Fostering the Development of PPP Models in the COMESA Region

Final Report

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Fostering the Development
of PPP Models in the COMESA Region

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Abbreviations

AICD	Africa Infrastructure Country Diagnostic
BoT	Build Operate Transfer
CIDA	Canadian International Development Agency
COMESA	Common Market for Eastern and Southern Africa
CoP	Community of Practice
EAC	East African Community
EFR	Enabling Framework Roadmap (for PPPs)
ICT	Information and Communication Technologies
IFC	International Finance Corporation
MoF	Ministry of Finance
MoU	Memorandum of Understanding
PFI	Private Finance Initiative
POS	Point of Sale
PPI	Private Participation in Infrastructure
PPIAF	Public Private Partnership Advisory Facility
PPP	Public Private Partnerships
PPPI	Public Private Partnerships in Infrastructure
RIA	Regional Investment Agency
SADC	Southern African Development Community
SDT	Self Diagnostic Tool
SSA	Sub-Saharan Africa
VFM	Value For Money
WBI	World Bank Institute

EXECUTIVE SUMMARY

The project **Fostering the Development of PPP Models in the COMESA Region** hopes to help COMESA Members improve infrastructure service provision though the increased and more systematic use of public private partnership (PPP) arrangements. The project's four key objectives were to:

- Capture and synthesize critical elements of an overarching **policy and vision** for effective PPPs in infrastructure sectors;
- Analyse and lay out critical elements of an enabling **legal framework** for effective infrastructure PPPs;
- Analyse critical elements of an effective, coordinating **institutional framework** for PPPs in infrastructure sectors; and
- Analyse where a **regional approach to PPPs** can be helpful, and how COMESA members should pursue such a regional agenda.

PPPs have been undertaken in Africa, as they have worldwide, to bring both efficient management of infrastructure assets, and additional capital investment. In Africa, management / lease and concession type projects have been common in sectors with pre-existing assets. Additionally, there have been many Greenfield PPPs in power generation and mobile telecommunications. Mobile telephony has attracted by far the most PPP investments due to its ability to control connections and non-payment.

The World Bank's extensive efforts to create a database of PPP deals worldwide, including all COMESA countries, helps us understand the pattern and scale of PPP deals (broadly defined) in the region. Egypt led COMESA members with 22 PPP deals valued at $15.4bn achieving financial closure between 1990 and 2007. Over the same period, in terms of deal count, Kenya had 16 deals ($3.9bn), Uganda 15 ($2.4bn), and Mauritius 11 ($0.5bn). Energy and telecoms were the most active sectors.

PPP investments in COMESA members have essentially been contractual rather than being based on a larger legislative framework. Thus, some ministries in some countries have developed expertise in structuring a very specific category of deal, but, for example, the procurement process, dispute resolution and regulation / tariff setting arrangements have generally been subject to a contractual arrangement rather than independent laws, regulations and regulators.

Moving forward, a more systematic approach to identifying and managing PPP opportunities can help plug Africa's huge infrastructure gap (estimated at $40bn per annum by the Africa Infrastructure Country Diagnostic program of the World Bank). Thanks to their public private character, PPPs also have the power to bring infrastructure services to previously un- and underserved segments of the population.

True Public Private Partnerships have very particular characteristics and are appropriate for only a small proportion of all a country's infrastructure needs (perhaps 20 percent). The four key characteristics of a PPP are: (1) it is a long term partnership; (2) there is an optimal sharing of risks and responsibilities between public and private sectors; (3) it offers value for money (VFM) to the public purse; and (4) it provides a public service of some kind. This is not always clearly understood.

A successful PPP regime for infrastructure requires strong leadership in PPP strategy, as well as a clear understanding of where it is, and is not, appropriate and feasible. Ultimately, in order to go beyond one-off deals or concentration in one or two sectors (e.g. mobile telecoms), a strong, overarching legal and institutional framework is necessary. A framework law, gathering relevant legislation from elsewhere, establishing a PPP Unit and laying down proper procedure, is valuable but not essential, and some successful countries have achieved a good enabling environment through regulations rather than laws (e.g. South Africa). Since a PPP deal obligates public funds many years into the future, solid fiscal oversight needs to be part of the PPP regime.

There are many advantages to pooling general expertise on PPPs in a central PPP Unit, and indeed in sharing knowledge and experience across COMESA, and the larger continent. Some line ministries (again telecommunications, and energy) may have become quite smart at designing PPPs but where deal flow is slower, transactions have to be designed and advised one at a time, with preparations being very expensive and time-consuming. The most successful PPP Units are often attached, especially in countries with weaker governance, to Ministries of Finance or a strong Planning Ministry where they hold sway, crucially, over financial due diligence in addition to other key functions. Key functions of a PPP Unit include: (i) being a centre of cross-cutting technical, project management and financial expertise; (ii) gathering and disseminating information and performance indicators; (iii) designing and rolling out training to line ministries and sub-national governments as necessary, and so on.

