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Good Governance in Public Private Partnerships in Infrastructure: Lessons Learned From Selected Case Studies

[1] NOTE: The UN/ECE Secretariat has produced this discussion paper based upon recent case studies in order to identify the relevant issues related to governance in PPPs and to make some recommendations that could be further elaborated into a set of Guidelines on Good Governments for public private partnerships in infrastructure development.

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Introduction

Recently, in response to concerns about the ability of public and private actors to operate appropriately in an increasingly global economy, many governments, regional, international organisations and NGOs have started to recognize the importance of good governance for economic development.[2] Governance is also important in Public-Private Partnerships (PPPs) in infrastructure. Until now, however, the issue of governance and PPPs has not been specifically addressed. PPPs use concession based financing techniques, which offer governments a way to finance and improve the quality of services in transport, energy, and telecommunications as well as in health, education and municipal services. PPPs are increasingly common in Europe and there is now evidence that PPPs have brought significant benefits to the reform of public services, e.g. service improvement, strengthening of infrastructure, better mobilisation of capital, value for money, provision of buildings and services that would not otherwise be available, innovation, elimination of cost overruns and timely completion of projects. At the same time, as with many new initiatives, there are inevitably risks in the PPP process, namely weak procedures, and poor accountability etc., which need to be addressed in order to ensure that the model and its variants are applied beneficially in all parts of Europe.

The purpose of the paper is to define the main ingredients of good governance in PPPs and how these can be best implemented to ensure the success of future infrastructure projects. The paper is divided into three parts:

- Part I examines the rationale and the case for promoting good governance and why it is important to the stakeholders involved, public and private sectors respectively, with regard to project preparation and delivery and what the key components of good governance are in PPPs;
- Part II illustrates these different aspects and standards of good governance in PPPs through a number of selected case studies from recent privately financed infrastructure projects,
- Part III draws upon the main lessons learned from each of these cases and makes some conclusions and suggestions for further developing these principles for good governance further.

Part I – The Case for Good Governance in Public-Private Partnerships and why Governance matters

1. Definition

The term 'governance' refers to the procedures, practices and incentives in both the public and private sectors by which decisions are taken.[3] Specifically, good governance in PPPs refers to those procedures, practices and incentives, which are associated with the delivery and preparation of infrastructure projects.

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[2] Amongst the bodies include: International Monetary Fund (IMF), World Bank Institute (WBI), Organisation for Economic Co-operation and Development (OECD), the International Centre for Not-for-Profit Law (ICNL).

[3] There are many definitions of governance and many commentators on the subject. The Oxford English Dictionary defined governance as "the action, manner or fact of governing". Daniel Kauffmann of the World Bank Institute describes governance as "the exercise of authority through formal and informal traditions and institutions for the common good".

Good governance is increasingly being recognized by both the public and private sectors as a core component to establish and sustain a suitable environment for investment and enterprise development. The need for better 'governance' in many countries has arisen from the recognition that privatisation and liberalisation by themselves are insufficient to sustain economic growth. Although many of the transition economies have noticed substantial benefits as a result of liberalization and privatisation, sometimes it has come at the expense of transparency, accountability, social equity and acceptability.

The Build-Operate-Transfer (BOT) Group of the Economic Commission for Europe in analysing the early experiences with the private financing of infrastructure in the 1990s noted that most advisers tended to ignore the importance of good governance, and specifically the need to take into account the wishes of the stakeholders (local citizens, NGOs, employees/trade unions, civil society, media, etc.) in PPPs.[4]

2. Importance of good governance in PPPs for economic and social development

The importance of achieving good governance in PPPs is critical for the following reasons:

1. An effective procurement regime will mean that government institutions are able to buy goods and services of higher quality at lower prices.
2. Mechanisms that secure well-governed projects will heighten the support of society for PPPs and give policy makers the confidence to provide the necessary political support for the PPP process.
3. Projects which are well planned and have been based on the full agreement of all the parties engaged following a proper and ongoing consultation have less of a chance of unravelling, thereby avoiding costly litigation.
4. A public administration that conducts its purchasing in an open manner contributes to the increased confidence of suppliers in the reliability of the administration as a business partner.
5. In general, good governance and efficient institutions has been strongly linked to increased competitiveness and faster rates of economic growth and development. [5]

