

Clarifying the Role of Partnerships between Public and Private Sectors in International Development

BIAC Draft Thought-Starter

About

While many different BIAC policy groups comment from time to time on public-private partnerships (PPPs) in different contexts, there is no single BIAC paper which expresses common private sector views on PPPs. Participants in the first BIAC Development Task Force meeting in November 2012 therefore suggested that BIAC should develop a discussion paper on PPPs that could serve as a useful reference to relevant BIAC and OECD activities in future.

In preparation for the second meeting of the BIAC Development Task Force on 27 June 2013, this paper has been prepared as a “thought-starter” for discussion. Following the 27 June meeting, it is proposed that the thought-starter could be revised if needed and then circulated to other relevant BIAC policy groups for further comments and eventual finalisation.

The BIAC Secretariat wishes to express special thanks to Mr. Jack Moss, Chair of the BIAC Water Group, for having been a lead drafter in preparing this thought-starter.

Executive Summary

To be inserted at a later stage.

I. Introduction

Private sector-led growth is essential in building the strong, sustainable and inclusive growth that is needed in developing countries. Moreover, increasing focus is now being placed on using aid to leverage private investments, such as through innovative financing mechanisms and public-private partnerships. Beyond private philanthropy and corporate social responsibility, the private sector is a key partner in development through establishing new enterprises, creating jobs, providing goods and services, generating income and profits, and contributing to public revenues.

The declaration¹ from the Fourth High-Level Forum on Aid Effectiveness, held in Busan in 2011, for the first time demonstrated a clear recognition by the international development policy community of the role played by the private sector in development. This was evidenced further by the release of the first joint public-private statement² on public-private cooperation for development, which has been formally supported by over 40 public and private entities, including BIAC. Furthermore, the Rio+20 Summit (2012), as well as the June 2013 report by the High Level Panel of Eminent Persons, emphasised the importance of the private sector in generating development.

In short, it is now recognised that the public sector on its own cannot achieve the ambitious development results expected and that a closer association between governments and private enterprise is required. There is therefore growing interest in various forms of partnership between the public and private sectors. This is fuelling high and growing expectations of the contribution that the private sector can make in international development, thus posing new challenges and opportunities for both governments and businesses.

This BIAC paper focuses on Public-Private Partnerships (PPPs) and its aims are essentially two-fold:

- a) The first objective is to show the need to **clarify the different types of established PPP** that can be used and to examine OECD recommendations in this field so that such partnerships can be applied under appropriate conditions that enable them to continue to contribute to the development process. There is already growing

¹ Available online at http://www.effectivecooperation.org/files/OUTCOME_DOCUMENT_-_FINAL_EN2.pdf

² Available online at <http://www.effectivecooperation.org/files/Joint%20Declaration%20on%20expanding%20and%20enhancing%20public%20private%20cooperation%20%20%20.pdf>

confusion over the expression PPP and it is important to clarify what it entails and what it does not entail³.

- b) The second is to show that more attention needs to be given to the **evolving partnership models** that fall outside the accepted definitions of PPP and to look at the way public policy and administration can be adapted to maximise the real potential of these new concepts in sustainable ways.

II. The enabling environment for PPPs

Improving the business-enabling environment in countries is of crucial importance to development, including the increased use of PPPs. Governments can do this by, for example, ensuring rule of law, implementing clear policies, good governance and impartial regulation. This is already important to enable existing models of PPP to deliver their full potential.

The importance of a business-enabling environment is clearly articulated in the joint public-private statement submitted to the Fourth High-Level Forum on Aid Effectiveness, quoted below, and has been emphasised by the private sector in several other fora:

Governments should consult closely with the domestic and foreign private sectors in order to create an enabling environment for development which promotes peace and stability, the rule of law, enforcement of human rights, good governance with accountability and transparency, the absence of corruption, adequate economic and social infrastructure, stable economic policy, an educated workforce, clear property rights and enforceable contracts, enhances the competitiveness of the local private sector and promotes equitable growth.

“Expanding and Enhancing Public and Private Co-operation for Broad-based, Inclusive and Sustainable Growth”, Busan 2011

Building such a business-enabling environment can contribute towards the diversification of local economies, allowing developing economies to attract and retain investments in different sectors and viable industries, while also serving to shore up the local tax base (through volume of receipts and diversity of sectors). It is an important pre-requisite for companies to be able to rely on an effective and fair legislative system. Due attention should also be paid to the development of local businesses and supporting local innovation, while reducing the size of the informal sector. All of this leads to more resilient and sustainable economic growth.