A regional approach to infrastructure PPPs in COMESA would have significant benefits.

- **Promoting standardization of national legal and institutional frameworks** around good practice guidelines can help larger cross-border projects progress more smoothly, shorten the learning cycle for follower countries, and generate pipelines of PPP projects more quickly. Leader countries do not lose by helping others catch up - and will often lead to investment opportunities for sponsors and investors from leader countries.
- **Sharing knowledge amongst countries** will help standardize national PPP enabling frameworks around established good practice, and stimulate the flow of both larger and smaller PPP projects. There is a strong incentive to share knowledge on PPPs since sponsors will be inclined to repeat a successful experience.

- **Small and medium scale PPP projects replicate relatively easily** across and within across national borders. They are less complex; quicker implementation will lay a successful track record; more project experience means project design can be improved and adapted more effectively.

- **Investment into PPP projects will be stimulated** by a strong regional approach. International investors will be encouraged by upgrading of PPP enabling frameworks around global good practice. Greater emphasis on innovative small and medium size PPPs will stimulate intra-regional investment flows, since smaller PPPs can be better handled by African sponsors and financiers, and local investors who have a successful experience in (e.g.) their own country will look to capitalize by replicating a project in a similar neighbouring country (e.g. in healthcare or small-scale power generation).

A regional strategy and approach to PPPs can boost infrastructure service provision in many ways. It is therefore proposed that COMESA and its members pursue the following agendas and associated next actions.

1. Initiate a regional Community of Practice (CoP) to share knowledge and experience on PPPs in different infrastructure sectors; and initiate practical capacity building on a series of smaller-scale sub-sectors;

2. Encourage phased, steady strengthening of national legal and institutional frameworks for PPP around a set of guiding principles (such as those provided in this report, but tailored to each country situation);

3. Identify one regional "mega"-project, perhaps in the context of the North-South Corridor to use as a demonstration project, and "on-the-job" capacity building and alignment of national legal and institutional frameworks with accepted good practice; and

4. Develop and pilot small and medium scale PPPs that can be replicated across the region, and where the regional knowledge sharing network (also proposed) can help build capacity and refine projects.

I. INTRODUCTION: THE ATTRACTION FOR COMESA COUNTRIES OF PUBLIC PRIVATE PARTNERSHIPS IN INFRASTRUCTURE

Private investment can help bring efficiency to infrastructure projects and infrastructure service provision through the provision of higher technology, transfer of know-how, improved management and incentives, as well as financing. Public private partnerships (PPPs) are one means of bringing the private sector into infrastructure service provision, and exist between the traditional extremes of pure public procurement and full or partial privatization. PPPs recognize that public and private sectors have different but complementary capabilities and responsibilities. The two can partner to provide superior outcomes in infrastructure service provision. The aim of this report and underlying project is to stimulate PPPs in infrastructure construction and service provision in COMESA countries.

COMESA Member Countries (2009)	
Burundi	Malawi
Comoros	Mauritius
D.R.Congo	Rwanda
Djibouti	Seychelles
Egypt	Sudan
Eritrea	Swaziland
Ethiopia	Uganda
Kenya	Zambia
Libya	Zimbabwe
Madagascar	

In this final report[1], the study team summarizes the findings and recommendation of this project – *Fostering the Development of PPP Models in the COMESA Region.* It is divided into four main sections in addition to the Annexes.

- Status of PPPs in Infrastructure in COMESA
- Good Practice in National PPP Enabling Frameworks
- Key Findings and Messages for Promoting PPP in COMESA
- Pursuing a COMESA Regional Approach to Infrastructure PPPs – Next Actions

PPPs in infrastructure are about risk sharing, value for money, public service provision and long-term partnerships. They differ in many ways from divestitures and direct public procurement, and it is important to approach them with due diligence, understanding their benefits and risks.

[1] A draft of this Final Report was distributed at the Swaziland Validation workshop on May 6-7 held in Swaziland; the present Final Report is enhanced in two ways. First, it includes a summary of legal and institutional good practice for national PPP enabling frameworks originally in the Desk Report. Second, it includes a focussed strategy and next steps for developing a regional PPP program.

- PPPs are not new to COMESA. Many complex deals have been developed on an ad hoc contractual basis; and small scale examples with great potential for replication also exist. In other words, PPPs have been done in COMESA, and the challenge is to do them better and more systematically leading to greater use of this extremely valuable tool – while always bearing in mind the key principles that make them work.
- The overarching legal frameworks and centralized PPP units investigated in this report seek to establish an environment for private investment and PPPs that makes them work for all sides. In other words, a PPP enabling framework should allow private companies an appropriate return on investment (and involvement) whilst improving the delivery of public services, through the application of efficient methods, and often but not always capital investment.
- A regional approach can help promote cross-border PPPs as well as in-country PPPs. By sharing PPP solutions and models that work, and by bringing good international practices to PPP enabling frameworks, COMESA members can benefit both individually and collectively from public private partnerships in a variety of sectors. Doing so can bring infrastructure services to previously un- and underserved populations, and help plug Africa's enormous infrastructure gap.

