

FfDO Paper in support of the

**INTER-AGENCY TASK FORCE
ON FINANCING FOR DEVELOPMENT**

Working Paper Series

Scoping Study on Public-Private Partnerships

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February 2017



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FEBRUARY 2017

SCOPING STUDY ON PUBLIC-PRIVATE PARTNERSHIPS
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Contents

EXECUTIVE SUMMARY	4
I. GLOBAL CONTEXT	9
II. BACKGROUND OF THIS STUDY	11
III. PURPOSE AND METHODOLOGY OF THIS WORKING PAPER	12
IV. FINDINGS	13
a. The Audience, Nature and Focus of PPP Guidelines	13
b. Similarities and Differences	14
c. Gaps – Sustainability Dimensions and Stakeholder Perspectives	19
d. Drivers of Differences and Gaps – Different Aspects of Public Governance	23
e. Alignment with the AAAA Principles	25
f. Impact of PPP Guidelines	32
g. Success Factors	34
V. OTHER OBSERVATIONS	34
VI. CONCLUSION	37
VII. RECOMMENDATIONS FOR FUTURE WORK	39
Annex 1: Long List of PPP Documents Identified by UNDESA	42

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, countries and key 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 also compared 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 informative rather than normative. 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.
- 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.
- c. **Gaps:** On the whole, the guidelines reviewed leave out the viewpoint of the public or noncommercial stakeholders and the need for PPPs to generate public benefit and public good for the country and its people. Too many of the guidelines dedicate their content to public financial management and facilitating the interest of commercial stakeholders. They define concepts such as value for money, cost benefit analysis, and affordability from public sector financial management and efficiency perspective. They fail to explain how different stakeholder groups, particularly vulnerable ones, are impacted by and react to 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 should not be blind to the most up-to-date advice on climate change and PPPs; for example, some 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 notable 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 or not at all 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 unsuitable for all but the simplest and the most predictable and stable projects, and may not work well in economic infrastructure 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. 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 do not address “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. Furthermore, if PPPs only work well in limited circumstances, one could question whether the time and resources that go into producing the PPP guidelines could be directed more productively elsewhere, for example, to infrastructure more generally.

This Working Paper also speculates that the value addition of the PPP guidelines may be greater when expert institutions engage with countries or countries engage with each other and analyze and socialize the lessons learned in a holistic learning setting. In addition, if the MDBs finance PPPs explicitly in accordance with their own advice contained in the guidelines, this could also have tangible impacts on the ground.

- g. **Success Factors:** The guidelines converge on ex ante success factors but do not shed light on the possible ex post indicators of PPP success that projects should 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 and analyzed consistently in all PPPs.

Other Observations

- a. The multilateral development banks (MDBs) could actively disseminate sustainability and other policies and studies relevant to PPPs so that they can guide other financial institutions that seek information in these areas.
- b. Hardly any transparency initiatives or accountability mechanisms exist for infrastructure and little caters to the interest of noncommercial stakeholders. Any effort to strengthen transparency and accountability should be mindful of the need to properly align the two.
- c. Guidance on PPP contracts should provide information about the public policy aspects of PPPs and not be driven by bankability considerations alone.
- d. Cross-border PPPs will become a significant challenge in the future and states need guidance on how to manage unexpected aspects of such PPPs.
- e. Sustainability considerations need to be fully reflected in the entire procurement process.

Conclusion

The PPP guidelines are driven by different aspects of “public governance.” They rightly 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; however, from this perspective, noncommercial stakeholders are less visible compared to commercial stakeholders. The guidelines pay less attention to the role of the public as beneficiaries and participants in public sector management and decision making, and 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 through effective enhancement of sustainability and appropriate consideration and management of climate change risks. These gaps indicate that the PPP guidelines do not yet fully align with the Addis Agenda or the 2030 Agenda. For the organizations that published the PPP guidelines, this is an opportune moment to take stock of areas of improvement in PPP guidance. It would be extremely helpful for the guidance documents to fully spell out the circumstances under which PPPs could be undertaken or avoided. This will ensure that public resources will not go to waste in making a PPP work in a project not suited to PPPs. If PPPs are in fact unsuitable for all but the simplest projects, time and resources could be directed more productively elsewhere, for example to infrastructure more generally, rather than on PPPs. After all, PPPs are but one tool in an infrastructure toolbox. Any new work on PPPs should not be at the expense of broader work in infrastructure development. A more holistic approach to infrastructure

development and finance would help us fulfill the ambition of sustainable and resilient infrastructure for all, envisaged in the Addis Agenda and the 2030 Agenda.

Recommendations

Based on the findings, this Working Paper recommends consideration of a new set of PPP 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 take on the perspectives of noncommercial stakeholders.

Guidance should be created collaboratively with partners and build on existing guidance and resources to the extent available, as envisioned by the Addis Agenda. 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.