3. The importance of good governance for EU-enlargement

The EU-enlargement and finishing the process of transition to market economies, requires considerable effort in developing a more entrepreneurial environment in Europe. Good governance is an important element in economic growth. Evidence suggests that good governance is an essential component of sustained economic growth. In contrast, poor governance and slow economic development appear to be mutually reinforcing. It is increasingly evident that the quality of governance is a contributory factor to improved economic performance. Weakness of institutions and lack of good governance in many countries hinder the process of economic reform. In transition countries there is a lack of an entrepreneurial culture and a negative widespread belief in society that connects being an entrepreneur with the 'black' economy.

At the enterprise level the principles of business and corporate social responsibility will become increasingly relevant in the transition countries. Corporate social responsibility

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[4] See Guidelines on PPPs, prepared by the UNECE Build-Operate –Transfer (BOT) Group, Geneva, 2001

[5] Douglass C. North (1990): Institutions, Institutional Change and Economic Performance. Cambridge University Press.

means that enterprises, in addition to goals of profit-maximisation, should also be committed to supporting the surrounding social and local environment. In this way enterprises can be an integral part of local communities, helping them to fulfil their goals. It is necessary to lay down the foundations of this way of thinking amongst business and society in countries in transition.

Transition is a long-term process of building new, political and economic institutions; not only liberalizing trade, prices and privatising state property. Good governance also involves bringing domestic stakeholders on board to maintain the momentum for liberalization. It also means establishing safety nets (from unemployment benefits to retraining programmes) for the many whose jobs are threatened by imports.

4. Importance of good governance for employees, consumers and other ‘stakeholders’

Governance in PPPs is also important for consumers, employees and other stakeholders who are eager to see PPPs, which achieve the following:[6]

1. A fair and transparent selection process by which governments develop partnerships;
2. Assurance that value for money has been obtained;[7]
3. An improvement of essential public services especially for the socially disadvantaged, combined with the achievement of commercial success;
4. Fair incentives to all parties; fair salaries for risk takers, and adequate training for those to be involved in the new partnerships;
5. Sensible negotiation of disputes that assures continuation of services and prevents the collapse of projects and consequent public waste;
6. Enhanced security in the face of the new threats and for a general improvement in the safety of services provided under PPP arrangements.

Additionally, public employees demand that the standards of employment that they enjoy in privately financed projects are no less than those, which they have enjoyed in the public sector. In particular, they argue that PPPs should not create ‘two-tier’ employment practices: with lower employment benefits in the PPP area.

The key ingredients of good governance in PPPs based on the aforementioned can be distilled into the following:

1. Transparency and openness in the PPP process;
2. Public accountability and scrutiny;
3. Combining commercial success with social progress;
4. Achieving effective dispute resolution systems;
5. Safety and security

The following section will address these points in turn illustrating the main issues involved by case studies.

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[6] It should be noted that this is not an exhaustive list and that the factors necessary for consideration can vary from project to project. However this does provide a list of some of the most major and common issues confronted in PPP projects.

[7] “Added value, also ‘value for money’ means higher quality for the same money or the same quality for less money.” See, *Public Private Comparator*, PPP Knowledge Centre, and The Netherlands Ministry of Finance at p. 113.

Part II – Selected Issues related to Good Governance

1.Transparency and openness in the PPP process

The challenge
Under the new form of public management that has become common in many countries in recent years, there are more opportunities to interact with the private sector. These 'partnerships' also give opportunities for weak transparency. PPPs require a special form of public management with new skills, found more often in the private than in the public sector. One of the questions is whether PPPs offer more opportunities for weak transparency?