The study team's working assumption was that COMESA members, who have implemented a relatively large volume of PPPs on an *ad hoc* basis, would benefit from a more coordinated and systematic approach to PPPs in their countries, legally, procedurally and institutionally. Furthermore, a regional approach could have many benefits.

II. STATUS OF PPP IN INFRASTRUCTURE IN COMESA

1. Background and Figures

During the 1980s and early 1990s, PPPI became popular as an extension of privatization activities, in particular. Power generation BOT type arrangements with off-take agreements, for example, drew much attention. Greenfield telecoms investments were also extremely popular. However, this sector concentration did not generally lead to a broader set of laws and regulations overseeing a variety of PPP contract types with applicability to multiple sectors. All sorts of reasons existed for this, including the operational silos of line ministries.

Table 1: Distribution of COMESA PPP Projects 1990-2007 (Financial Closure)

COMESA Member	PPP Projects Financial Closure 1990-2007	Main Sector	Second Sector	Total Investment (all projects, $mn)	# of Greenfield	# of concessions
Burundi	3	Telecom	n/a	54	3	0
Comoros	2	Transport	n/a	1	0	1
D.R.Congo	7	Telecom	n/a	915	6	0
Djibouti	4	Transport	n/a	480	2	1
Egypt	22	Telecom	Energy	15,352	15	2
Eritrea	1	Telecom	n/a	40	1	0
Ethiopia	0					
Kenya	16	Telecom	Transport	3935	10	1
Libya	0					
Madagascar	9	Telecom	Transport	216	4	3
Malawi	6	Telecom	Transport	133	3	0
Mauritius	11	Telecom	Energy	549	9	0
Rwanda	5	Telecom	Energy	206	2	0
Seychelles	3	Telecom	n/a	94	3	0
Sudan	7	Telecom	Water / Sewerage	2101	5	1
Swaziland	1	Telecom	n/a	53	1	0
Uganda	15	Telecom	Energy	2352	7	5
Zambia	6	Telecom	Energy	944	2	1
Zimbabwe	5	Energy	Telecom	841	4	0

Source: PPIAF Database, World Bank.

There is a new interest in PPPs after a relatively quiet period in Africa and other regions in the late 1990s and early 2000s. Table 1 shows the volume and main sectors of PPP projects in COMESA member countries that achieved financial closure over the period 1990 – 2007.

The PPI database maintained by PPIAF, a multi-donor-funded facility under the World Bank / IFC, is the most sophisticated attempt so far to create a global database of PPI projects. The PPI database does ***not*** cover social infrastructure / PFI-model PPPs. It does cover Energy (electricity and natural gas), Telecommunications, Transport (airports, seaports, railways, toll roads), and Water and sewerage (treatment plants and utilities).

2. Types of PPPs in Africa

Most PPP projects in Africa are Concession-based PPPs where users rather than public authorities pay user charges (PPIAF, 2009, p.30). Table 2 gives an overview of types of infrastructure project by region based on data from the PPIAF database. In Africa, there are also many *Affermage* contracts in the French tradition, which are not considered PPPs under other definitions. In particular, sectors with a legacy of below-cost pricing can prove difficult due to problems concerning the *level* or *collection* of fees (e.g. water, electricity, passenger rail), which has led to management or lease contracts with limited capital investment and risk exposure on the private sector side in many cases. Liberalization of telecommunications sectors has also led to significant amounts of private investment. The status of mobile phone investments as PPPs is also debated, but the economic and social impacts of mobile phone penetration, and efficiency of service, argue for their inclusion.

Table 2: Number of projects by region and type (1990-2007)

Region	Concession	Divestiture	Greenfield project	Managem't and lease contract	Total
East Asia and Pacific	118	39	166	6	329
Europe and Central Asia	23	15	19	9	66
Latin America and the Caribbean	284	8	96	20	408
Middle East and North Africa	11	0	14	7	32
South Asia	106	0	66	6	178
Sub-Saharan Africa	52	3	15	14	84
Grand Total	594	65	376	62	1,097

Source: PPI Database, PPIAF

3. Sectoral Comments on Infrastructure Provision in COMESA

Research conducted by Vagliasindi and Nellis for the Africa Infrastructure Country Diagnostic Project (AICD) provides an overview of the state of PPI in African infrastructure sectors. This analysis is for Sub-Saharan Africa not COMESA, but the disaggregated data will be released in due course, in the context of the AICD project report, and appears to have more detail than the PPIAF database alone. Table 3 gives a summary of the impact and achievements of PPI in Africa.