Scoping Study on Public-Private Partnerships

I. 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)¹ 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).² Of particular interest 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 Development³ and agreed to the Addis Ababa Action Agenda (the Addis Agenda). 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'⁴ – 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.'⁵ To improve alignment and coordination among existing and new infrastructure initiatives, the Addis Agenda also established the Global Infrastructure Forum led by the multilateral development banks (MDBs).

¹ Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

² Available at: <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

³ Available at: http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

⁴ P.24. However, the Addis Agenda does not define PPPs.

⁵ 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.

Continuing its long-standing commitment to infrastructure finance and development as key ingredients for strong growth, the G20 countries announced in China in 2016⁶ that they intend to undertake new investments in sustainable infrastructure and will enhance infrastructure connectivity among countries through the new Global Infrastructure Connectivity Alliance. The G20 Action Plan on implementing the SDGs will require new investments in sustainable infrastructure.⁷ PPPs are one option for delivering results.

In anticipation of the Addis Agenda and the 2030 Agenda, seven MDBs proposed a collective vision to enhance development finance and to support states' commitments under these global agreements (From Billions to Trillions⁸). 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 MDBs will use the Global Infrastructure Forum, which convened in 2016, 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.⁹

Some civil society organizations (CSOs) warn against placing PPPs at the center of any attempt to achieve the SDG commitments.¹⁰ 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.

A pioneering effort by a handful of countries that initially put in place PPP frameworks and processes has been followed by over 130 countries that implemented PPPs in

⁶ G20 (2016). Leaders' Communiqué: Hangzhou Summit, para.39. Available at: <http://www.g20.utoronto.ca/2016/160905-communicue.html>

⁷ G20 (2016). Action Plan on the 2030 Agenda, p.4. Available at: https://www.g20.org/Content/DE/_Anlagen/G7_G20/2016-09-08-g20-agenda-action-plan.pdf?_blob=publicationFile&v=4

⁸ [http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23659446/DC2015-0002\(E\)FinancingforDevelopment.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23659446/DC2015-0002(E)FinancingforDevelopment.pdf)

⁹ <http://www.un.org/esa/ffd/ffd-follow-up/infrastructure-forum.html>

¹⁰ For example, Powell (2014). PPPs and the SDGs: Don't believe the hype. Available at: http://www.world-psi.org/sites/default/files/ppps_and_the_sdgs-dont_believe_the_hype_psiu.pdf. Also see: Eurodad (2016). What lies beneath? A critical assessment of PPPs and their impact on sustainable development. Available at: <http://eurodad.org/files/pdf/559e6c832c087.pdf>

infrastructure.¹¹ While private participation in infrastructure dropped in 2013, it is on the rise again.¹² The World Bank notes¹³ that “private capital has contributed between 15 and 20 per cent of total investment in infrastructure.” 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.”¹⁴ 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 and public benefit from PPPs as well as strong evidence-based advocacy against 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

¹¹ World Bank (2014). World Bank Group’s Support to Public-Private Partnerships: Lessons from Experience in Client Countries, FY02-12. Available at:

https://ieg.worldbankgroup.org/Data/Evaluation/files/ppp_eval_updated2.pdf

In addition, the World Bank’s Private Participation in Infrastructure Database reports activities from 139 countries, though this database includes activities broader than PPPs as defined by many PPP Guidelines.

¹² As tracked by the World Bank’s Private Participation in Infrastructure Database, which is broader than PPP projects alone.

¹³ World Bank (2014). Overcoming constraints to the financing of infrastructure. World Bank background paper for the G20 investment and infrastructure working group. Available at:

http://webcache.googleusercontent.com/search?q=cache:y-IDJbMH1ogJ:www.g20.utoronto.ca/2014/WBG_IIWG_Success_Stories_Overcoming_Constraints_to_the_Financing_of_Infrastructure.pdf+&cd=4&hl=en&ct=clnk&gl=us

¹⁴ IMF (2014). World Economic Outlook 2014. P.79, footnote 9. Available at:

<http://www.imf.org/external/pubs/ft/weo/2014/02/pdf/text.pdf>

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 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.

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 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?
5. 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 glean answers to these questions, and synthesized the answers and made recommendations.

Box 1: PPP guidelines reviewed for this Working Paper (the PPP Guidelines)

- Asian Development Bank (ADB) (2014). Public-Private Partnership Handbook
- 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 (UN ECE) (2008). Guidebook on Promoting Good Governance in Public-Private Partnerships
- UN ECE (2016). Promoting People first Public-Private Partnerships for the UN SDGs
- United Nations Economic and Social Commission for Asia (UN ESCAP) (2011). A Guidebook on Public-Private Partnership in Infrastructure
- World Bank (2014). Public-Private Partnership Reference Guide: Version 2.0
- World Bank (2015). Report on Recommended PPP Contractual Provisions
- World Bank (2016). A Framework for Disclosure in Public-Private Partnership Projects

Throughout this Working Paper, individual guidelines are referred to by the publishing organization and the publication year.

