



# Public-Private Partnerships (PPP) in Developing Countries

Presented by David Baxter

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# PPPs in Developing Economies

- ▶ Well-functioning and accessible infrastructure is fundamental to social and economic development
- ▶ The scale of the infrastructure backlog in developing countries is alarming
- ▶ It is estimated that to close the gap by 2030, over \$1.9 trillion per year will be required in developing countries alone
- ▶ Governments experiencing resource constraints need private sector involvement
- ▶ The private sector is becoming increasingly essential to support the budgets of governments to deliver basic services. It is also seen as a **critical potential source of innovation**, discipline and quality for these services, as well as providing essential resources to administer the services. In the context of severe infrastructure backlogs and limited public funds and capacity for addressing the problem, **one viable option for private sector resources to be mobilized to address this daunting challenge is the PPP.**

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INTERNATIONAL FINANCIAL LAW REVIEW

## Infrastructure PPPs in the most challenging developing countries: Closing the gap

Patricia O. Sulser



# Status of PPPs in Developing Economies

A PPP can be defined as a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears substantial risk and management responsibility, and remuneration is linked to performance.

- ▶ The private party specifically undertakes the primary responsibility to deliver the design, feasibility, construction and implementation, and operations and maintenance of the project.

PPPs can support governments in the provision of public infrastructure by providing -

- ▶ additional sources of funding and financing
  - ▶ flexibility in the allocation and prioritization of fiscal resources
  - ▶ technical expertise and innovation
  - ▶ efficient project management and operation based on incentives
  - ▶ capacity to administer the asset or service throughout its life.
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- ▶ Public-private partnerships are attractive to governments and government entities, the G20, the United Nations, and many DFIs because they can thus be an important engine of growth throughout the economy