The prime role of governments and international organisations, such as OECD, must be to ensure and reinforce the enabling environment to permit the private sector to fulfil both its primary role of producing the goods and services required by society and missions assigned

³ In this respect, BIAC has observed some conflicting positions in recent OECD publications related to “structured” PPP approaches, which require clarification to enable the full potential of these vehicles to be realised in the pursuit of international development.

to it by governments. For the evolving role of the private sector and new partnerships to be effective, it is necessary to review and adapt the policy frameworks, governance and regulation appropriately to new circumstances.

III. Clarifying the types of established PPPs

The expression PPP has become much overused and is increasingly employed to cover a wide range of different kinds of partnership that fall outside the accepted definitions of PPP. In the context of global development, it is necessary to clarify these different interpretations in order to preserve the established meanings of PPP. This would help to clarify language for newly evolving approaches (discussed in section IV of this paper).

There is a very large pool of literature, many case studies, a complex lexicography and a significant number of national laws that relate to the various different types of formalised contractual PPPs. It is beyond the scope of this paper to discuss all of these, but we believe it could be a useful objective for the OECD to attempt some form of simplified inventory and standardisation of the terms, definitions and concepts used.

We are pleased to provide BIAC's perspectives on clarifying PPPs as follows:

a) A contractual relationship to provide services, infrastructure, management, expertise or finance for a public service

A formalised situation is the family of PPP (or private sector participation - PSP) type contracts. To qualify as a PPP, an arrangement must be formalised through a contract and must contain the elements embodied in each of the 3 P's. This means that the arrangement must be between a public authority (P1) and a private enterprise (P2), and must have a common and shared objective (partnership - P3).

In detail, a wide variety of different formats is available, but they all involve the essential principle of the "delegating authority" or "responsible body"⁴ engaging a private sector company to build, maintain and operate public infrastructure to provide all or part of a public service to specified standards and for a specified time period.

These normally relate to the core business of a specialised private company and comprise medium- to long-term contracts for the partial or total delivery of public services or public infrastructure on behalf of public sector clients. The scale and scope of the works involved is normally much greater and the commitment on both parties much more significant than in the newly emerging partnership models that are described in Section IV. The potential for further long-term sustainable development is also much greater than in the more informal models outlined in Section IV.

It is important to recognise that within this category of contractual partnerships there can be significant differences between those contracts that focus principally on *operating a service* from those that concentrate on *delivering a piece of*

⁴ ISO 24510: Definition 2.42 - **responsible body**: body that has the overall legal responsibility for providing drinking water (2.11) or wastewater (2.51) services (2.44) for a given geographic area

infrastructure. This difference can have significant impacts on the risk profiles, financing, regulation and supervision of contracts.

b) Certain kinds of mixed economy company - Joint venture

Another large scale and effective form of PPP is the creation of a joint venture company involving a mixed shareholding of capital from both the public and the private sectors. A mixed company of this kind is often set up to deliver a public service. To qualify as a PPP, a mixed economy joint venture must contain the key elements of the 3 P's. That is to say it must have both a public and a private partner (P1 and P2) and these must be linked either by a shareholders' agreement that formalises the objectives and governance of the partnership (P3) or the joint venture should itself be engaged in a PPP-type contract with the responsible body. Other forms of mixed economy company, for example a state-owned enterprise that has a portion of its capital quoted on a stock exchange, would not be termed PPP.