Table 3: Overview of PPP Experience in Infrastructure in SSA

	Extent of PPP	Nature of experience	Prospects
		ICT	
Mobile telephony	Over 90% of countries have licensd multiple mobile operators	Extremely beneficial with exponential increase in coverage and penetration	A number of countries still have potential to grant additional licenses
Fixed telephony	60% of countries have undergone divestiture of SOE telecom incumbent	Controversial in some cases, but has helped to improve overall sector efficiency	A number of countries still have potential to undertake divestitures
		Power	
Power generation	34 IPPs provide 3,000 MW of new capacity investing USD 2.5 billion	Few cancellations but frequent renegotiations, PPA have proved costly for utilities	Likely to continue given huge unsatisfied demands and limited public sector capacity
Power distribution	16 concesssions and 17 management or lease contracts in 24 countries	Problematic and controversial with one quarter of contracts cancelled before completion	Movement toward hybrid models involving local private sector in similar frameworks
		Transport	
Airport	4 airport concessions investing <USD 0.1 billion	No cancellations but some lessons learnt	Limited number of additional airports viable for concessions
Ports	26 container terminal concession, investing USD 1.3 billion	Processes can be controversial but cancellations have been few and results positive	Good potential to continue
Railroads	14 railroad concessions, investing USD 0.4 billion	Frequent renegotiations, low traffic and costly PSOs keep investments below expectations	Likely to continue but model needs to be adapted
Roads	10 toll road projects almost all in South Africa, investing USD 1.6 billion	No cancellations reported	Limited as only 8 percent of road network meets minimum traffic threshold, almost all in South Africa
		Water	
Water	26 transactions, mainly management or lease contracts	Problematic and controversil with 40% of contracts cancelled before completion	Movement toward hybrid models involving local private sector in similar frameworks

Source: AICD, 2009, p.18, adapted from Vagliasindi and Nellis, 2008.

The AICD project itself focuses on Africa's infrastructure financing gap, and how to fill it. In that context it considers the possible role of PPI. Findings are just being released, and country- and sector-specific breakdowns will be available shortly. Early general conclusions include:

- PPI provides overall 20 percent (or $4.8bn) of current annual expenditure on infrastructure capital investment (ICT, Power, Transport and WSS) in SSA. Of this, a full $3.1bn is in the telecom sector (57 percent of annual $5.4bn Capex) (AICD, 2009, pp. 8-9);

- World Bank estimates an annual funding gap (Capex and maintenance) of $40bn per annum, but notes that there is a minimal funding gap for telecoms, which is partly correlated with the private sectors willingness to finance much of the needed investment. Needs clearly remain in the more public goods areas of fiber-optic backbones, submarine cables and the like, but the track record so far is good;
- Eighty percent of the financing gap is still in power. The biggest financing gaps are in the energy and transport sectors of fragile states;
- African countries typically manage to spend only two-thirds of the budget allocated to infrastructure investment suggesting that there is an expertise gap, a strong argument in favour of a technical infrastructure project implementation and management unit allied with a PPI Unit function perhaps;
- Collection of billed utility charges represents a major challenge, with both government agencies and consuming individuals as culprits. Clearly "point of sale" (POS) billing solutions are the most effective (e.g. mobile phones).

This quick review of the status of PPP deals in COMESA shines some light on the way forward. First, there has been a large volume (if rather unevenly distributed) of PPP deals, but even the lead performers (e.g. Egypt) are only now beginning to approach PPPs systematically as one potential public procurement avenue.

Second, this large volume of PPP deals has been concentrated in large projects in a relatively limited range of sub-sectors, where deal structuring is very complex. There is a sense, confirmed in the fieldwork, that capturing past experience, and promoting a more systematic approach to PPP design, preparation and implementation, is necessary to make these big, complex projects easier in the future.

Third, it also seems clear that a proper understanding of how PPPs work – the basic principles and benefits of using them – might reveal new, valuable, sometimes smaller, probably less complex, opportunities in other sub-sectors.

A regional approach to PPPs in infrastructure, as discussed later, would facilitate the way forward on all these fronts.

III. GLOBAL / REGIONAL GOOD PRACTICE IN NATIONAL PPP ENABLING FRAMEWORKS

An efficient, effective and successful national PPP program has four components:

- A suitable legal and regulatory framework
- Effective management and institutional structure overseeing the PPI program (i.e. a PPP unit)
- Availability of project finance
- Pipeline of feasible projects

This project has focussed primarily on the legal and institutional enabling framework for PPPs, or at least treated that as the entry point for the investigation into a regional strategy for promoting PPPs in COMESA. Financing issues and project pipeline development are addressed in the following chapters in the context of realizing a regional approach to PPPs in COMESA. In particular, both at the national level and when taking a regional approach, making projects happen is fundamental, clearly the end goal, and, in the spirit of learning by doing, one of the most effective ways of honing the enabling framework, thereby creating a virtuous cycle.

This section looks at what COMESA members can learn from regional and global good practice in strengthening national legal and institutional frameworks for PPPs in infrastructure. Several good reports have been prepared on PPP institutional frameworks, in particular; and, not wishing to reinvent the wheel, the study team offers a relatively brief summary, as well as references to good, existing resources. Based on a desk review of existing sources and fieldwork in a few COMESA "early implementers" it was decided to make three alternative value-adding offerings.