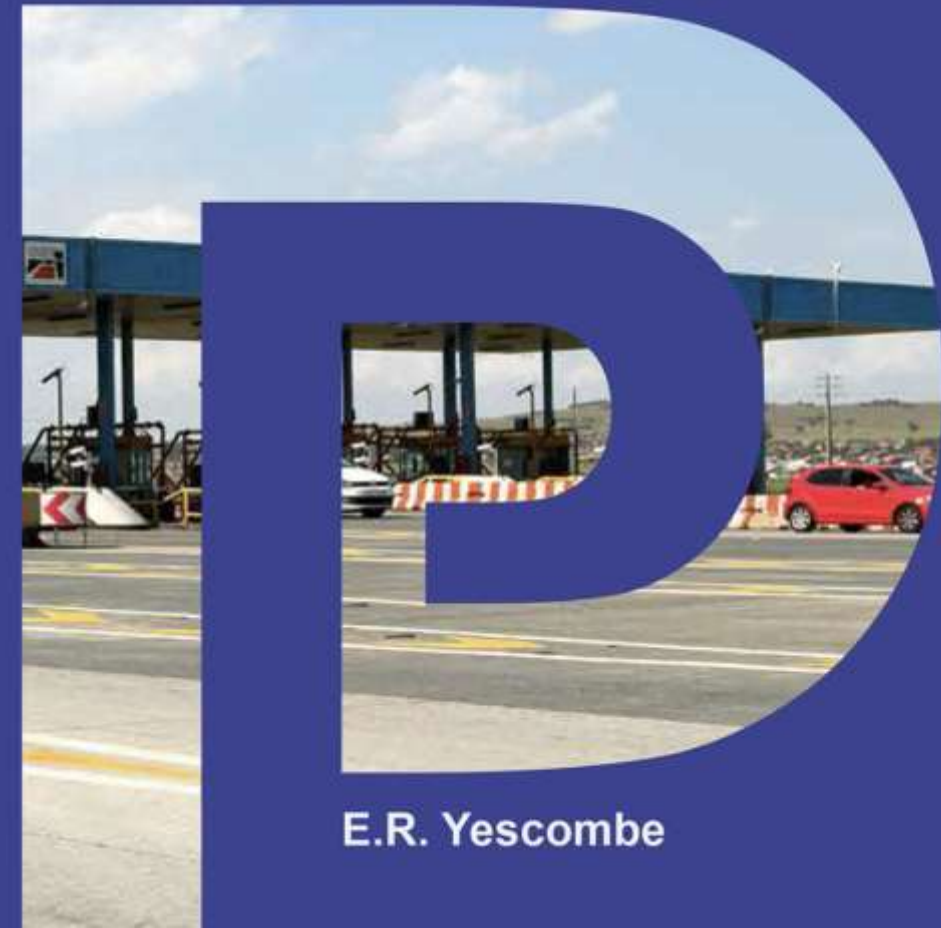
# 10 African Case Studies

Project name	Country	Sector	Type of PPP
Bujagali Hydropower	Uganda	Power generation	Process-plant (IPP)
Cenpower	Ghana	Power generation	Process-plant (IPP)
DTI Campus	South Africa	Government accommodation	Availability-based
KivuWatt	Rwanda	Power generation	Process-plant (IPP)
Lekki Expressway	Nigeria	Toll road	Concession
Mbombela Water	South Africa	Water & sewage distribution	Concession
Platinum Highway	South Africa	Toll road	Concession
Rift Valley Railways	Kenya/Uganda	Railway	Concession
Songas	Tanzania	Power generation	Process-plant (IPP)
Tšepong	Lesotho	Social infrastructure	Availability-based

## Public-Private Partnerships in Sub-Saharan Africa

*Case Studies for Policymakers*

2017



E.R. Yescombe



# WB Benchmarking of Algeria and Neighbors - Investors are not Sentimental

## Algeria

MENA  
Upper middle income



## Morocco

MENA  
Lower middle income



## Tunisia

MENA  
Lower middle income



## Egypt, Arab Rep.

MENA  
Lower middle income



## South Africa

SSA  
Upper middle income



## ALGERIA

MIDDLE EAST AND NORTH AFRICA

GNI PER CAPITA (IN USD)  
\$4,220

### Preparation of PPPs

Central budgetary authority's approval	No
Fiscal treatment of PPPs	No
PPPs' prioritization consistent with public investment prioritization	Yes Detailed procedure not regulated
Economic analysis assessment	Yes No specific methodology developed
Fiscal affordability assessment	Yes No specific methodology developed
Risk Identification	Yes No specific methodology developed
Comparative assessment (value for money analysis)	Yes No specific methodology developed
Financial viability or bankability assessment	Yes No specific methodology developed
Market sounding and/or assessment	Yes No specific methodology developed
Environmental impact analysis	No
Assessments included in the RFP and/or tender documents	No
Draft PPP contract included in the RFP	Yes Tender documents also available online
Standardized PPP model contracts and/or transaction documents	No

### Procurement of PPPs

Evaluation committee members required to meet specific qualifications	Yes Detailed membership and/or qualifications not regulated
Public procurement notice of the PPP issued by procuring authority	Yes Available online
Foreign companies permitted to participate in PPP bidding	Yes
Minimum period of time to submit the bids	Yes No specific period of time regulated
Availability of various procurement procedures for PPPs	Open procedure (single-stage tendering), Restricted procedure (competitive procedure with prequalification stage), Competitive dialogue and/or multi-stage tendering
Direct negotiation not discretionary	No
Tender documents detail the procurement procedure	Yes
Tender documents specify prequalification/shortlisting criteria (if apl.)	Yes
Clarification questions for procurement notice and/or the RFP	No
Pre-bidding conference	No
Financial model submitted with proposal	No
Proposals solely evaluated in accordance with published criteria	Yes
Treatment when only one proposal is received	No
Publication of award notice	Yes Available online
Notification of the result of the PPP procurement process	Yes Grounds for selection included
Standstill period	No
Negotiations with the selected bidder restricted	Yes
Publication of contract	No

### PPP Contract Management

System to manage the implementation of the PPP contract	Yes Establishment of a PPP contract management team, PPP contract management team requires qualifications without specific detail
System for tracking progress and completion of construction works	Yes
Monitoring and evaluation system of the PPP contract implementation	Yes Performance assessment against established criteria. Abatement of payments for non-performance. Private partner provides periodic information. Procurement authority gathers information
Foreign companies permitted to repatriate income	Yes
Change in the structure (stakeholder composition) of the private partner and/or assignment of the PPP contract regulated	Yes
Modification/renewal of the PPP contract (once the contract is signed) regulated	Yes Approval by an additional government authority required. Unilateral modification by the procuring authority possible. Regulations about: changes in the scope; changes in the economic balance; changes in duration; changes in the price or tariff
Circumstances that may occur during the life of the PPP contract regulated	Yes Force majeure, Subcontracting
Dispute resolution mechanisms	Yes Domestic arbitration, International arbitration, Investor-State Dispute Settlement (ISDS)
Lenders' step-in rights	No
Grounds for termination of a PPP contract	Yes Consequences of termination expressly regulated

