convention on the Rights of the Child and key multilateral environmental agreements, for parties to those agreements" (AAAA, para 37). A reference to the UN Guiding Principles on Business and Human Rights (UNGPs) and the ILO conventions are important recognitions of the applicability of international human rights frameworks in the areas of business enterprises.

At the heart of the definition of a public-private interface is a dilemma on the consistency and coherence between public and private interests, and therefore around the negotiation of different motivations between the actors involved (Posner, 2002), as they need to "confront the fundamental tension between equity and economic efficiency, between market-based and political rationality" (Stephenson, 1991). The tension often emerges as the public sector seeks to create a sustainable development outcome in the economic, social or environmental spheres, while the private sector (apart from some co-operatives and other social economy enterprises) is interested in maximising profits for shareholders. Current models of public-private interfaces of different types raise the question of a greater involvement of private sector actors, as matters of commercial secrecy and profit generation become a more visible concern for public transparency and service delivery. Any benefits of private sector involvement should be weighed against some of the common pitfalls of lack of accountability, challenging corporate practices that lack alignment with sustainable development such as poor labour practices, lack of environmental sustainability and tax avoidance.

The approval of the Agenda 2030 for Sustainable Development boosted the framing of this debate in terms of "partnerships", with no clear or agreed definition of what public-private partnerships entail, as noted in a recent civil society report (Eurodad, 2015):

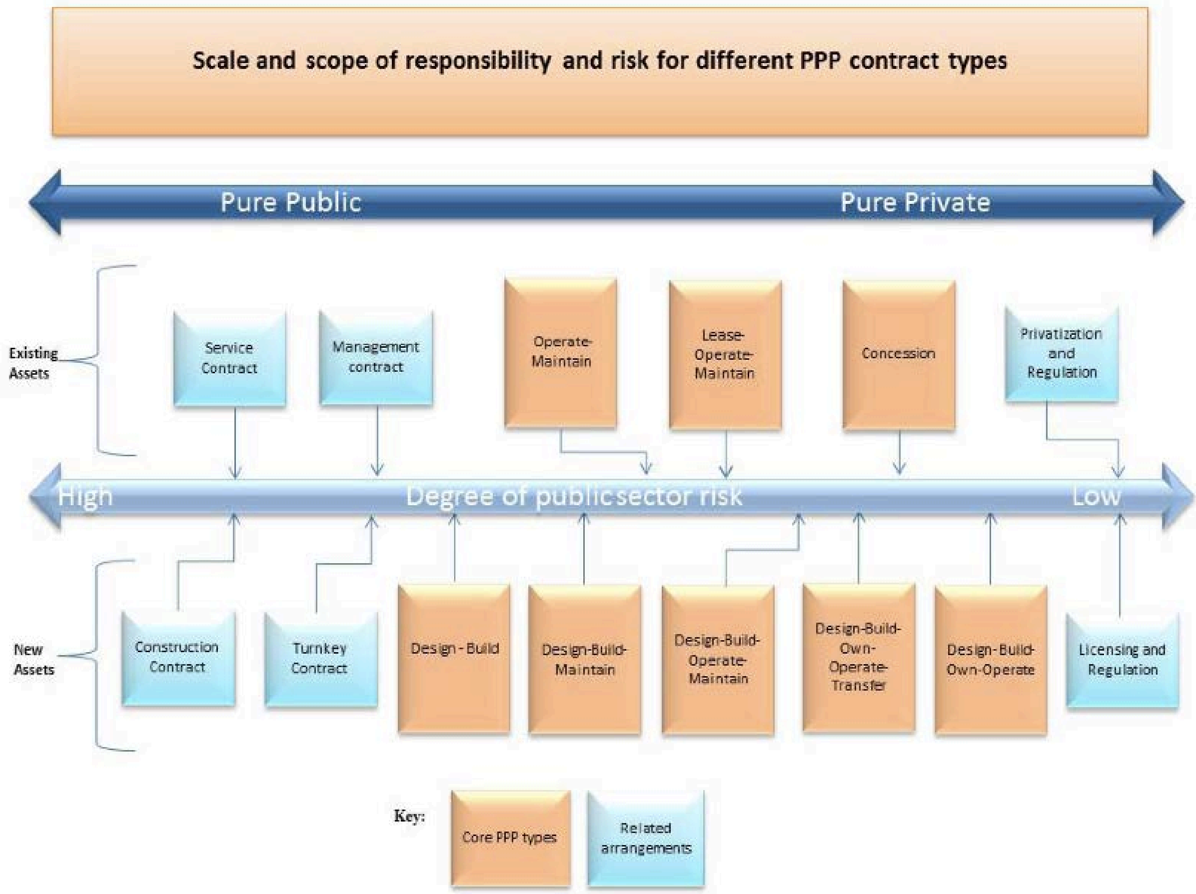
> "The word 'partnership' has nowadays become a catchall expression to describe the engagement between public and private actors (for profit, but also non-profit). The acronym 'PPP' is currently being used in development circles to identify very different types of arrangements. These range from informal and short-term collaborations between non-governmental organisations (NGOs), the private sector and/or government agencies to implement specific programmes or projects to more complex, formal and long-term contractual arrangements in which the private sector participates in the supply of assets and services. In a very general way, all of these arrangements can be seen as 'partnerships.' However, this generates a lot of confusion and makes it difficult to engage in any constructive debate about PPPs."