1) The first offering is a Self-Diagnosis Tool (SDT) for countries and their potential supporters to analyse where a country is on the road to a strong national PPP enabling framework. Essentially a checklist / list of questions that need to be asked (there is always room for refinement but the tool should not become too complex), it can help key government officials structure requests for assistance, and donor project officers design technical assistance programs. The SDT has three main sections depending whether a country is "pre-triggering", "triggered but not yet implementing" or "in the process of implementing". "Triggering" refers to a realization or understanding of the potential value of PPPs and a systematic approach to identifying and implementing them.

2) The second offering is a simple PPPI Enabling Framework Roadmap (EFR). There is no single reform template or roadmap that can simply be applied to all COMESA countries. Consequently, the EFR collects key actions or framework elements under four categories: (1) Vision and Policy, (2) Legal

Framework for PPPs, (3) Institutional Arrangements, and (4) Getting Projects Done / Project Pipeline (representing the "learning by doing" approach to strengthening the PPP enabling environment). A project cycle approach to PPP enabling framework strengthening (depending upon the starting point – see SDT above) will contain elements in different orders from each category. Countries should develop a country-specific reform project cycle using this EFR (or similar), thereby identifying priorities and identifying what external support is needed.

3) The third related offering / recommendation is to proactively approach development partners with requests for assistance to strengthen the PPP enabling framework. Donors should respond positively to requests of this kind that are (a) proactively pursued, (b) based around clear national leadership on the issue, and a working/policy level focal point in government, and (c) show understanding of the PPP challenge and potential, as well as the county's needs (e.g. from using the SDT and EFR above). Such country by country support, around common principles, is important since it allows countries to adapt existing legislation and institutions (where appropriate) rather than create from scratch new structures, which are generally more likely to fail. Moreover, donors are likely to provide such assistance which can open the way for significant flows of private sector capital and sustainable infrastructure investments – a very attractive proposition for Africa as well as its development partners.

4) The final offering / recommendation is to seek out the experience and advice of nearby or similar countries, and their practitioners, who have been through the "project cycle" themselves. The challenges facing developing or African countries are different to those facing a state in Australia, or an OECD country. A good starting point for COMESA countries is the experience of South Africa, which was presented at this project's Validation Workshop.

The international good practice regarding the legal and institutional framework for PPPs in infrastructure is summarized below. Although in various reports the fieldwork countries of Mauritius, Uganda and Rwanda were noted as having made much progress towards a strong legal and institutional framework for PPPs, the countries themselves acknowledged they remained at the early stages. The many deals that these countries had done, classed as PPPs by PPIAF, had generally been done outside of any specific national framework. Also, Egypt – the number one host of PPP deals between 1990 and 2007 in COMESA – has just finalized its first two deals under its new legal and institutional framework.

Thus, the lessons and good practice summarized here are based on case studies and analyses from countries *outside* COMESA. This includes, notably, South Africa which was visited as part of the project fieldwork, even though it is not a member of COMESA. South Africa's experience leading up to the establishment of a PPP Unit around 2000, and since then, is of particular relevance to COMESA, and is reflected in the "principles of good practice" summarized below.

1. Good Practice PPI Legal Framework

Many countries that have developed PPP legislation have drawn upon UN Legislative Guidelines for Privately Financed Infrastructure Projects. This document provides general guiding principles to set up a legislative framework to support the development and implementation of infrastructure projects partially financed by the private sector. It addresses in particular the principles which shall govern the selection of the "concessionaire" under the public procurement process and provides recommendations and a code of conduct to handle unsolicited proposals from private developers.

In fact, many developing countries have faced the issue of unsolicited proposals for various projects and have been struggling with the difficulty of ensuring a fair and transparent procurement process while trying to compensate the private company which has submitted the original proposal and undertaken the pre feasibility studies This issue was stressed out by many interlocutors met by the study team during field trips in the COMESA Region. In that regard, the UNCITRAL Legislative Guide distinguishes between several types of unsolicited proposals and advises the governmental authorities to restrict their admission to projects containing new technologies and processes where their acquisition will be in the general interest of the host country.

A Framework Law may partly gather together or refer to other legislation already in place necessary for a successful PPP Enabling Environment, such as public procurement law, land, environment and tax legislation. A PPP Legal Framework may also have new components, for example, establishing a PPP Unit, specifying the procedures required for approval, and laying out when various ministries or authorities need to sign off. It seems that so-called Civil Law (Francophone) countries where laws tend to specify what is allowed (rather than what is forbidden) are likely to have more extensive legislation for PPPs. Mauritius is a useful example of a "hybrid" country where the framework legislation is more Common Law (Anglophone) in nature and the implementing regulations more Francophone in nature.