Transparency should be one of the most important criteria in organizing and initiating the PPP process, unless there are political/strategic reasons for disregarding this. However, governments and policy makers should insist that transparency remains in place throughout the project and make sure that it means really open procedures and not just formal compliance. The real issue is to have transparent and fair tender rules and to have bids evaluated by panels that include people widely regarded as competent and honest. The larger issue is the question of oversight in foreign aid and IFI financed projects and the criteria used for providing assistance and finance for PPPs.

a. Danish Sports Facility

Case Facts
A local authority in Denmark of around 20,000 inhabitants, seeking increased funds for local projects, implemented a new PPP financing system. The financing mechanism consisted of selling public assets, such as school buildings, kindergartens and cleaning services, to private enterprises and then renting them back with a provision that the municipality may buy them back after a number of years. The scheme also included a project for the construction of a sports arena and a soccer stadium as well as a nautical centre under a contract of 20 years. The scheme took advantage of the Danish tax system: this allowed the leasing company tax advantages, which the municipality was not able to enjoy. In 2000, a sale and leaseback agreement was signed with a financial institution. The sale and leaseback contract was not formally offered as part of a tender process.

At first sight the impact of the projects was positive. No Danish community had been able, up until that time, to offer such high standards of service through public funds. School children were provided with free personal computers, pensioners were offered free trips and the new sports facilities were of an international standard. Following a newspaper investigation, however, it was alleged that companies had given money to the soccer club in return for obtaining contracts from the local authority. The mayor was a shareholder of the company and chairman of the soccer club, which was to play in the new soccer stadium.

Issues
- Failure to follow the EU's procurement rules for tender and contracting;
- Lack of proper public accountability, the local council was not effective in accounting for payments;
- No formal tender offer process was declared, apparently due to the sale and leaseback contract to a private financing company, which gave the possibility of avoiding EU procurement regulations;

- The local community was not aware of the procedures and contract formalities of the project;
- There are ongoing investigations to determine whether corrupt payments were made by the private companies in the form of sponsorships of local sports clubs as pre-requisites for the awarding of public works contracts by the council.

2. Public accountability and scrutiny

The challenge

PPPs are difficult to arrange from both a legal and financial point of view. This entails the involvement of many players and partners such as bankers, lawyers, consultants and government officials at both national and local levels. However, it is important in addition to all the ‘deal makers’ that all the ‘stake holders’, i.e. citizens, trade unions and employees are involved as well and have full information and opportunity to be consulted in the development of PPP projects. This is sometimes not easy from a legal point of view because of the need for privacy in tendering and other aspects, which are important for the deal’s success.

Financing of PPPs is a complicated exercise. PPP transactions create payment on obligations by a public sector body over the 20-30 years of their life. It involves the distribution and transfer of funds from the public to the private sector and vice versa. Information on these transfers needs to be open and accounted for. The public must know what the obligations are in the future. These ‘contingent liabilities’ are obligations, which the government must pay back in the future. The challenge here is to ensure that everyone is aware about the future financial obligations contained in the transaction. [8]

The wish of some governments in PPPs may be to move the underlying financial obligations for public service assets ‘off the balance sheet’, i.e. the obligation for Government is moved from the capital to the current account. This can be also a mechanism to hide the true cost of the project to the public and will have inevitably problems later on for tax payers. The question is what is the level of PPP any economy should take on?

b. The Mapeley PFI project: sale of land and building by the Inland Revenue UK

Case Facts

In March, 2001 the UK government’s tax authority (the Inland Revenue and Custom Excise) in order to raise capital for the Exchequer proposed a PFI through a transference of the ownership and management in a lease back for 20 years. For £220m 600 buildings went to a consortium “Mapeley” who was chosen as the preferred bidder. The Inland Revenue said at the time of the operation that it was dealing with a UK registered company. However, 18 months later, it stated that in fact it concerned a company based offshore in Bermuda. This raised therefore, the possibility that valuable assets were to be shifted beyond the reach of the UK tax authorities to a company registered in a tax haven.