### Unsolicited Proposals

Regulation of USPs	Not regulated and do not happen in practice
Assessment to evaluate unsolicited proposals	
Vetting procedure and/or pre-feasibility analysis of USPs	
Evaluation of consistency of USPs with other government priorities	
Competitive PPP procurement procedure for USPs	
Minimum period of time to submit the bids	

# Considerations for PPPs

- ▶ Ease of doing business
- ▶ An effective champion to oversee the project
- ▶ Clear appreciation of the implications of the value of the private sector and commitment to PPPs
- ▶ Support and consensus within government
- ▶ Acceptance of changing roles
- ▶ Demonstrable commitment to honoring contracts
- ▶ Alignment of the public sector's interests with the private sector's interests
- ▶ Integrity and transparency (competitiveness)
- ▶ Quality and track record of advisors
- ▶ An enabling environment
- ▶ Respect of laws
- ▶ Availability of funds and government performance

- ▶ Meaningful and sustained engagement with communities / stakeholders
- ▶ The technical, commercial and financial feasibility of the PPP project
- ▶ The underlying market for the public service or product
- ▶ Technological obsolescence
- ▶ Affordability of project to users
- ▶ Is there adequate ancillary infrastructure?
- ▶ Are the private sector parties of good quality?
- ▶ The tendering and selection process
- ▶ Continuing contractual commitments during the operation phase
- ▶ Risk Management and allocation
- ▶ Force majeure



# 2020 PPP Global Practitioner Survey

- ▶ Respondents were asked the following questions:
- ▶ *Q 1. What are the two biggest challenges that you are facing in regards to COVID-19 impacts on your PPP projects*
- ▶ *Q 2. What two PPP sectors do you see being the most vulnerable to COVID-19 impacts?*
- ▶ *Q 3. What two PPP sectors do you see as being the most promising in a post-COVID-19 era?*
- ▶ *Q 4. What help would you most appreciate from development banks, donors, investors, and developers as you move forward with your PPP programs during economic recovery?*
- ▶ *Q 5. What positive opportunities do you see the Covid-19 Pandemic creating for a new approach paradigm to PPPs in the next few years?*
- ▶ Regionally, the distribution of survey respondents is as follows: Africa 20.4%; Asia 19.1%; Australia 06%; Europe 27.4%; Middle East 13.4%; North America 8.9%; and South America 7.6 %.



David Baxter posted this



**157 PPP Practitioners from 69 Countries Share their Insights on the Status of PPPs in the Pandemic Epoch**

David Baxter on LinkedIn

June 15, 2020

# Survey Q 1. *What are the two biggest challenges that you are facing in regards to COVID-19 impacts on your PPP projects*

- ▶ Concern about shrinking investor interest in certain types of PPP projects (especially future projects) due to the weakening financial global market and investors' concerns about project bankability due to declining economic and user activity
- ▶ Concerns about current projects being able to generate revenues and the ability of governments to make availability payments and meet deferred concession payments from the private sector
- ▶ Project risk management and mitigation under pandemic conditions and emerging risk pushbacks
- ▶ Delays in government project procurements/tenders due to changing priorities and timelines
- ▶ A loss of a long-term focus on PPP programs due to a short-term crisis management focus on pandemic mitigation
- ▶ Technical advisors being unable to advise on projects, especially new procurements due to social distancing
- ▶ Concerns on how to address force majeure provisions in contracts (this was the most common concern) in a global pandemic crisis of a scale never seen before
- ▶ Adjusting project contract deliverable expectations due to project delays and potential terminations and the cost thereof
- ▶ Practical concerns regarding staff availability, their access to project sites due to health concerns, and project partners being unable to physically meet to discuss project mitigations and recovery strategies
- ▶ Balancing immediate concerns with long-term concerns
- ▶ Accountability to stakeholders and declining project site monitoring (including environmental monitoring)
- ▶ Impacts on the balance sheets of investors, particularly where leverage is high
- ▶ Concerns about project liquidity
- ▶ Inflexible legislation (legal frameworks) that is unable to proactively address impacts to PPP projects
- ▶ Excessive public sector bureaucracy preventing proactive reactions to challenges and immediately needed mitigations
- ▶ Interventions by politicians who lack an understanding of PPP's complexity
- ▶ Impacts to supply chain logistics
- ▶ Long-term perceptions of project profitability in times of pandemic austerity when projects receive support from governments



## Question 2: The PPP Sectors most vulnerable to COVID-19 impacts

The most identified vulnerable sectors were as follows in decreasing order: transportation 53.9%; tourism/leisure 16.9%; power energy 7.5%; healthcare 7.1%; education 5.9%; water and sanitation 3.1%; waste management 1.2%; prisons 1.2%; social PPPs 1.2%; agriculture 0.8%; petrochemical 0.4%; digital 0.4%; and social PPPs / housing 1.6%. It must be pointed out that the sectors differed slightly on a continental / regional basis.