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-EPEC (2011); European Commission (2003); OECD (2008), World Bank (2014), and World Bank (2016)), one includes private sector practitioners as well (World Bank (2016)), while two mention staff

of the relevant institutions as additional target audience (ADB (2008) and EIB-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-EPEC (2011) guidelines link to over 130 case studies and reference materials, and the World Bank (2016) 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.”¹⁵

The PPP Guidelines are not intended to be normative, other than the European Commission (2003) guidelines, which bind EU grant applicants. Those published by the MDBs - the Asian Development Bank (ADB), European Investment Bank (EIB) and the World Bank - are informative only 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.

Each PPP Guidelines have a distinct thematic focus, such as public governance (OECD (2012) and UN ECE (2008 and 2016)), public sector financial management and budget transparency (IMF (2006)), risk sharing (OECD (2008)), disclosure of information (World Bank (2016)), contract provisions (World Bank (2015)), and PPP implementation from start to finish (ADB (2008), EIB-EPEC (2011), UN ESCAP (2011) and World Bank (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 variety of views outweighs 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. UN ECE (2008) also favors a broader definition of joint ventures between public and private and contractual PPPs. The World Bank (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

¹⁵ EIB-EPEC (2011), p.5.

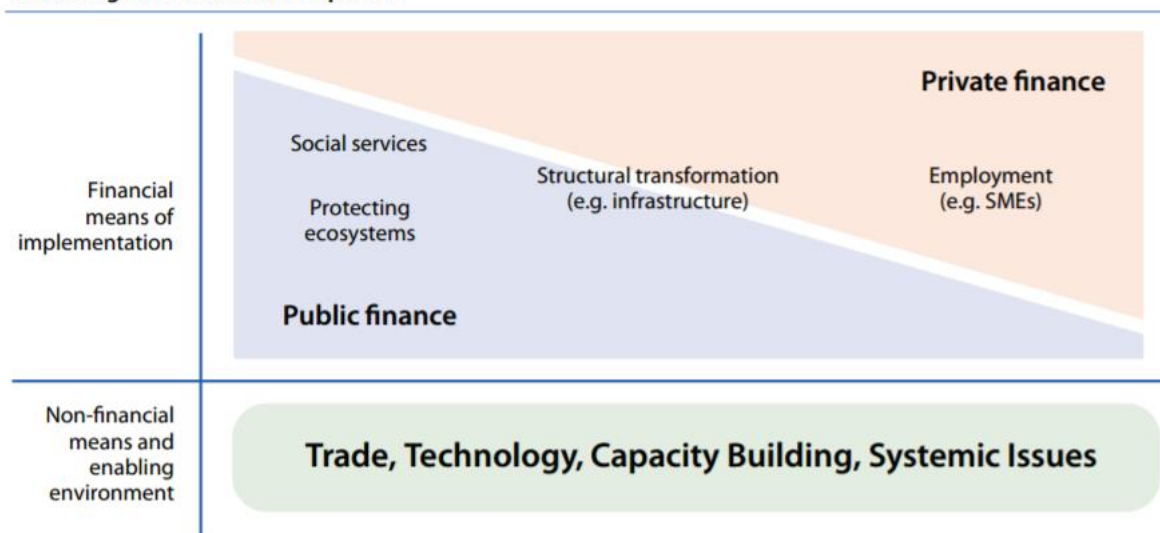
variance among the PPP Guidelines complicates any attempt to standardize, replicate, or evaluate PPPs.¹⁶ The situation is made more complex by each national PPP framework setting its own definition of a PPP.

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.

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: UNDESA

¹⁶ For a comprehensive discussion of different PPP definitions, see: DESA (2016). Public-Private Partnerships and the 2030 Agenda for Sustainable Development: Fit for Purpose? Available at: http://www.un.org/esa/desa/papers/2016/wp148_2016.pdf

Another definitional variance can be found in the treatment of CSOs as possible partners in PPPs. ADB (2008) and UN ECE (2008 and 2016) include CSOs while OECD (2008) and OECD (2012) exclude 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 noncommercial stakeholders' interests. In the area of green or climate finance, CSO participation may bring innovation and an ethical approach to investments.¹⁷

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 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. These may not necessarily constitute traditional PPPs but they encompass practical and possibly innovative modalities of developing and financing infrastructure.

Private Sector Efficiency and Risk Transfer: 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.”¹⁸ 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: 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 (EIB-EPEC (2011), European Commission (2003), OECD (2008), UN ECE (2008), World Bank (2014), and World Bank (2016)). (See also Box 2 below for various definitions or descriptions of the concept.) The OECD (2008) guidelines explain the role of value for

¹⁷ Based on a remark made at the Inter-agency Taskforce on Financing for Development Meeting, held at the UN on December 16, 2016.

¹⁸ ADB (2008) points to Singapore as an exception: ‘Singapore has demonstrated. . . a government-wide dedication to efficiency while maintaining many critical services within the public domain.’ (p.3).