Careful negotiation of contracts as well as accountability and governance mechanisms that ensure a sustainable development and human rights impact assessment need to be built into any interaction between public and private sectors.

2. Categorising Public Private Interfaces

To understand the landscape of public and private sector interaction with the motivation of achieving sustainable development and human rights frameworks, these **interactions can be considered in terms of different types by the intensity of private sector participation, and who promotes a specific framework or type of partnership in the sustainable development or human rights context.** This intensity of private sector participation is not in itself any guarantee of greater alignment with sustainability and human rights considerations, but it provides an understanding of the landscape of the PPIs (Jomo et al 2016). Not all the identified new forms of public and private interfaces are classified as Public Private Partnerships (PPPs), as can be seen in the Figure 1 below, and if we include all the 'related arrangements' that are included in blue in the scope we start to define what constitute PPIs.

Figure 1: Variations of public and private interfaces and distribution of risk



Source: Jomo, Chawdhury, Sharma, Platz (2016). Based on World Bank (2012) and Roehrich et al (2014)

2.1. Long-Term Public-Private Contract

On the spectrum of the PPIs, a long-term or practically perpetual PPI is one of the most talked about methods for public and private sector collaboration are, Long-Term Infrastructure Contract (LTIC) that often includes design, financing, building, operating and maintaining by a private sector actor (Bloomfield and Ahern 2011) in the areas including roads, railway, urban infrastructure, utilities. They are also sometimes used to deliver health and education services. These are often also called Public Private Partnerships (PPP), P3 contracts, Private Finance Initiatives (PFIs), when an aspect of the arrangement is highlighted. Even if a single contract comes to an end, say a rail or a bus concession, a new tender is drawn up rather than foreseeing the public sector to operate the service or infrastructure. The proposed benefits of the model include cost-effectiveness and project quality if the government contract (World Bank, 2012) is designed in such a way to capture such benefits – including using relevant guidelines UNESCAP (2017) and standards UNECE (2016). However, the public sector often carries much of the risk of systemic failure or planning errors, as well as paying for continued operation and maintenance often at a relatively high price as private sector cost levels and profitability levels need to be counted on the cost side, and accounting methods may involve not revealing the true cost of LTICs on balance sheets (EURODAD 2015).

2.2. Limited-Duration Public Private Contracts

When we move from long-term to short-term PPIs, they tend to involve much less operating and maintaining contracts, while the focus is on limited-duration contractual interaction so as to achieve a specific purpose or goal. The models that are used here include also some PPPs where operation is handed over to public sector administration or government-owned enterprises. Thus, for instance, Alliance Contracting (ACEVO 2015) involves only joint risk and reward sharing in design and building contracts, while the actual asset is owned, maintained and operated by a public body. Other limited-duration public private contracts includes so-called **blended finance** and **leveraged finance, where the private sector is incentivised through grant components or concessional finance to invest their own resources**. Leveraged financing may take place via project lending at Development Finance Institutions (DFIs), but it may also take new forms. The collaboration may also include specific grant programmes that incentivise private sector behaviour with a defined public benefit, such as Challenge Funds (O'Riordan et al 2013: 4), Prosperity Funds and Enterprise Funds. The theory behind 'leveraged' or 'blended' financing is that by supporting private sector enterprises from public resources and ODA in development financing, they can mobilise or catalyse additional private sector funding and incentivise innovative approaches to delivery of public goods and services. These initiatives also are vehicles for channelling more ODA resources to the private sector. The issue with the first assumption on catalysing or mobilising, as noted by UK's independent commission on aid impact (ICAI 2016), is that the resulting impact assessment lacked robustness, and thus ODA eligibility becomes hard to justify.