- ▶ Sector vulnerabilities vary between regions. The most mentioned vulnerable sectors by region identified by survey respondents in decreasing order are as follow:
- ▶ Africa - transportation; tourism/leisure; power/energy; and healthcare
- ▶ Asia - transportation; tourism/leisure; and power/energy
- ▶ Australia - education; schools; and transportation
- ▶ Europe - transportation; tourism/leisure; healthcare; and education
- ▶ Middle East - transportation; tourism/leisure; power/energy
- ▶ North America - transportation; tourism; health; power/energy; and education
- ▶ South America - transportation; tourism; and education

# Question 3: PPP sectors Most Promising in a Post-COVID-19 Era

- ▶ The most identified promising sectors were the following in decreasing order: healthcare 39.4%; digital infrastructure 17.7%; renewable energy/power 8.6%; transportation 7.5%; education 7.1%; agriculture 7.1%; water and sanitation 6.4%; tourism and leisure 1.5%; waste management 1.5%; social housing 1.1%; prisons 1.1%; and defense 0.8%.
- ▶ Sectors with the greatest post-COVID-19 pandemic potential identified by respondents vary between regions. The sectors with the most potential - by region - identified by survey respondents in decreasing order are as follow:
- ▶ Africa - healthcare; digital infrastructure; agriculture; renewable energy; and water and sanitation
- ▶ Asia - healthcare; digital infrastructure; education; agriculture; and renewable energy;
- ▶ Australia - social housing and healthcare
- ▶ Europe - Healthcare; digital infrastructure; smart transportation; renewable energy; and social housing
- ▶ Middle East - healthcare; smart transportation; education, digital infrastructure; and water and sanitation
- ▶ North America - healthcare; digital infrastructure; power / energy; and transportation
- ▶ South America - healthcare; digital infrastructure; and transportation

# Question 4: Help Needed from Development Banks, Donors, Investors, and Developers for PPP Programs During Economic Recovery

- ▶ Additional Technical support
- ▶ Fast Tracking Capacity Building
- ▶ Supplementing Financial Support
- ▶ Enhancing Stakeholder Collaboration
- ▶ Improving Communication
- ▶ De-Risking Projects
- ▶ Guaranteeing Packages for Force Majeure Events
- ▶ Improving PPP Project Contracts
- ▶ Cultivating PPP advocacy
- ▶ Reprioritizing PPP Programs and Pipelines
- ▶ Helping Develop Targeted PPP Reforms in countries supported by new responsive guidelines and revised legal frameworks
- ▶ Improving and Refining Project Procurement and Management Best Practices
- ▶ Embracing Innovation Incentivization

It was evident that financial support and relief actions were the most sought after short term requests. However, longer terms needs were focused on improving the selection and implementation of PPPs that are people focused, inclusive, and future-forward looking in terms of sustainability and resilience.



# Question 5 - Positive opportunities in a Post-Covid-19 Pandemic Era for a New Approach PPP Paradigm in the next few years

- ▶ Enhance and Improve PPP contracts - especially in the areas of force majeure
- ▶ Implement legal reforms that embrace new sustainable PPP policies and limit bureaucratic barriers that hinder innovative, flexible, robust and responsive PPPs
- ▶ Streamline and introduce mandatory planning, procurement and implementation of future PPP projects Change social contracts and increase the focus on People First PPPs
- ▶ Redefine PPP priorities that will focus on economic recovery and achievement of the SDGs
- ▶ Highlight the increasing importance of a new generation of smart projects - especially in healthcare, education and IT sectors
- ▶ Herald in a preference for smaller projects - instead of large risky mega-projects
- ▶ Demand greater collaboration between domestic and international investors and stakeholders; and redefining what partnerships mean in PPPs
- ▶ Allocate of project risk better
- ▶ Necessitate financial reforms
- ▶ Improve dialogue and collaboration between the public and private sectors due to dwindling resources and the need to leverage existing resources
- ▶ Adopt lessons learned during the pandemic to improve the practice of PPPs by PPP professionals (especially in crises management and shared decision making)
- ▶ Encourage more and improved cross-border (transnational) PPPs that integrate economies in the globalizing world