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 broader social, environmental and development costs and benefits are not explicitly factored in.¹⁹

UN ECE (2008) 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.”²⁰

Box 2: Sample Definitions/Descriptions of Value for Money

EIB-EPC (2011): “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.” (p.13)

European Commission (2003): “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.” (p.75)

OECD (2008): “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.” (p.24)

UN ECE (2008): “‘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, p. 113.) “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.” (Glossary, p.94)

World Bank (2014): “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.” (p. 99)

interesting and idealistic, it contains many debatable criteria and technical issues. Thus, most governments do not follow this approach” (p.25).

²⁰ P.15.

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. UN ECE (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 on development finance 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.²¹ 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.”²²

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 PPP options, 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. 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

²¹ Carter (2015). Why subsidise the private sector? What donors are trying to achieve, and what success looks like. Available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9948.pdf>

²² Ibid.

rights, appropriateness of termination payments, availability of alternative services, safe closure of facilities, impacts of closure and decommissioning on communities, etc.) can inform new PPPs about risks and issues to anticipate two to three decades down the road.

c. Gaps – Sustainability Dimensions and Stakeholder Perspectives

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 noncommercial stakeholders are often left at the sidelines. The World Bank Group's Independent Evaluation Group (IEG) that looked at the PPP projects supported by the Group from 2002 to 2012 noted²³ 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 (see Section IV. f. below).

Noncommercial Stakeholders

All the PPP Guidelines explicitly or implicitly acknowledge that PPPs must ultimately benefit the public. Some of the PPP Guidelines 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 purport to address the interests of stakeholders, though they actually have commercial stakeholders 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, who are entitled and empowered.

The ultimate objective of public benefit from PPPs cannot be completely fulfilled if the rights and interests of noncommercial stakeholders in PPPs are not explicitly placed at the center. In public governance, people play an important role in giving credibility to decision making, and even improving decisions and outcomes. 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.

²³ Supra 11.

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 socioeconomic factors, so that the analysis factors in more than speed in achieving project completion as a benefit. It would be useful to bring different disciplines together for a broader, more holistic cost benefit analysis. 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 noncommercial stakeholders. OECD (2012), UN ECE (2008) and UN ECE (2016) each stands out with its unique exploration of the role of the public. UN ECE (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 OECD (2012):

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.

UN ECE (2016) 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.”²⁴

The rest of the PPP Guidelines miss the opportunity to fully bring the interest of noncommercial stakeholder within their scope. When noncommercial 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 noncommercial 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

²⁴ UN ECE (2016), p. 2.

vulnerable. The World Bank's work on gender and transport²⁵ is not referenced in any of the PPP Guidelines published by the World Bank. 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 entitled “Emerging Trends in Mainstreaming Climate Resilience in Large Scale, Multi-sector Infrastructure PPPs.”²⁶ It urges the international development community to build in climate risk and resilience in economic infrastructure PPPs. A separate PPIAF Issues Brief²⁷ 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 development or 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 attempt to update the national PPP framework to reflect references to climate change,²⁸ and look for projects or project components that help with mitigation as well as adaptation to climate change, including disaster risk management. Furthermore, countries and corporations both need guidance on innovative ways to avoid locking in old technology in long-term contracts spanning over two or more decades.

²⁵ See (World Bank 2010). Mainstreaming Gender in Road Transport: Operational Guidance for World Bank Staff. Available at: <http://siteresources.worldbank.org/INTTRANSPORT/Resources/336291-1227561426235/5611053-1229359963828/tp-28-Gender.pdf>

²⁶ Available at: <https://library.pppknowledge.org/PPIAF/documents/2874/download>

²⁷ World Bank (2016). Climate Risks and Resilience in Infrastructure PPPs: Issues to be Considered. Available at: https://library.pppknowledge.org/attached_files/documents/2870/original/PPIAF_ClimateResilience_IssueBrief.pdf?1458848137

²⁸ According to the World Bank, among the sample of 16 national PPP policy frameworks examined, not a single one was found to mention a changing climate, climate resilience or adaptation (Supra 27, p. 13).

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 consistently 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 restricts 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,²⁹ 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 contract³⁰ 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 provisions³¹ 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 foregoing PPIAF guidance (and any similar guidance available in the future) should be either incorporated into the PPP Guidelines or at least prominently cross-referenced. 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 and 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 demonstrate a persistent disregard for policy coherence with these sustainability issues.

²⁹ For example, German Watch (2016). Shifting the Trillions. Available at: <https://germanwatch.org/en/download/15891.pdf>

³⁰ Force majeure events are those events (political or natural) outside the control of the contracting parties. These events typically excuse the operator from performing its obligation but obligates the contracting authority to continue to pay the operator.

³¹ Change in law provisions determine who should be responsible for the costs of compliance with future changes in law and how such costs should be funded.