[8] PPP: Public –Private Partnerships: “Son-of-Enron”? T.Martin Blaiklock, Adviser, Unpublished paper submitted to the NAO, 27 January 2003.

Ministers and officials of the Board of the Inland Revenue were not informed about key aspects of the deal, including its tax implications. Mapeley UK reported a loss of £12m in 2001 after it transferred £81m to a Bermuda based Mapeley Company for the master lease. How much Mapeley charges the Revenue in rent and service cost is not known, because commercial agreements between the government and the private sector are confidential. In addition, further details of the contract cannot be disclosed from Mapeley Bermuda accounts because neither does the company file financial reports, nor does it pay tax in the UK. Some experts believe the sale will eventually cost the Government millions of pounds in lost revenues from capital gains tax.

Issues

- Important government officials were not fully informed about key circumstances related to the contract.
- A stakeholder company registered in a tax haven was able to participate in a public tendering offer in spite of the fact that through the contract the Government exchequer would receive less tax income. Neither the law nor the contract provided for any disqualification for such a company.
- Information disclosed to the UK Parliament and to the public provided by the Government was not accurate. The exact contract structure was revealed fairly late in the procurement process and the press release incorrectly stated that the contract was signed with a UK based company.
- A financial crisis affected Mapeley UK, soon after the signing of the contract demonstrating a poor due diligence and accountability process that should be improved.
- The Inland Revenue (IR) issued two letters of comfort without approval of the IR board, overlooking Government accounting requirements.
- Mapeley as a bidder was able to charge the Inland Revenue a lower rent than UK-based companies that were competing in the tender offer and therefore was awarded the contract.

c. The Zurich Soccer Stadium project

Case Facts

A project to build a new football stadium in Zurich was proposed which included a shopping centre alongside the stadium. The Green Party was however opposed to the construction of the stadium on environmental grounds. The local residents reacted against the project as well, because of concerns over increased traffic congestions that result from the project. To solve the dispute a referendum was called to approve both the planning permission and the city decision to provide land and funding worth a total of CHF 37.5m, which is 10% of the total project's cost. In September of the year 2003, the referendum results were: 63, 26% of the inhabitants agreed to the private plan and 59, 19% agreed with the financial participation. Credit Suisse will finance the project with a loan of CHF 370m among a consortium of other private investors. The project involves improvements in the public transportation network with a new tram and bus line to meet the rise of traffic.

Issues

- Public scrutiny by a referendum before the final approval of a project provides benefits. Participation is positive as it generates a better understanding by the community through an open debate.
- Consideration on related aspects, such as traffic increase before a project being approved, is highly recommended.

d. D47 Motorway Project (Czech Republic)

Case Facts

In order to improve the infrastructure to meet EU standards and the expected greater use of motorways, a project to improve the D47 motorway was proposed. It was intended to be the first motorway project in the Czech Republic to be built using a payment structure based on shadow tolls. In March 2001, a consortium company (Halliburton, Housing & Construction Holding, Bauholding Strabag and Shiran) was awarded the construction for an 80 km Motorway in the Czech Republic (north-east Moravia). The company, it was announced, would manage the Motorway for 30 years and the Government would pay an annual toll based on the number of vehicles that used the motorway. The contract stipulated several conditions regarding the final price, including risks involved in the buy-out of property and receipt of land-use permits (the risk covered by the Government).

In April 2003, the Czech government decided to cancel the contract due to strong criticism on the price and contract's omissions and the fact that an important amount of money could be saved even though a possible penalty for early termination might have to be forfeited. Environmental groups in addition, claimed that the construction would severely damage the environment and urged that an alternative route be considered. A parliamentary commission was appointed to investigate circumstances of the conclusion and subsequent termination of the contract. A compensation for the constructing consortium was agreed in July 2003.

Now, the Czech Government has decided that the D47 motorway project should be reinitiated but this time using traditional methods, i.e. constructing companies are chosen by tender the financing comes partially from the State Transport Infrastructure Fund, partially through issuing bonds and partially from loans from the EIB.