# Emerging Trends Identified in the Survey

- ▶ **Embracing Sustainable PfPPPs** which are an inclusive approach where both the public and private sectors are encouraged to collaboratively leverage their pandemic strained resources to provide essential services and economic development infrastructure necessary for economic recovery.
- ▶ Many countries are **implementing legal reforms** that will create enabling environments (legal frameworks) that are more conducive to competitive and transparent PPP procurements.
- ▶ There is an increasing conversation underway that acknowledges that **PPP contracts need to be flexible and adaptable** to adverse events impacts that hitherto have been unimaginable.
- ▶ This was particularly relevant for **force majeure clauses** in contracts, which in many cases have proven to be vague, ill-defined, and unhelpful in determining which party was responsible for pandemic effects, when in reality neither party was.
- ▶ There has also been an increased appreciation of the need to **revisit risk allocation**.
- ▶ **PPP Project Planning** will also undergo major reform in 2021 and beyond.
- ▶ It is also noteworthy that governments around the world have realized that they need to **understand the needs of potential private sector partners** and also to understand what types of projects developers and investors are really interested in.
- ▶ One of the most exciting outcomes of 2020 are the **opportunities for innovation** that will ensure that **sustainable and resilient strategies** will be embraced

# Pillars of Resilience

These five pillars can be implemented with minor revision to PPPs when they are implemented as PfPPPs. Recommendations based on De Graaf-van Dinther and Ovink ideas include the following -

- ▶ **Threshold Capacity** - This should include PPP planners preparing and building thresholds of variation to prevent project structural damage through risk management.
- ▶ **Coping Capacity** - it is important that capacity to reduce damage from an adverse event that exceeds a damage threshold to PPP projects exists.
- ▶ **Recovery Capacity** - This refers to the project's ability to quickly recover to a project state that is the equivalent or better than before the event.
- ▶ **Adaptive Capacity** - This is related to a project team's capacity to anticipate the unanticipated threats to projects in the future. Present conditions can and do change constantly change for PPP projects.
- ▶ **Transformative Capacity** - This relates to the ability of a project management team to transform the way it operates when faced with future expected catastrophic developments.

*Adapted from - "Climate Resilient Urban Area - Governance, design and development in coastal delta cities" edited by Rutger de Graaf-van Dinther (published by Palgrave MacMillan - ISSN 2523-8124)*



# Conclusion - MENA Forum 2020 - Takeaways

- ▶ MENA region governments are increasingly focused on the need to diversify their economies away from an over dependence on oil and gas revenue through PPPs
- ▶ The infrastructure and services funding gap remain a concern
- ▶ Most countries are aggressively improving their enabling environments (and legal frameworks) so that PPPs can be an effective development tool to achieve the sustainable development goals.
- ▶ Many speakers called for a human element to be introduced to PPPs, especially the idea of People First PPPs (PFPPPs)
- ▶ Governments are increasingly harmonizing their national PPP project priorities with national visions (such as the Saudi Vision 2030 initiative) so that public and private sectors can be effectively leveraged in goal realization
- ▶ Business leaders stressed that the private sector has much to offer governments, especially in the areas of innovation, mobilization of resources, and financing which could help governments reach their goals quicker and more efficiently
- ▶ There is an increasing understanding that procurements need to become competitive and transparent

# Conclusion - MENA Forum 2020 - Takeaways

- ▶ Many speakers stressed the need for governments in the region to also focus on social PPPs that improved access to housing, education, and health
- ▶ There were calls for increasing monitoring of PPP projects and programs so that the private sector could develop a more trusting relationship with governments in the region
- ▶ Calls for strategic sectoral master plans and related PPP project pipelines with clear priorities were also called for as this would allow the private sector to mobilize their resources more efficiently
- ▶ The private sector called for better packaged PPP procurement documents so that they could respond more efficiently to new project tenders
- ▶ There were recommendations from both the public and private sectors for more reasonable allocations of risk for PPP projects to parties that were best positioned to address them
- ▶ There were calls for an integrated and structured approaches to procurement processes and documentation

# Thank you - Any Questions?



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