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)). OECD (2012) mentions the importance of responsible business conduct of the private sector,³² and several mention corruption risks (for example, UN ECE (2008), OECD (2012)). The MDBs do not mention their own environmental and social safeguard policies; however, the World Bank (2014) guidelines do mention the Equator Principles,³³ which are based on IFC's Performance Standards.³⁴ 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 notable 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 in a way that enables the public sector to discharge its fiscal and financial 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 noncommercial stakeholders may get acknowledged but do not receive the same attention as commercial stakeholders. They define concepts such as value for money, cost benefit

³² This is in reference to the relevance of the OECD Guidelines for Multinational Enterprise (2011) to infrastructure projects, which includes standards on disclosure, human rights, employment and industrial relations, environment, anti-bribery and consumer interest issues among others. Available at: <https://www.oecd.org/corporate/mne/48004323.pdf>

³³ An environmental and social risk management framework, based on IFC Performance Standards and used by international financial institutions active in project finance. Available at: www.equator-principles.com. According to the Equator Principles website, 85 Equator Principles financial institutions in 35 countries have officially adopted the Principles, covering over 70 percent of international project finance debt in emerging markets.

³⁴ Available at: www.ifc.org/performancestandards

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 (2012) 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 concepts 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 always target the affected communities or consumers (for example, ADB (2008), EIB-EPEC (2011), World Bank (2014)), 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 World Bank (2014) guidelines briefly mention grievance mechanisms for users.

The most recent UN ECE (2016) 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. . ."³⁵ The UN ECE 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. To some extent, the vintage of the Guidelines also influenced the differences and gaps; for example, many of them predate the 2030 Agenda or the Paris Agreement (even though the concept of sustainable development

³⁵ UN ECE (2016), p.3.

existed since the 1990's, and climate change has already been inflicting devastation on infrastructure for at least two decades). Even taking these factors into consideration, no reason or hypothesis can fully explain why the Guidelines consistently fail to align with sustainable development, or address climate change risks. All the PPP Guidelines could benefit from a better focus on sustainable development and climate issues, if they are to evolve to the next generation of PPP guidance.

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. The more implementation-oriented PPP Guidelines, such as ADB (2008), EIB-EPEC (2011), UN ESCAP (2011), and World Bank (2014) explain the entire PPP process from start to finish, including generic structuring options at the outset. But these are not manuals that offer detailed instruction on how to structure PPPs. It is difficult to extract from the PPP Guidelines consistent structuring details or advice on when to use specific PPP instruments.

The PPP Guidelines do not seem to offer advice on whether any PPP model is more suitable for a particular type of infrastructure. At a very basic level, they do not seem to think PPPs work better for economic infrastructure compared to social ones. Although UN ECE (2008) offers some insights on countries that applied a PPP model to specific sectors (see Box 3 below), no specific pattern emerges from the collection of sectors, other than that PPPs appear to have worked well in transport and road projects.

Box 3. UN ECE examples of sectors in which PPPs have been successful

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

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

Greece: transport projects: airport and roads. Ireland: road and urban transport systems.

Australia: transport and urban regeneration. Netherlands: social housing and urban regeneration.

Spain: toll roads and urban regeneration.

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

Source: UN ECE Guidebook on Promoting Good Governance in Public-Private Partnerships (2008)

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 measureable 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 projects that can be structured via PPPs.

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

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.
- v. The ability to identify, assess and allocate risk appropriately – e.g. are we sure which parties should carry what risks?³⁶

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

Items iv. and v. of the above criteria 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 then such a relationship is inconsistent with 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 UN ECE (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

³⁶ OECD (2012). Towards a Framework for the Governance of Infrastructure. Available at: <https://www.oecd.org/gov/budgeting/Towards-a-Framework-for-the-Governance-of-Infrastructure.pdf>

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 that 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 UN ECE (2008) guidelines ask whether the project upsides (such as those from an interest rate cut 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 rewards at the outset, a subsequent renegotiation on the deal could upset the balance. According to the IMF, renegotiation is common and tends to favor private sector operators.³⁷ The concessionaire could also go bankrupt and request relief from the government,³⁸ which must step in and assume the unfulfilled obligations.\

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 environmental and social dimensions of sustainability. This area represents a significant challenge for the new generation of PPPs to address in short order 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,³⁹ 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. This finding is consistent with other observations on the PPP Guidelines in relation to social and

³⁷ According to a presentation by IMF, 55% of all PPPs get renegotiated, on average every 2 years. Of all PPPs renegotiated, 62% lead to increase in tariffs; 59% lead to automatic pass-through to tariffs of increases in cost; 69% lead to postponement and decrease in private sector obligations; and 31% end up decreasing concession fees paid to the government: Maximilien (2014). “Managing Fiscal Risks from Public-Private Partnerships (PPPs)” https://www.imf.org/external/np/seminars/eng/2014/CMR/pdf/Queyranne_ENG.pdf

³⁸ Ibid.

³⁹ 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>

environmental standards and climate change, and the lack of focus on user accessibility and affordability of services.

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 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;⁴⁰ waive freedom of information laws; enhance opportunities for corruption; exceed budgetary constraints; or other problems raised by civil society.⁴¹ 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 noncommercial stakeholders, the European Commission (2003) guidelines suggest consumer watchdog associations, whereas World Bank (2014) briefly mentions a grievance mechanism for users, which could play a role in both prevention and remediation of grievances.⁴²

Only the UN ECE (2008) guidelines explicitly acknowledge the need for public officials tasked with PPPs to build capacity through training (though many agencies that issued the PPP Guidelines offer online courses and certification programs).