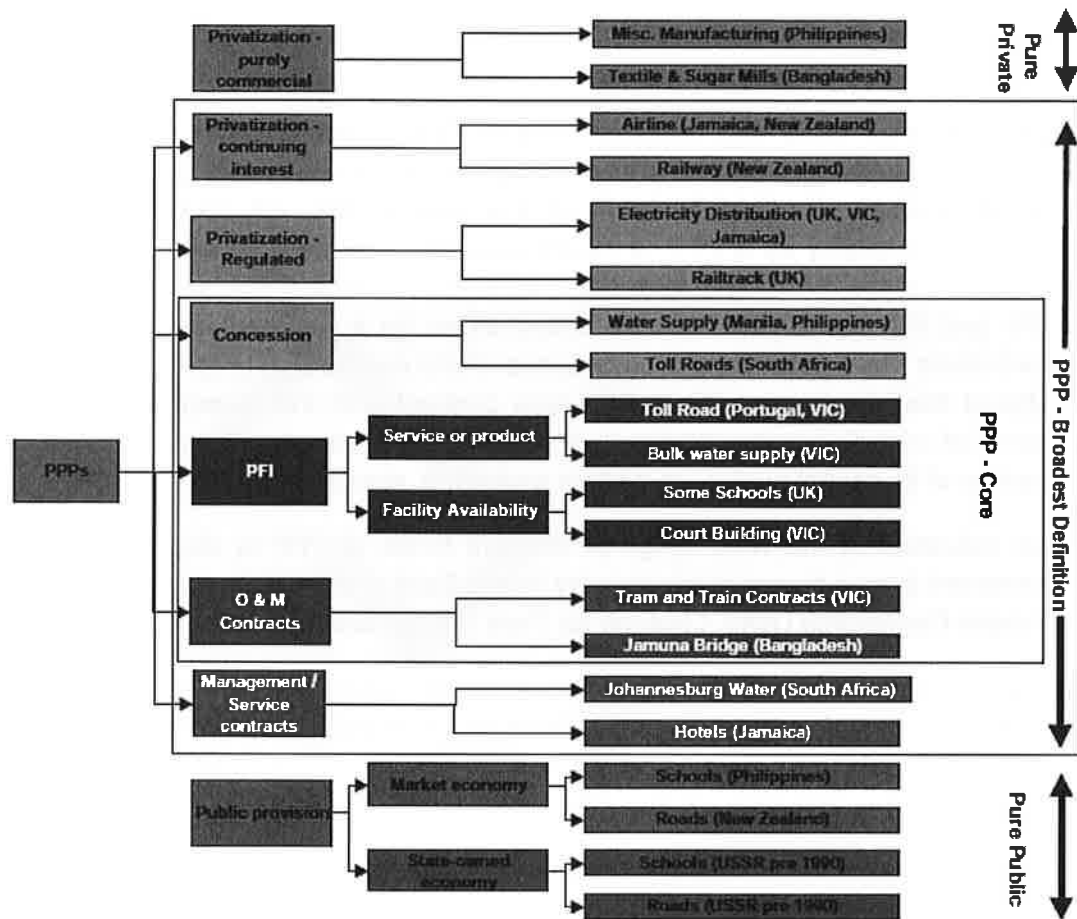
An indication of the wide range of different forms of PPP is depicted in Figure 1, extracted from a recent publication by World Bank and PPIAF under the title "Public-Private Partnership Units: Lessons for Their Design and Use in Infrastructure"⁵.

This diagram helps to place the above broad categories into context and clearly delineate PPP contracts from privatisation and from pure public operation. It would be useful to review this presentation and to look at the possibilities of integrating the new forms of partnership that are described in section IV below.

It should also be noted that the diagram gives no indication of the scale or scope or duration of the different forms of PPP contract. These are all aspects that can have a significant impact on the way contracts are designed, implemented, regulated and monitored.

⁵ [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/012_7_EN_World%20Bank%20Public-Private%20Partnership%20Units%20-%20Lessons%20of%20their%20Design%20&Use%20of%20Infrastructure%20\(Report\)%20WB.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/012_7_EN_World%20Bank%20Public-Private%20Partnership%20Units%20-%20Lessons%20of%20their%20Design%20&Use%20of%20Infrastructure%20(Report)%20WB.pdf)

Figure 1: Forms of PPPs



Source: World Bank and PPIAF (2007) "Public-Private Partnership Units: Lessons for Their Design and Use in Infrastructure"

IV. Forms of partnership that are not formalised PPP contracts

There are a variety of partnership arrangements that can be very helpful to the development process, but which clearly fall outside the accepted and established definitions of PPP. These partnerships, which should not be named PPPs, are certainly not PPP contracts. They include the following.

a) Loose informal relationship

The simplest form of partnership is a loose and informal relationship between one or more private sector companies, possibly in association with NGOs, and a government or other public sector body. An example of this would be where the various parties come together to clean a beach or a riverbank or something similar.

b) A “naming rights” or “product placement” agreement

Under this model, a private company would pay to the public authority a sum of money to have its name, logo or brand exposed in a position of prominence, or would provide its product free under certain circumstances to enhance its image. Examples would be where a company sponsors a public building or other infrastructure in exchange for placing its name prominently on the building.

c) Co-operation based on philanthropy or "charity"

An increasingly common model is where a business provides finance on a philanthropic or charity basis to enable a public authority to carry out some form of socially desirable work that could not be otherwise achieved. This kind of approach is increasingly seen in efforts to improve schools and other services in poor communities in developing countries.