Issues

- Why the original contract was granted without a tender process.
- Environmental groups claim their views were not taken into consideration
- Early termination of a contract by government may send a wrong message to the private sector although an early exit may on the other hand appear to be the best option in the long run.
- An efficient as well as an impartial dispute resolution system should be considered in advance.

3. Combining Commercial Success with Social Progress

Challenge

The challenge is to achieve successful PPPs from a commercial point of view and at the same time, continue the social objectives of traditional public services achieving universal service, poverty alleviation, protection of the weak and vulnerable groups etc.

f. Tajikistan Pamir Private Power Project

In Tajikistan, one of the poorest countries in the region, the International Finance Corporation (IFC) and the Aga Khan Fund for Economic Development (AKFED) together with the Tajikistan government are working for the development of a new electricity generation and distribution project in Gorno-Badakhshan region for 250,000 residents. A new company was established (Pair Energy), 70% owned by AKFED (a group of private, non-denominational development agencies) and 30% by IFC. The project will cost $26m. In addition, the Swiss Government provided $5m to maintain the tariff increase required in the early years in line with the national tariff and to support a minimum consumption amount. The company will control and operate all existing electricity generation, transmission and distribution facilities in Gorno-Badakhshan under a 25-year concession, complete with a partly constructed hydroelectric plant increasing its capacity from 14MW to 28MW. It also will operate another 8KW plant in the city of Khorog and construct a river regulating structure at the upstream Yashikul lake to ensure adequate flow in winter and rehabilitate other assets including substation, transmission and distribution lines.

Issues

- The concession granted a legal, regulatory, environmental (including deforestation and pollution), financial and technical framework with a parliamentary approval that reduced political risk of future changes.
- A social protection scheme tariff that should increase gradually in 10 years was agreed with some flexibility in order to accomplish affordable tariff to mitigate political and social risk. Due to limited fiscal resources and weakness in public sector financial management, precise funds were mobilized to ensure a social protection cost at a lifeline tariff.

g. Scottish Schools

Case Facts

In Scotland, more than half of all expenditures on PPPs have been directed towards schools. In 2001, schools PPPs accounted for 10% of all capital expenditure committed by the Scottish Executive. In March 2003 it was announced that almost £750m would be invested in rebuilding or refurbishing more school buildings under the second stage of a programme that already includes £1.2bn since June 2002. The project will provide the quality working environments and access to world class IT enabling pupils and teachers to work together, productively and efficiently, to raise standards and maximise the individual potential of every participant. As of May 2002 there were 89 school PPP projects, representing £2.6bn capital value, some of them with excellent teaching and learning facilities, such as swimming pool, a gymnasium, fitness suite and a floodlit artificial grass pitch, including an email address for each pupil. The main goals on the Schools PPP Project are to increase educational standards, to improve pupil attendance, to prepare them for the Information Age, and to raise the morale commitment and dedication of teachers.

Issues

- Value for money as educational standards is being improved.
- Schools are set up in many of Glasgow's so-called "deprived" areas.
- School projects are implementing progress in several aspects of education in order to make attendance of pupil more attractive and to improve school results.
- PPPs in education have not taken a single, standardised form; the range of PPPs completed or in procurement has expanded in response to the diverse needs and circumstances of different local educational authorities.
- Contracts align the private sector to the achievement of improved social standards e.g. the private contractors may incur penalties if they do not achieve the improvements in education standards agreed in the contract.

4. Achieving effective resolution of disputes

Challenge

The multiplicity of parties in privately financed projects creates special problems for an efficient resolution mechanism. Given the essential and critical nature of services being delivered by PPPs to the national economic life, the main challenge is to ensure that services continue to be provided in the face of disagreement between the various parties in the project.

h. Resolving a dispute in energy and transport projects

Case Facts – Energy

Two large energy companies built a joint facility based on a long-term power purchase agreement. However, the economic, regulatory and political circumstances changed unexpectedly in the country concerned. The dispute began over a project whose value was in the region of $1 bn. For one party the joint facility's exclusive contractual use appeared onerous; whilst the other insisted on the fulfilment of the project in order to recover its investment. 3 years of negotiations failed to reach an agreement. Arbitration appeared to be expensive and time-consuming (up to 3 years plus 5 years by the enforcement agency involved), both parties therefore agreed to use a mediator through a public tender.