⁴⁰ World Bank (2014) acknowledges 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, as described in Section 2.3.1: PPP Process and Section 2.3.3: Institutional Responsibilities: Review and Approval, helps overcome this risk.” (p.25)

⁴¹ For example, see *supra* 10.

⁴² 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

Noncommercial stakeholders have different needs, and the directly affected stakeholders in particular will need an accountability mechanism that is tailored to their needs.⁴³ Different 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 noncommercial stakeholders, even though the PPP Guidelines acknowledge their informational needs in theory. This is the case with the newly released World Bank (2016) 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 (2016) guidelines and a few others mention the unsolicited PPP scenario⁴⁴ and make the case for an even higher level of information disclosure in unsolicited projects in order 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, waiving 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 if PPPs start off as unsolicited projects.

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 noncommercial ones, in comparison to commercial stakeholders. For the most part, the PPP Guidelines fail to ensure 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 affect the speed with which PPP projects move forward, hence they are increasingly maligned by some governmental officials and members of the public. Yet, the failure to place the public at the center of a PPP project could cause PPP officials to

⁴³ 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).

⁴⁴ World Bank (2014) defines 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 (p.195).

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)).⁴⁵ However, even if governments are willing to engage in transparent practices, they will be challenged by the current lack of clarity on 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.⁴⁶ This tool should be widely piloted.

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. 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. World Bank (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 stress the need for a PPP project 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, 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 project selection. The PPP Guidelines should acknowledge explicitly the need for coherence with national processes and decisions by appropriate national planning authorities.

⁴⁵ Notwithstanding such advice, the OECD internal survey indicates that budget documentation or other published material of many countries do not contain an assessment with respect to contingent liabilities.

⁴⁶ Available at: <https://www.imf.org/external/np/fad/publicinvestment/pdf/PFRAMmanual.pdf>

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 in response to 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 rarely 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.⁴⁷ MDBs typically conduct evaluations of their 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 2001.⁴⁸ 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 2009.⁴⁹ 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.

The critical IEG study of PPP projects financed by the World Bank Group (WBG) reviewed 170 projects financed by the World Bank Group over a decade.⁵⁰ This evaluation found that:

- "WBG's approach to PPPs has been based on the assumption that involving the private sector is a good thing. . . public sector comparators – systematically

⁴⁷ The OECD has indicated that it surveyed Member Countries on their awareness of the OECD (2012) guidelines, and whether any reform has been undertaken in view of recommendations under the guidelines.

⁴⁸ EIB (2005). Evaluation of PPP Projects Financed by EIB: Synthesis Report. Available at: http://www.eib.org/attachments/ev/ev_ppp_en.pdf

⁴⁹ Asian Development Bank (2009). ADB Assistance for Public-Private Partnerships in Infrastructure Development–Potential for More Success. Available at: <https://www.oecd.org/derec/adb/47166423.pdf>

⁵⁰ Supra 11.

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 WBG supported PPP projects are “rarely fully quantified.”
- “Most of the upstream work aims at sector reform, which, however, 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.

Since the publication of the IEG evaluation occurred in the same year as the World Bank (2014) guidelines, it is not clear whether the guidelines had a chance to incorporate the early findings of the IEG evaluation. It is not clear whether and how user feedback will be reflected in the planned 2017 update of the World Bank (2014) guidelines.

With such wealth of information available on the PPI (Private Participation in Infrastructure), PPIAF, and other World Bank Group websites, including user-friendly briefing notes, data sets, and interactive tools,⁵¹ it is possible that the PPP Guidelines published by the World Bank are mainly the object of academic research rather than by professional inquiry.

Considering the renewed attention to PPPs in the recent years, it is possible that the PPP Guidelines have some minimal direct impacts on ongoing and planned PPPs. There is a 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).

Furthermore, 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 infrastructure more generally, rather than on PPPs.

This Working Paper also speculates that the value addition of the PPP Guidelines may be greater when expert institutions engage with countries or countries engage with each

⁵¹ For example, the Global Infrastructure Hub (GIH) website has a sector-specific risk allocation tool for PPP contracts in transport, energy, and water and sanitation sectors, created by GIH staff (some of whom are seconded by the World Bank) with Norton Rose, accessible at: <http://globalinfrastructurehub.org/allocating-risks-in-ppps/>

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.

g. Success Factors

Many PPP Guidelines do offer 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, political support, and so on. 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 creation of public benefit and public good.

What are the possible ex post indicators of PPP success that projects should 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. This means additional nonfinancial indicators for monitoring impacts on various vulnerable groups, implementation of ESG sustainability measures, and indicators of public service delivery must be used by the public sector to monitor and publicly report.

The IEG evaluation mentions three indicators of public service delivery: access, pro-poor aspects, and quality of service delivery. As suggested by the UN ECE (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 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, impacts on the poor and the vulnerable, on a disaggregated basis. Impacts from corruption in PPPs should also be monitored.