In the end, it is unnecessary to treat Anglophone and Francophone countries differently. This is because, ultimately, the definition of a proper legal and regulatory framework for the implementation and enforcement of PPP contractual arrangements depends upon the nature and particulars of the "public service" concerned. A more important distinction relates to the type of PPP arrangement in question, for example whether it is a concession or availability-based arrangement upon which the remuneration of the private operator shall be based. Thus, the requirements and the objectives sought by the public authorities with respect to the procurement of infrastructure equipment, management, maintenance and renewal of same, and the operation and administration of services in the health or education sector may not be comparable.

With these observations in mind, the main features of a suitable legal framework aimed at designing, implementing and monitoring PPP projects in traditional sectors, such as energy and water supply as well as less conventional ones such as health and education, can be summarized as follows:

- The legal framework should be based upon a clearly defined specific policy relating to each sector concerned and setting out the underlying principles and criteria according to which PPP schemes should be adopted;
- It should define the different types of contractual arrangements which may be entered into by the public contracting authority;
- The legal framework should specify an institutional setting or focus that permits sound administrative coordination;
- In particular, competent authorities should be identified and their respective roles and responsibilities should be expressly set forth; specifically which authorities may:
  - enter into PPP arrangements;
  - advise and assist in setting up the PPP projects;
  - select qualified private sector operators;
  - monitor and audit the proper performance of the PPP contracts by the private sector; and
  - regulate the sector covered by the PPP contract.
- The establishment of specific PPP units should be addressed, which may assist in the promotion of PPP transactions, provide information and guidelines on project structuring; contractual setting, procurement, implementation process and project management;
- The law should clearly state the provisions for providing the modalities of financial or economic support to PPP transactions, and the relevant authorities which are responsible for doing so;
- A sound transparent and competitive procurement procedure addressing the specificities of PPP contractual arrangements and other forms of delegation of public service should be specified;
- Concise terms and conditions are needed governing the different types of PPP transactions and the corresponding modes of remuneration of the private operator, including the minimum requirements which should be provided for in the draft PPP contract as part of the tender documents (see Draft Model PPP Standard Terms and Conditions in Annex 4);
- There should be clear specification of rules for tariff setting and revision as well as regulated technical, environmental and safety standards and the

establishment of an independent regulatory authority for the sector concerned with resources adapted to arbitrate between the different stakeholders;

- A clear process for dispute resolution, including the ability to enforce the contract terms and conditions and lenders' remedy in case of bankruptcy or insolvency, should exist and be specified in the laws; and

- Well defined standard PPP agreements and other guidance materials should be available.

- The determination of main terms and conditions of the draft PPP contract to be inserted in the tender documents constituting a minimum requirement, which shall serve as a basis for negotiation with the preferred bidder, shall encompass the following:

    - Permits and licenses to be issued for the implementation and the performance of the project;

    - Land title and leasehold, easement, quiet use of the land and facilities to be used and occupied by the private partner;

    - Condition precedent to coming into force, early termination or extension of the PPP contract;

    - Warranties and covenants to be given by the contracting authority and the private contractor in connection with their respective obligations;

    - Structure of the Specific Purpose Company (SPC; the project company to be incorporated specifically for the performance of the project) and local equity contribution requirements;

    - Duration of the PPP agreement and modalities of the transfer of the facility to the public authority;

    - Mode of remuneration of the private partner;

    - Legal status of the assets built, refurbished or used for the provision of the public service, transfer of assets;

    - Auditing and monitoring mechanisms and determination of conditions of access to project site by the relevant authorities;

    - Tariff revision and adjustment mechanisms;

    - Technical specifications, time schedule for completion of the construction works and commencement of operation of the facility(ies);

    - Force majeure and adverse economic conditions which will allow the private operator time extension for completion or tariff adjustment; and

- Dispute resolution mechanisms including alternative dispute resolution (ADR), i.e. mediation, appointment of technical and financial experts, etc.

2. Good Practice PPI Institutional Framework / Role of Central PPI Unit

In the last two or three years several analyses have been conducted of legal and institutional frameworks for PPI, and the main lessons are presented here. Selected key documents are listed in the Annexes. Drawing on these various global good practice analyses and the resurgence of interest in various models of PPP enabling framework, many PPP enabling environment country studies / diagnostics / feasibility studies / design projects have been organized. Of particular interest are two (forthcoming) that have sought to apply good practice legal and institutional enabling environment PPP lessons to Uganda and Kenya.

As with many countries both Uganda and Kenya in COMESA have generated numerous PPP projects without an overarching legal and institutional framework. They, and other COMESA members, now want to lay an effective legal and institutional framework over their past experience in order to increase the volume of PPP investment, and spread it, perhaps, to new sectors and geographical areas.