The mediator in this case helped to significantly improve understanding, and assisted the parties to change the valuation, particularly regarding the risk of the zero-sum option from an arbitration alternative. Each party presented its own assessment of what needed to be discussed. By gathering these positions and concerns of both companies a much more realistic view of the situation was taken. Each party met in a neutral location for 3-day mediation with their negotiation team. After 6 months from the starting day of the mediation, the parties involved ratified an agreement.

Case –facts transport

The London Underground has initiated a major new form of arbitration that has implications for other projects around the world and could become a 'test case'. The special role of PPP Arbiter was created by the Greater London Authority Act 1999, which establishes its functions and duties. The 'Arbiter' determines disputes on the key commercial aspects of the PPP agreements, in particular at the 7 year Periodic Reviews, and gives guidance on nay aspect of the Agreement when requested by one or both of the parties. He is able to require parties to provide information and to carry out inspections, consult appropriate parties and do what he considers appropriate to prepare for giving directions or guidance. The Arbiter has an office comprising a Director, supported by technical, commercial and legal advisers and administrative staff. The essential new aspect is that the Arbiter is 'on call' continuously in order to deal with disputes and to solve them as quickly as possible.

Issues

- Contracts should be clear in considering an efficient dispute resolution mechanism. Although arbitration is widely accepted in contracts, it may be useful in cases to consider other alternatives such as mediation.
- An expensive and exhausting litigation process may interrupt the business development and damage important commercial relations.
- The companies' public image may be seriously damaged through a litigation process.

5. Security and Safety

Challenge

Provision by the private sector of transport, health and other services raises concerns about security and safety. The key concern is that the private sector while improving efficiency by cutting costs, may in addition seek to cut costs available for maintenance, control etc of important services. For the stakeholders and citizens, out of all the things which PPPs must do, e.g. increase efficiency, delivers better services, etc the most important is the improvement of the security and safety of the service.

i. London Underground PPP

Case Facts

The London Underground PPP is the world's largest PPP project. Its structure is complex with disaggregation of integrated networks and bid processes involving multiple parties on three separate deals. One of the main critics of the project being done on the PPP basis was the London Mayor. The crux of the Mayor's argument against using a Public-Private Partnership to run the London Underground was safety. He argued that it would be difficult to enforce maintenance and safety rules on the three private companies, which under the government's preferred scheme will operate the underground on a 30-year franchise. He also argued he was elected by an overwhelming majority to oppose the PPP.

Safety concerns in the UK have been heightening by recent rail tragedies. Also there have been cases of injury on the London Underground in the recent past. In August 2003, the London Underground passed into a PPP run by a private consortium consisting of Tube lines and Metro land. The PPP promises improvements in electronic security measures as part of the station improvement programme. The PPP station enhancement programme is expected to provide a state of the art, comprehensive CCTV system in each station, help points in ticket halls and platforms, and station control rooms to enable staff to better monitor station security and assist customers more effectively.

Issues

- Private companies should be aware of their role to assure the public safety.
- PPPs will increasingly be judged by their ability to reassure users of the safety of transport facilities run under a PPP or a concession.

j. Claim settlement on the case of Pan Am 103 flight over Lockerbie UK

Case Facts

In 1988, the crash of Pan Am flight 103 occurred over the town of Lockerbie in Scotland. The cause of the disaster was a bomb placed in the luggage hold of the carrier. The bomb made of Semtec had not been detected by the scanners used at the airport of embarkation. Investigation showed that had colour scanners been used, the bomb might have been detected. The reason why 'x-ray' colour scanners were not used was because these scanners were more expensive than the black and white ones. As the company involved in security for Pan Am was not an airline, but a Florida based company, they were not protected under the terms of the Warsaw Convention, which limits the liability of airlines for death and injury of passengers. The airline insurers were thus liable for huge damages as a result of the tragedy. In order to limit their liabilities in the future, the insurers insisted that colour x-ray scanners be installed at every airport. As a result of the financial imperative facing insurers the use of such technology has now become standardised throughout the industry. The improvement in security was due to pressure exerted by the industry not as a result of government pressure.[9]

Issues

- Private sector partnership can drive up security standards in transport and other services through the threat of litigation and through the financial imperative of operating in a market economy.