V. 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, the PPP Guidelines put out by the MDBs are clearly intended to be comprehensive to be helpful to their borrowing clients. In the process, the MDBs end up advocating for PPPs in both explicit and subtle ways – PPPs are a good source of business for them, and with the new emerging markets competitors (such as the Asian Infrastructure Investment Bank) poised to overtake market share, they have to assert that PPPs work if their advice is heeded.

On the other hand, the PPP Guidelines published by the MDBs seem to miss an opportunity by remaining silent about their own rules relevant to external stakeholders and contribute to good public governance of PPPs, such as those on environmental and social safeguards, disclosure,⁵² anti-corruption, or procurement. (Some of these policies can be useful in risk management by the MDBs and their client countries, but are maligned by the client countries as conditionalities.) The body of work that the World Bank carried out on gender and road transportation⁵³ or the World Bank Group's significant resources dedicated to climate change due diligence⁵⁴ is not referenced in any of the World Bank guidelines reviewed in this Working Paper.

For countries, companies and commercial banks and other financial institutions (such as private equity, insurance or pension funds, or sovereign wealth funds) that look to the MDBs for guidance on what they should support or not, the PPP Guidelines do not give them clear cut answers.

Closer alignment of transparency and accountability mechanisms: Infrastructure projects tend to lag behind extractives sector when it comes to signing up to transparency and accountability initiatives. The extractive sector leads others by successfully participating in initiatives, such as the Extractive Industries Transparency Initiative and Publish What You Pay, both of which are dedicated to natural resources extraction. With other initiatives of broader application, such as the Open Contracting Partnerships that apply to public contracting, the uptake is said to be slower outside the extractives sector. Ironically, the Construction Sector Transparency Initiative,⁵⁵ dedicated to the infrastructure sector and described as “a country-centred initiative that drives better value from infrastructure by increasing transparency and accountability in its delivery” is not as strongly embraced by the intended target sector when compared to the extractive industries' participation in and advocacy of their own transparency initiatives.

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 drove the examination and establishment of (or recalibration of existing) formal and informal accountability mechanisms to hold public official accountable for revenue management and ultimately the public governance of natural resources. The sector's lesson teaches us that transparency mechanisms can be effective but they must align with and facilitate accountability mechanisms to fully benefit the public. The infrastructure sector has a long way to go to

⁵² For example, paragraph 53 of IFC's Policy on Environmental and Social Sustainability (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. Available at: http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES

⁵³ Supra 25.

⁵⁴ See for example: <https://climatepolicyinitiative.org/wp-content/uploads/2013/09/World-Bank-Group-Risk-Mitigation-Instruments-for-Climate-Change-Brief1.pdf>

⁵⁵ Available at: <http://www.constructiontransparency.org/home>

reach sector-wide consensus on the value of transparency and accountability initiatives. The PPP Guidelines should not be timid in advocating for greater uptake of the relevant initiatives.

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 external public policy debates on PPP contracts.

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. 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.

The World Bank (2016) guidelines are a high visible guidance document issued by a MDB and submitted to the G20's Investment and Infrastructure Working Group in 2015. The planned update of this guidance document in 2017 can benefit from a 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, and incorporate innovative practices.⁵⁶

Cross-border PPPs: The latest G20 initiative 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. To achieve its goals, the Alliance promotes PPPs to finance, build and operate multi-trillion dollar projects in these sectors, crossing many national boundaries. Implementation of this vision means PPPs with coordination challenges of unknown magnitude.⁵⁷ The PPPs initiated under the Alliance will have to cope with different policy and regulatory frameworks of multiple countries, since international standards or protocols do not exist for many aspects of PPPs. And if PPP units already

⁵⁶ For a summary of comments received during consultation of World Bank (2015), see: <http://pubdocs.worldbank.org/en/616131464363398212/Final-Website-Matrix-of-comments-and-responses-Version-Disclosure-Framework.pdf>.

⁵⁷ The One Belt One Road project initiated by China is expected to cross more than 60 countries with several hundred subprojects.

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.⁵⁸ Complex mega-projects spanning countries are not some isolated occurrence but are already the reality today, and the multiple challenges and blind spots could take countries and international organizations by surprise, not to mention delays and cost overruns.

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.⁵⁹ The PPP Guidelines should not bypass these important sustainability considerations in the procurement process.

VI. CONCLUSION

It takes a herculean effort to implement a PPP. Apart from all the hype on PPPs today, guidance on PPPs proliferates because they 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 accounting methods to account for liabilities are still work in progress. The financing and legal arrangements

⁵⁸ ASEAN's Public-Private Partnership Guidelines (Supra 19) contain some guidance on the cross-border dimensions of PPPs – see Chapter 5.

⁵⁹ For example, see IISD (2014). Value for Money in Infrastructure Procurement: The costs and benefits of environmental and social safeguards in India. Available at: https://www.iisd.org/sites/default/files/publications/value_for_money.pdf

are complex and often involve staggering expenses. 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, or be recognized by the beneficiaries. For all these faults and failures, we demand the public sector to improve the public governance of PPPs.