A variation on the previous model is one where in addition to providing finance in a philanthropic way, a private company also provides management expertise and or professional coaching of staff to help carry out the work. This model is increasingly used where the scale or scope of projects becomes more significant and therefore both the sums of money involved and the operational risks increase.

d) Strategic alliance

“Strategic Alliance” is not a commonly used term in the lexicon of PPP, but we have introduced it here to cover a growing new trend of co-operation between governments and/or international institutions and business. Alliances of this kind, which are often simply loose associations of major businesses with one or more country governments or international institutions, are being used more often as a way of exploring complex problems that require convergence of political and industrial activities or decision-making and often also social and environmental issues.

e) An extension of a core business activity into the community

A different model is where business needs infrastructure or public services beyond its immediate operational perimeter in order to be able to conduct its business. This is typically with infrastructure and public services such as energy, transport, water supply and sanitation, schools or hospitals linked with activities such as mining. In these circumstances, a private company can create the infrastructure which it then either hands over to the public authority or operates on its behalf.

V. Relationships of parties in PPPs

As outlined in the preceding sections above, the processes involved in creating different forms of PPP, and also the outcomes that can be expected from them, differ from model to model and from case to case. This is often not fully appreciated in general discussion of private sector involvement in the context of development.

The fundamental difference between the sorts of partnerships in Section III and IV is that there is essentially one set in which parties are bound through contractual or shared capital models (as in Section III), and another set which is far less binding on parties (as in Section IV) and tends to be associated more often with corporate social responsibility (CSR).

Key to all PPP arrangements is the way that the relationships between the various parties involved are established and maintained. Considering the kinds of results required in international development, one can identify four principal parts and roles in the “value chain” for PPPs:

i. Public policy

The first of these parts in the PPP value chain is the sphere of **public policy**. This is essentially about decisions on the allocation of available resources to different users for different purposes over different time scales. It involves identifying priorities, setting targets and mobilising the means for action.

This activity is about deciding how the public goods or services are allocated to different private or public uses and also how the different users should contribute to covering the costs involved, be this through user tariffs, taxation or a combination. Where resources are abundant and demands small, this presents little or no challenge, but where resources are scarce and competing interests are many, the challenge of arbitrage becomes extremely difficult.

Public policy also requires difficult decisions concerning the protection of the interests of those users that are weak or voiceless (primarily, the environment and poor and disadvantaged communities). These decision-making activities are fundamentally political and can only be carried out by duly empowered community leaders.

ii. Public administration

The second sphere is that of **public administration**. This activity concerns the implementation of the policies set by the public policy sphere and involves planning, budgeting, regulation, monitoring, control and if necessary policing of the provision and utilisation of the resources, infrastructure or services. It should also provide data and feedback to both the policy makers and other users. This activity, which is now often referred to as governance, can only be the responsibility of public officials, but should be separated from and free of influence from the political sphere. Certain of these functions can be conducted by specialist independent agencies and even private sector consultants, but the responsibility remains with the public administration.

iii. Delivery

For most provision of services or infrastructure, there is then a **delivery** or an “industrial” type activity, which consists of installing, operating and maintaining the physical infrastructure needed to deliver services of appropriate quality to the place where they are required. Depending on the scale, complexity and technical aspects of the processes involved, this activity can be carried out by public, private, combined

or even charity-based organisations. In most cases, the principal performance criteria for these organisations are cost effectiveness and technically proficient performance.

iv. Usage

Public services and infrastructure are used by different **users** for a very wide range of uses ranging from domestic, through small and medium-size business and commerce, large-scale industry, and agricultural activities. The combination of the allocation, administration and delivery functions should ensure that these users can benefit from the public services or infrastructure they need. These various users themselves should be aware of the benefits that the service provides to them and the responsibilities as well as the rights that their allocation imposes on them. In this picture, it is also important to recognise the needs of the environment and ecosystems.