2.3. Regulated private provider enjoying a concession

There are also several non-contractual public and private interfaces that are more often governed by legislation, regulation or application process for subsidies, and concessions aimed at mobilising actors and resources. Looking first at areas where a public sector gives a concession or role to the private sector we have many multi-stakeholder partnership Initiatives in areas such as global health initiatives, e.g. the Global Fund for HIV/AIDS, Malaria and Tuberculosis, and initiatives to purchase medicine at bulk prices e.g. Global Alliance for Vaccines and Immunization (Nishtar, 2004). **These public concessions involve designating specific roles such as new product development, improving access to goods and services, global coordination mechanisms, strengthening public service systems, public advocacy and education and regulatory and quality assurances** (Nishtar 2004, Table 1). For instance, in the health sector the *Initiative on Public-Private Partnerships for Health of the Global Forum for Health Research* lists 91 international partnership arrangements in the health sector, which can qualify to be called public-private partnerships. Of these, 76 are dedicated to infectious disease prevention and control, notably AIDS, tuberculosis and malaria; four focus on reproductive health issues, three on nutritional deficiencies. However, among these, 85 have their secretariats in developed regions of Europe and North America; the United States and Switzerland being the commonest host countries (Nishtar, 2004).

2.4. Regulated private provider enjoying a subsidy

The transfer of a subsidy or regulatory exemption is the second type of a regulated public and private sector interface. It includes tax exemptions and lowering labour protection and environmental standards, and financial regulatory standards. In some areas there is a growing consensus of harmful nature of some aspects of subsidies such as. fossil fuel subsidies, tax incentives (IMF, OECD, UN and World Bank 2015). However, in other areas such as labour standards, international institutions consider that some labour market liberalisatin is necessary for economic growth. Tax exemptions are at times classified as 'tax expenditures' when they have budgetary impacts, but are more commonly not at all monitored or tracked for public accountability purposes. However, **it is difficult to gauge whether an investment would have happened in any case, and often the impact of giving regulatory, tax or other incentives is not evaluated against sustainability indicators.** Investment and enterprise promotion activities may exist as part of a wider economic development strategy, or they can as often be ad-hoc and unplanned in terms of the government's national development strategy. An example of a strategy for responsible investment promotion include the 'enabling environment for agricultural investment' (FAO 2013).

2.5. Established state enterprise to provide the service

There are many examples of establishing municipal or state-level corporations that deliver public goods and services. This gives the corporation a certain level of autonomy, while often the board of such a corporation will also include political decision-makers alongside with managers. The European Commission's (2016) analysis for State Owned Enterprises (SOE) raise concerns over market functioning, public finances and financial stability by a greater focus on transparent reporting on commercial and non-commercial objectives of SOE. The OECD Guidelines on SOE (2015) focuses on areas such as disclosure and transparency, public-private competition, board practices and funding and financing of SOE. Different countries have specific SOE policies, for instance the Finnish Government (2004) policy on SOE states that conditions for use of SOE include: natural monopoly or special assignment, financial interest, strategic interest, creation of something new and defending national ownership.

South Africa (2017) defines that the mandate is to meet explicitly stated government socio-economic objectives, including accelerating economic growth along an inclusive and sustainable path, ensuring higher levels of employment creation and decent work, reducing inequality substantially, as well as ensuring meaningful black participation in the ownership, control and management of the economy. While some developed countries have clear ownership steering policies for both large government shareholding stakes as well as fully-owned SOE to ensure public benefit and accountability, SOE are notably absent as a delivery mechanism of public services in the development policy space in developing countries. Also it is important to ensure enhanced transparency and accountability of SOEs that operate in third countries, so that SOE refrain from activities that may undermine development efforts.

2.6. Public procurement from private sector

The provision of public goods directly by government departments may involve public procurement operations, whereby the government agency buys inputs from the private sector to design, and then builds the public infrastructure e.g. schools, prisons and hospitals. The AAAA recognises the Open Government Partnership (OGP) focused on improving government transparency, accountability and responsiveness to citizens. Accountability takes place through a direct feedback from the citizens, municipal councillors, parliamentarians or other stakeholders can be directed to the relevant administration that is responsible for the service provision. Guidelines have been developed by the UN Commission on International Trade Law (UNCITRAL 2011), and the OECD principles of public procurement (2009) among others. It is not clear whether long-term and short-term PPPs come under public procurement guidelines, as they are often used as an alternative to direct This may involve just a limited public procurement of the inputs (such as medication, maintenance materials, school books), which may also be produced by state-owned enterprises or public sector agencies.