Part III Key lessons and recommendations

The above analysis demonstrates the need for Governments, policy makers and representatives of the private sector to give good governance more attention when developing public private partnerships. Many projects have often encountered problems as a result of insufficient attention being given to the procedures and processes involved. Without doubt PPPs cannot be the sole responsibility of the technical, legal and financial specialists, but should involve broader sectors of society as well.

The existence of guides and studies from different institutions such as UNICITRAL, the EU, among others provide priceless technical advice on PPPs. The question is why there is continually found several cases of bad governance? Are those documents (guidelines) and many others sufficiently comprehensive? Do they require to be updated? Is it a matter of implementation? Or should there be a merge of existing documents to take account of good governance aspects? Should the principles mentioned below be developed further into a set

[9] See "The Rule of Law and Economic prosperity" Peter Watson, BA,LLB, SSC, paper presented to the Second UNECE Land for Development Forum, 30-31 October 2003 , Rome Italy (UNECE REAG website)

of Guidelines on "Good Governance" in PPPs, which take account of what already exists already and incorporates these new elements?

Good governance means rules, processes and behaviour that affect the way in which powers are exercised, particularly as regards to openness, participation, accountability, effectiveness and coherence. In the five sections below, the lessons that have been learnt in the above mentioned case studies are presented.

1. Transparency and openness in the PPP process

Transparency is the watchword of procurement and competitive tendering in PPPs. Transparency shall ensure that there is a fair competition in the tender process and the government purchases the best value for money. Such a principle comprises many specific obligations. These are listed in procurement and competitive tendering guidelines that have been prepared by the multilateral development banks, World Bank, EBRD, various branches of the business sector, OECD, the ICC and by the United Nations. At the same time, there needs to be more efforts at implementation.

The interface with the private sector of the new form of 'public management' has given rise to new opportunities for corruption. These are difficult to control and eliminate. These difficulties are often occurring at the local levels. Decentralisation has given power to local authorities and this has improved decision-making and democracy but it has not sometimes been accompanied with the necessary rules and regulations. Given these new vulnerabilities and opportunities, there is an important role to be played by new external actors such as the media and civil society. As seen in the case study, the media has an important role to play in uncovering corruption in the first place.

The governments need to give a strong support to the freedom of the press and to allow them as much freedom to operate and investigate corruption. Citizens are victims and potential informants on corruption. The challenge in many countries is to identify a vehicle by which consumer groups can be mobilised to speak up and to obtain redress where corruption has occurred.

Government agencies and PPP Units are best centralised and given responsibility to develop standards rules of good behaviour. In this regard it would be helpful if the UNECE PPP Alliance with the European Commission and others could work together on issuing a clear statement against the lack of transparency in the PPP process and commit to improving standards of monitoring and compliance with the private sector such as with the European Industry of Construction (EIC). It is important that governments and private sector develop a benchmarking to demonstrate their progress in improving the transparency of tendering in PPPs. Such benchmarking would give an incentive to investors and governments alike to pursue the development of PPPs more aggressively.

2. Public accountability and scrutiny

Further means to avoid the lack of transparency and opportunities for corruption is to establish more effective mechanisms of public accountability. Accountability means amongst other things providing basic information on the pricing of projects. Proper cost and benefit analyses should be undertaken before projects begin (as seen in the case of the D47) and the facts and figures should be made publicly available. The Mapeley Case showed a weakness in the information about the financing of projects and a lack of information about the company, which was awarded the contract.