It is clear that the four elements described above are quite different. This understanding should be borne in mind when faced with questions about the relative roles and responsibilities, risks and rewards, rights and recourse of the different parties in this value chain and to integrate them appropriately into the various different models of PPP.

A clear understanding of the roles of different parties and different parts of the PPP value chain is particularly important when tensions arise between the objectives and interests of the various parties involved in the development process. Typically, these tensions can be between national and local governments, between the objectives and policies of service delivery ministries and the requirements of national budgetary and Treasury control, between public and private parties, between NGOs and business, between suppliers and consumers, and so on.

The successful outcome of a PPP therefore often depends on being able to manage these tensions as they evolve over the duration of a project or programme. To some extent, this can be helped by careful preparation, setting realistic expectations, by good definition and allocation of risks, and by good documentation, project governance and regulation. However, particularly as the duration of the partnership extends, it becomes impossible to foresee all eventualities and prescribe solutions in advance. This means that inevitably a degree of flexibility and adaptability is required in implementation and the various parties need to be willing and able to accommodate each other's difficulties. It also means that common and coherent positions on communicating about changes and challenges are required.

VI. Role for OECD policy guidance on PPPs

Recognising the value of formal PPPs to development and service delivery, the OECD has produced a number of documents over the years that seek to assist governments in preparing and executing formal PPP arrangements. Many of these reports provide very useful guidance on many issues related to selecting and setting up appropriate PPP models.

BIAC believes that there are some information gaps where fresh OECD analysis would be useful, as well as some important considerations that we believe should be integrated into OECD thinking on PPPs.

We therefore wish to highlight the following key considerations for future OECD work on PPPs:

- **Examine the less formal partnerships more closely**

At this stage, there seems to be little advice available on creating and managing the partnership approaches, which are not formal PPP contracts, outlined in Section IV of this BIAC paper. In BIAC's view, it would be beneficial for the OECD to instigate a programme to look at these emerging concepts with the aim of facilitating their uptake and thus accelerating sustainable development.

- **Take a more comprehensive approach to formal PPPs**

While the OECD advice on formal PPPs is useful, BIAC feels there are a number of limitations that need to be overcome in order to enable greater potential of formal PPP contracts to be harnessed in the interests of accelerating development, policy alleviation and green growth.

This involves taking a more balanced and comprehensive approach by considering the following:

- Focus not only on "infrastructure" PPPs, but also "service" PPPs;
- Focus not only on national scale projects, but also on those at local government level;
- Ensure sufficient balance between national budget control and optimisation of beneficial development impacts;
- Be cautious of over-emphasising "public sector comparators" and theoretical "value for money" studies; and
- Be cautious of somewhat unrealistic views on risk allocation and in particular *force majeure*.

- **Take a more nuanced, sector-specific approach where necessary**

It is particularly important when moving from theory to the practical application of policy guidance to recognise that, in both the formalised contractual PPP situation and in the less formal partnerships, the viewpoints and constraints of the parties can vary significantly as a result of the kind of business sector involved and the geographical, industrial, economic and cultural variables that may apply. This means that formal PPPs that are applied to transport infrastructure, for example, can be quite different from those for energy projects or the provision of water and sanitation services. These constraints are often well understood within a sector but poorly between sectors, which makes some comparisons across sectors of doubtful value.

It is most likely that similar conditions apply across sectors when the less formal and emerging kinds of partnership are under consideration. However, there is little or no evidence to date to help understand what these variables might be and what constraints they might apply to different sectors. This is an area in which BIAC and OECD could potentially work together.

VII. Conclusions

Partnerships between the public and private sectors have existed for centuries and continue to evolve as needs and conditions change. In order for the expectations surrounding the private sector's contribution to development to be fully realised, the understanding of how partnerships work and how to make sure they are successful requires continual refinement.

BIAC believes that OECD has a role to play in this effort, by mobilising its expertise to develop and improve policy advice that would be useful for both public and private decision makers.

In undertaking such work, BIAC underlines the importance of:

- Strengthening and reinforcing the potential of the recognised and established contractual PPP or PSP arrangements. This should particularly include the objective to achieve a balance between the views and constraints of Exchequer control and those of development and service extension objectives; and
- Developing appropriate, simple and robust governance frameworks to assist other new forms of partnership to play an active and sustainable role in future development.