3. Characteristics of Public Private Interfaces

This section examines current models of public-private interfaces of different types, discussing the difficulties that arise from a greater involvement of private sector actors, as matters of commercial secrecy and profit generation become a more visible concern for public transparency and service delivery. One should first take a step back and consider what kinds of options are best suited for making a wider and still sustainable impact on all the three dimensions of economic, social and environmental development (Alikhani et al, 2015, De Bettignies and Ross 2004). In this process of design, the notion of *cost* is not a simple matter of just accounting cost and benefit, and thus a *value-for-money* approach is not sufficient to assess the cost and benefit of public sector engagement as accountability structures need to be carefully considered (Forrer et al 2010). What is needed is **a wider set of criteria as discussed in this section, including citizen accountability, external impact and risk transfer.** Such a discussion makes it possible to assess the different types of PPIs in a more holistic and way. It also allows for developing countries and their citizens to gain a greater control over the space of policies that affect them directly. Below we propose ten key characteristics for such public-private interfaces.

Table 1: Characteristics of public-private interfaces

PPI Characteristic	Relevance for PPIs
1. *Legislative frameworks, policies and operational strategies*	Grant or subsidy, exemption, regulatory or legislative concession to the private sector should have a positive impact on sustainable development and human rights. While this may be the case for more traditional forms of PPIs such as public procurement, and some forms of Long-Term Infrastructure Contracts (LTIC), but some newer types of arrangements such as Public Private Partnerships, Private Finance Initiatives, and Challenge Funds may lack specific legislation to safe-guard public interest, and ensure a positive impact on development. However, as modalities tend to change and new ones appear, arrangements develop on an *ad hoc* and opportunistic basis as polices and specific operational strategies fail to develop.
2. *Sustainability of the economic impacts*	Specified public goal(s) identified in the economic development policies, labour rights of all groups, minority and women's rights in the economic sphere, and other economic rights. The AAAA mentions ILO conventions, Child Rights (para 37), as well as the wider UN Guiding Principles on Business and Human Rights, but establishes scope for what constitutes an inclusive economic impact.
3. *Sustainability of the social impacts*	Public goal(s) such as improved health care, education, water access and outcomes within the SDGs and human rights frameworks. The social impacts are only considered as relevant for Public Private Partnerships (PPPs), a Public Procurement, but they are not considered as central to criteria on a 'enabling environment' for business which is driven by economic impact considerations.
4. *Sustainability of the environmental impact*	Public goal(s) identified in relation to environmental protection policies are notably referred to the Paris Agreement as mechanisms to safe-guard climate-related risks related to the private sector and investors are being developed in response. Also, a comprehensive approach to disaster risk reduction, integrating climate change in all policies should be made according to SDG 13 commitment, and its financing.
5. *Governance structures*	Governance structures on a contract level would include formal governance of a PPI, which may involve duties and responsibilities of several actors, and accountability measures to wider stakeholders including civil society. Special care should be paid to free and prior informed consent (FPIC) around land issues and indigenous populations (Bosshard, 2017) in terms of project design and operation. Governance may be direct when the government body operates the PPI, but indirect and standard and guidance based when the private sector operates a PPI.
6. *Financing, resources and inputs*	This may include dedicated human capital, capital and physical assets including railways, roads, electricity grids, water pipes, radio frequencies and spectrums. In relationships with the for-profit

	private sector, there is the danger of the financially stronger partner influencing the public sectors decision making process on policies, regulatory and legislative matters, which have implications on the public benefit derived from the relationship. One way to redress differences in negotiation power is by establishing regulators to oversee newly created PPPs, but creating a regulatory environment and costs associated with it may actually erode cost savings of PPPs.
7. *Eligibility, screening and selection*	This involves clearly publicized rules and procedures on due diligence, standards, selection criteria, and competitive or invited bidding. These may be long-term or short-term contracts, extending up to 30-years for some Public-Private Partnerships (PPPs) to a few months for delivery of a specific public procurement contract. Many of these contracts are not available to the public scrutiny, meaning that the media, civil society and often also the Parliament is unaware of the contractual terms and their cost implications. There are already minimum standards on public procurement contracts being developed through the work of UN bodies and Open Government Partnership (OGP), but they tend not to extend to other types of PPIs apart from public procurement.
8. *Division of labour*	Tasks and labour is often shared between public and private actors in designing, financing, building and maintenance of physical assets depending on the model chosen. Most sources agree that private sector financing is typically more expensive than public sector financing (Martimort and Pouyet, 2008), but some argue that bundling financing and construction may give the incentive for constructing a high-quality project (De Bettignies and Ross 2004). The division of labour is, therefore, about finding the right trade off between doing activities oneself as a government body, or creating a Public-Private Interface through one of the available options. These choices should be guided by the best public interest, based on a careful impact assessment, rather than simply choosing the model that provides the greatest private sector involvement.
9. *Risk sharing and power relationships*	Risk sharing will involve management contractual clauses, performance management agreements, risk sharing in case of delay or operational problems, and managing conflicts of interest. The government can share risks with the private sector in many PPIs, while it is also the case that badly designed PPIs may result in a much bigger risk for the government if a long-term contractual arrangement that it entails, including contractual penalties for early termination. Risk sharing is seen both as a significant benefit if the private sector is willing to carry a large share of the risk in terms of service user numbers and income generation. Power is a key factor in risk sharing, as potentially skewed power relationships are a major impediment to the development of successful interface that safeguards public interests. If risks are borne by the public sector, while guaranteeing profits to the private sector then possibly