Governments of course should be more vigilant in dealing with partners based in tax havens as in the above-mentioned case in the UK, but other issues are involved as well. For example, Governments might consider disqualifying applications from companies, which undermine government's objectives for tax transparency and openness. Transparency should be the criteria for the selection of a bidder and the award of a contract. In addition the extent to which the bidders own market is protected, if it is a foreign company, may also be another criterion in which a bidder may be disqualified from competing.

The Mapeley case demonstrated the value of an open Parliamentary Enquiry in the UK system. But at the same time powers should be extended to National Audit Bodies to examine specific cases. These powers should include the power to decide by it to take on the investigation of a specific case. It should also have powers to obtain more information specifically regarding the financing of the projects.

Much of the financing of PPPs is of a technical nature and the argument is that ordinary citizens are not interested in having such information. The Zurich soccer stadium however showed that an open debate could encourage participation and a better understanding. In addition, governments and private sector are reluctant sometimes to disclose how much each has financially supported the other in a PPP project. This is related to the sensitive nature of negotiations between the public and private sector, prior to a deal being closed. But it is important for both sides to make a strong commitment to disclosure. Without such disclosure there is room for the manipulation of accounts, cross subsidies etc in abuse of the receipt of public funds. Accordingly, the private sector should make available their financial statements for each concession entered into.

Finally, if the deal goes wrong and the government must intervene with subsidies and other funding support to prevent the project collapsing, the public will complain that it has not been informed about how much the public is paying through taxation for a project. In some countries there is a high degree of openness with regards to the expenditure of state funds on PPP projects. Such information should be open to all and easily accessible.

3. Conditions for both commercial success and social enhancement

Critical to the sustainability of PPPs is their ability to deliver both social advantages and commercial viability. This is not easy since the private sector has to make a profit and poor and disadvantaged regions are often not attractive to private sector investors. In the case of Tajikistan it was possible to attract the private sector with a scheme that made an access in non-conducive circumstances possible. Due to limited fiscal resources and weakness in the public sector financial management, precise funds were mobilized to ensure a social protection cost at a lifeline tariff and by doing this to mitigate political and social risk. The desirable social effects such as creation of employment in the poor regions as well as use of local expertise and companies are positive side effects of such projects.

Not-for-profit organisations are becoming another useful variant in the PPP model reflecting the wish of PPPs to deliver social improvements. At the same time the profit motive is a good means for improving efficiency and standards and can be applied to achieve social objectives, as demonstrated in the case of Scottish Schools where companies were not eligible for financial incentives if they did not achieve improvements in educational standards and in class attendance.

4. Dispute resolution

Contracts between the public and private sectors should comprehend an efficient dispute resolution system. Consequences of a litigation process could involve high legal costs, interruption of the business development, impairment of important commercial relations and deterioration of the governments´ and the companies´ public image. Contractual parties should consider using other methods of arbitration and in cases of large projects involving important infrastructure services, such as the method being used in the London Underground PPP. In addition, there may be occasions when using other dispute resolutions besides arbitration is appropriate.

One alternative could be independent mediation as shown in the case study. At the same time there is little information on how to establish or use mediation to solve disputes especially in countries, which are probably in the most need of establishing alternative dispute resolutions systems for improving their judicial processes. Therefore, it might be useful as a follow up to prepare guidelines with other organisations such as UNCITRAL and to show how these mechanisms can fulfil a need in emerging market economies.

5. Security and safety

Procedures must be put in place to ensure that safety and security concerns are met in PPP projects. But it is not sufficient to issue new procedures. There must also be a commitment to their implementation. The private sector has an economic imperative to improve its standards. Partnerships with insurers, as seen in the Lockerbie cases, show that the economic imperative and the threat of litigation are good motivators for improving and ensuring compliance with standards.

Governments need to establish bodies, which can scrutinise the safety aspects of PPPs. They need to be independent and include experts. The companies as well must demonstrate their awareness of the increased importance of safety in PPPs and must show that they are implementing new standards in their current commercial practices.