Taking into account the similarities and differences, and the gap areas in the PPP Guidelines, this Working Paper suggests that the Guidelines are rightly driven by some notion of “public governance.” The PPP Guidelines rightly 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. From this perspective, however, noncommercial stakeholders are less visible compared to commercial stakeholders. The Guidelines pay less attention to the role of the public as beneficiaries and participants in public sector management and decision making, 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 ESG dimensions of sustainability and identifying and managing climate change risks. These gaps in the PPP Guidelines indicate that the Guidelines do not yet address the full spectrum of public governance, and the Guidelines 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 in 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 and decision making. Governments must weigh the costs and benefits of measures to tackle climate change and other sustainability considerations in the process, 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. It would be extremely helpful for the guidance documents to fully spell out the circumstances under which PPPs could be undertaken and those under which PPPs should not be attempted, in which case what the alternatives are. This will ensure that public resources will not go to waste in making a PPP work when in fact it should be avoided. If PPPs are in fact unsuitable for all but the simplest projects, time and resources could be directed more productively elsewhere, for example to infrastructure more generally, rather than on PPPs. After all, PPPs are but one tool in an infrastructure toolbox. This means that any new work on PPPs should not be undertaken at the expense of work in other modes of infrastructure development and finance. A more holistic approach to infrastructure development and finance would help us fulfill the broader ambition of sustainable and resilient infrastructure for all, under the Addis Agenda and the 2030 Agenda.

VII. RECOMMENDATIONS FOR FUTURE WORK

Based on the findings, this Working Paper recommends consideration of a new set of PPP 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 take on the perspectives of noncommercial stakeholders.

Guidance should be created collaboratively with partners and build on existing guidance and resources to the extent available, as envisioned by the Addis Agenda. 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 consider the following items (listed in no particular order of priority and not intended to be mutually exclusive):

- **General Considerations**

- Provide guidance on when and how to invite noncommercial stakeholders' feedback on risk avoidance as well as enhancement of services and service quality, when and how to disclose information that would be meaningful to such stakeholders, where and how to receive and 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) climate considerations throughout the PPP project cycle; (ii) ensuring the resilience of the PPP project to climate change; (iii) quantification of GHG emissions; (iv) mitigating any risk that the PPP project may pose to the climate, particularly the local climate; (v) enhancing positive externalities and climate co-benefits; and (iv) ensuring a fair climate risk allocation in the PPP contract to the extent possible.
- Collect guidance and case studies on the various phases of the PPP life span, especially information on PPPs that are coming to a close to understand how risks and rewards are addressed.
- 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. For example, the connectivity between participation, transparency and accountability should be enhanced.
 - 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., simple projects with no significant future variables), and those under which PPPs should be avoided (e.g., complex projects, and projects with significant climate change risks). Point to alternatives to PPPs so that a broad spectrum of options are available for public officials considering infrastructure development and financing.
 - Provide guidance on and examples of fair sharing of risks and benefits.

- **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 economic ones.
- Create new (or adjust any existing) ex ante or ex post 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, including 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 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 or anti-corruption policies, in order to inform other financial institutions on these issues.
 - The MDBs and bilateral agencies should 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.
 - The MDBs should disseminate broadly its research outcomes on sustainability issues in PPPs, such as research papers, methodologies, and evaluations alongside their PPP guidelines.
- **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, just as these groups benefitted from massive educational programs to help them understand and address the governance gap in the extractives sector.

Annex 1: Long List of PPP Documents Identified by UNDESA

1. 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.

2. Governance

a) Governance, Transparency, Information Disclosure, Anti-Corruption

- WBG, OECD et al (2016). A framework for disclosure in Public-Private Partnerships.
- UN ECE (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.

3. 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.

4. 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.

f) Selection of procurement procedure

- EC: Directorate-General for Internal Markets and Services (2007). Interpretative Communication of the European Commission on the Application of Community law on Public Procurement and Concessions to Institutionalised PPPs.
- UK Dept of Commerce March (2009) A Formula for Success: Procurement Effectiveness in Major Project Delivery.

- Govt of France, Ministry of Economy (March 2005). Le Contrats de Partenariat, Principes et Methodes.
- European PPP Report (2009). DLA Paper; EC (Explanatory Note - Competitive Dialogue - Classic Directive.

g) Define bid evaluation criteria

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

h) Prepare draft PPP contract

- PPIAF-World Bank March (2009). Toolkits for PPPs in Roads and Highways
- UK Treasury (March 2007). Standardisation of PFI contracts.
- PPIAF - WBG (2015). Report on Recommended PPP Contractual Provisions.

5. Procurement

a) Bidding process

I. Notice, prequalification and shortlisting

- PPIAF-World Bank March (2009). Toolkits for PPPs in Roads and Highways Infrastructure Australia (2011). National PPP Guidelines, Volume 2: Practitioners Guide.

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