	another type of PPI would be more suitable – e.g. a municipal or state-owned enterprise.
10. Accountability structures	Accountability involves ways in which the public sector establishes lines of public and administrative accountability in the chosen interface. Public-private partnerships also tend to shift accountability from direct to indirect accountability when management and operation is contracted out to the private sector. As a result customers can no longer hold service providers accountable by using administrative checks and balances through elected representatives and administrative staff in public godies, but need to work through complaints mechanisms as they are established by the private sector provider (Forrer et al 2010). The role of governmental bodies is limited to establishing standards, and potentially regulatory bodies that can issue fines or notices. Private sector partners will almost always be less transparent than the public sector (Colverson and Perera, 2011). However, in some services, e.g. schools, members of the public expect a high level of involvement and transparency due to relational specific nature of the service. Clarity in such relationships is needed to avoid ambiguities about the public interest, and impact on sustainable development and human rights.

4. Conclusion

The purpose of this issue paper was to discuss the existing types of Public-Private Interfaces (PPIs), and analyse their properties with regards to their usefulness and accountability in terms of helping to realise the objectives of the Addis Ababa Action Agenda as a continuation of the Monterrey Consensus on Financing for Development; and further, to what extent the well PPIs help to achieve the Means of Implementation (MoI) commitments under the 2030 Agenda for Sustainable Development, as well as within the international human rights frameworks. There is a clear need to actively increase the policy space of developing countries so that they can find the best available arrangements for public and private sector interaction suitable for each distinct situation.

In some cases, using a public procurement more transparently and effectively may help to achieve the commitments under the AAAA and 2030 Agenda, while also State Owned Enterprises (SOE) at different levels of government are commonly used to achieve similar goals as long-term PPPs. Having all these and indeed many other options on the table is important in order to have an informed dialogue. This issue paper proposes a research project to analyse and assess these and indeed potentially many other less well-known alternatives to achieve the overall ambition of increased and sufficient financing for development as a cornerstone for also achieving the 2030 Agenda and numerous human rights commitments and frameworks. We look forwards to further discussion and dialogue on the basis of the proposed typologies, criteria and guidelines that already exist and that may need to be developed in the future to address the central issue of public-private interfaces in development financing.

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Annex 1: Timeline for process of identifying Public-Private Interfaces in development financing

Stage	Description	Timeline
Phase I: Presenting the PPI issue paper	Following this initial discussion at the FFD Forum on this issue paper by the PPI Task Force established by the CSOforFfD Group as a stakeholder work stream part of a wider UN FfD Follow-up process.	May-July 2017
Phase II: Global Survey on PPI Cases	A research workshop with key academics, researchers and activists engaged in the PPI field will be held to test and better develop the PPI concept mid-2017. It will serve to frame the concept of a Public Private Interface in a Global PPI Survey.	Mid-2017
Phase III: Analysis of survey results and clustering of PPIs	The survey will be launched in July 2017 and is expected to run until December 2017. The survey will be conducted through the active engagement of regional, national and thematic hubs, and these roles are to be performed by CSOs engaged with the CSO FfD Group until December 2017.	July-December 2017
Phase IV: Global report on PPIs	The results of the survey will be assessed with the objective of describing both old and new forms of private-public interfaces to identify gaps, and to cluster them in new categories that may require distinct and tailor-made policy guidelines and safeguards presented at the FfD Forum 2018.	Jan-May 2018
Phase V: Policy Dialogue and Normative Development	Following the analytical phase is concluded, an intense policy dialogue will be initiated which will take place in national, regional and global contexts as appropriate, starting with the FfD Forum 2018, to explore which normative development might be more appropriate to safeguard the public interest in both old and new types of PPIs in the context of sustainable development and human rights.	May 2018 onwards