The main study on which other general studies as well as country-specific design programs have drawn is a 2007 World Bank-sponsored study of PPP Units worldwide. It investigated the performance of a variety of PPPI units in both wealthier and poorer countries. The countries / regions were: Victoria (Australia), UK, South Africa, Portugal, South Korea, The Philippines, Bangladesh and Jamaica. The main conclusion regarding the locus of such a PPP Unit was that, **"The most successful of the PPP Units surveyed have benefited from a combination of high level political support, and close association with a Ministry of Finance or Treasury".**

South Africa is a fine and relevant example of an effective national PPP enabling framework for COMESA for several reasons. First, South Africa is in Africa if not COMESA. Second, South Africa's PPP framework had high-level political support, and was "created" without great legal upheaval of fanfare, and within the Ministry of Finance. Third, many of the private investors that might be PPP partners in COMESA countries will come from South Africa, and they will be reassured to find a system similar to that which has worked well back home. Finally, South Africa shows clearly how a formal PPP framework and procedures can generate and support smaller PPP projects where the knowledge sharing function, in particular, reduces costs and perceived risks. Indeed, only one mega-project – Johannesburg's Gautrain – has been launched under the PPP framework. The majority of South Africa's PPP projects are in fact ecotourism operations (for which a toolkit has been created to make replication cheaper and quicker), social infrastructure, and so on.

Some of the main findings of the World Bank-sponsored analysis on PPP Units are as follows:

- There can be no assumption that a PPP Unit will perform well just because it was established with good intentions. The World Bank's analysis of more and less successful PPI units makes the following observations.

- PPP Units perform better in countries with generally good public sector governance, where line ministries and subnational guidance look to the Unit for leadership because they want to.

- Support must be forthcoming from the most senior political levels.

- Public sector (financial) governance is generally good in countries where PPPs / PPP Units have performed well; some analysis of the transparency and competitiveness of public procurement is often instructive.

- Although new institutions (whether public or public-private), in developing countries where establishing new institutions is particularly difficult (often because they are implemented or imposed, rather than evolving naturally in response to a need), PPP Units have a better chance of success inside existing institutions. The Ministry of Finance location is often logical given the need for oversight incurring public sector financial obligations, and so on.

- In poorer countries, or those with shorter histories of (e.g.) accountable public sector management a PPP Unit must take on a quality assurance and technical assistance role, as happened in South Africa.

- Simply put, in countries with below average governance credentials it is best to attach a PPP Unit, and give it the authority it needs to do its mandated tasks, to an existing government body that has the best governance track record, and must oversee the public sector finances. This will most commonly be the Ministry of Finance or Treasury. In some cases, it might commute to a Planning Ministry but this would assume excellent communication between these core ministries / agencies, where the planning ministry has a high level strategic financial function. Amongst the less wealthy countries with PPI units researched by the World Bank (PPIAF, 2007) South Africa went the MoF route, whilst the Philippines and Bangladesh went the quasi-independent route – with less success.

- Moreover, where central government funds most of state and municipal budgets, or where public service revenue collection is unpredictable or inefficient, a central financial unit should manage public sector financial liabilities and line ministry level.

- There is an argument for adapting PPI Units from Privatization Units, including if they have been set up as an independent institution. However, these were often staffed with external experts, affordable because of international donor project sponsorship and concentrated volumes of deal flow. A PPP agenda is longer term, and should be phased.

3. Benefits and Core Functions of PPP Units

Drawing on the main analyses of institutional experience of PPP Units let us list up some key *benefits and core functions* of a PPP Unit:

- Centre of excellence - pool of expertise of several kinds:
  - Technical expertise on project design, handing over to line departments in Phase II of any project development, but being a constant advisor. For example, most PPPs take the form of a Project Company, and a central unit can most easily gather and consolidate this general expertise that can then be adapted.
  - Dispute resolution – an indicator of PPP Unit effectiveness is whether it is used to resolve disputes (whether or not it helped originate the project)
  - Financial management expertise
- Information dissemination
  - Database on existing projects with basic information
  - Institutional memory capture of more qualitative experiences
  - Information absorption from overseas, and domestic dissemination and training
- Preparation and roll-out of training materials for project teams (implementation)
- Fulfilling of a "checks and balancing" function, and monitoring of project financial and operational performance. In particular it should ensure that PPP financial liabilities are affordable to national government. The financial function is another good reason to have such a unit in MoF, otherwise another supervisory relationship is born (in the early years) of MoF supervision of the outside PPI Unit (India1 p.16).
- Linking together different agencies, parastatals and so on involved in PPP infrastructure projects.
- Politician, consumer, other stakeholder awareness (e.g. Industry Canada's P3 office has six full-timers actively promoted the use of PPPs).
- PPI units can also play a useful role in supporting the project team (PPIAF, 2009, p.50), and market sounding (p.54), and liaising with more sophisticated units elsewhere.
- In the case of India, the World Bank notes that the absence (in PPP project proposals) of standard contracts or standard clauses that are approved by the central unit makes bureaucrats in line ministries or subnational regions more reluctant to sign off on PPP deals." (See World Bank, 2006, Paragraph 4.21).

4. Design Issues and Guidelines for PPP Unit

What then are the tentative PPP Unit design lessons / considerations that can be drawn from experience elsewhere? Many key questions and implementation guidelines are included in the Self-Diagnostic Tool, and in the Enabling Framework Roadmap created for this assignment. Some of the key questions / considerations are:

- Whether a central unit in an existing government agency (e.g. Ministry of Finance) is preferable to a semi-independent, even public-private entity.

- What will be the role of relation of the central unit to line ministries and subnational governments?

- How will a central unit engage with subnational governments, both in terms of oversight (required stage by stage approvals under a framework law perhaps) and training / capacity building (e.g. through satellite training centers in other regions / cities in due course)?

- The possible establishment of a public-private advisory group (e.g. in India – see World Bank, 2006, Paragraph 4.24) to provide additional expertise to the unit.

- Whether the project origination and quality assurance (including financial due diligence) functions are suitably separated. Thus, is a PPP unit in the Ministry of Finance at an appropriate distance from the Investment Promotion Agency or a line ministry or a municipal public works office?

- Could a central PPP Unit administer or provide impartial advice on the use of subsidy funds where PPPs are used for the delivery of basic services by municipal governments, an important consideration as countries encourage smaller scale utility services, or social infrastructure, at the local level. This is another argument for establishing the PPP Unit as part of the MoF.

- The possibility / likely need for project development funds also argues for a transparent / accountable unit within the MoF. Project development funds are often needed, or useful, because PPP projects cost more to prepare than pure public projects (many officials do not appreciate this, or avoid PPPs for this reason), and the relative costs of preparing smaller PPP projects is very high.

IV. KEY FINDINGS AND MESSAGES FOR PROMOTING INFRASTRUCTURE PPPS IN COMESA

The section summarizes key findings and recommendations after the fieldwork in several COMESA countries and South Africa. The study team had expected to be making more specific technical recommendations on the process of setting up PPP units and framework laws. In fact, the experts ended up standing back from the deep technical details and being more strategic and holistic.

The fieldwork was full of contrasts and surprises. The study team often surprised to come across smaller projects and creative infrastructure service projects being done by line ministries or municipalities that either hadn't been thought of as PPPs, or had simply not been captured by the national „knowledge" bank or PPIAF. Clearly there were opportunities for capturing and sharing statistics, knowledge, and project experience. At the same time, confusion existed in the region about the definition of what a PPP consists of, and inevitably therefore some misunderstanding about how PPPs can really expand and improve infrastructure service provision, and provide value for money. The somewhat revised picture of what COMESA Members needed actually underlined the value and usefulness of a regional approach to PPPs in COMESA. The study team decided to focus on eight findings and recommendations, which emerged from the desk research, fieldwork and validation workshop. This chapter focusses on seven, whilst the next chapter deals in more detail with the "cross-cutting" eighth recommendation / strategy, namely the development of a regional approach to PPPs in COMESA.

1. Definition and Justification of Public Private Partnerships in Infrastructure

The fieldwork revealed different understandings of what PPPs are or should be. Most countries have in fact their own general comprehension of the "public service" concept and of the respective role and responsibilities of the public authorities and the private party in managing and delivering this service. A better understanding of PPPs and their different types with regard, in particular, to the allocation of risks among the public and the private sector could make PPP strategy-making much more effective.

Public Private Partnerships (PPPs), Public Private Partnerships in Infrastructure, (PPPI) and Private Participation in Infrastructure (PPI) are used fairly interchangeably to refer to governments collaborating with private companies (domestic of foreign) in various ways to build and/or operate infrastructure facilities.

A public private partnership for infrastructure services has four key characteristics.

- It involves an efficacious sharing of risk between public and private sector with significant risks to be borne by the private partner;
- It provides a public service;
- It offers value for money; and
- It is a long term partnership over many years.

PPPs are to be found along the spectrum of infrastructure projects between the extremes of pure private and purely public funded operations (Figure 1). Under a PPP the public sector retains ultimate accountability to its citizenry for service provision whereas under privatization that responsibility is transferred to the private party. The nature of PPP is determined by what rights, obligations and risks are assumed by the public and private sectors. The PPIAF PPI Database, for example, identifies four types of project: Management and lease contracts; Concessions, Greenfield projects, and divestitures. Divestitures (either full or partial) are not considered PPPs.[2]

Social infrastructure PPPs are a particular form of often Greenfield PPPs where the public authority rather than the user makes payments to the private party, for a service provided at the individual level. These "Private Finance Initiative or PFI-model PPPs" (following the nomenclature of its UK origins) are often used for social infrastructure projects, like hospitals, schools or prisons.[3]

2. PPPs as a Means of Financing Infrastructure in Africa

PPPs are sometimes valued for their ability to attract capital investment in infrastructure projects. Whilst this is true the cost of this capital is greater than the various forms of concessional financing, and the financiers will expect to recoup these (greater) costs through revenue streams somehow. So, judged by the cost of capital alone private investment in infrastructure is rarely the most cost effective solution.

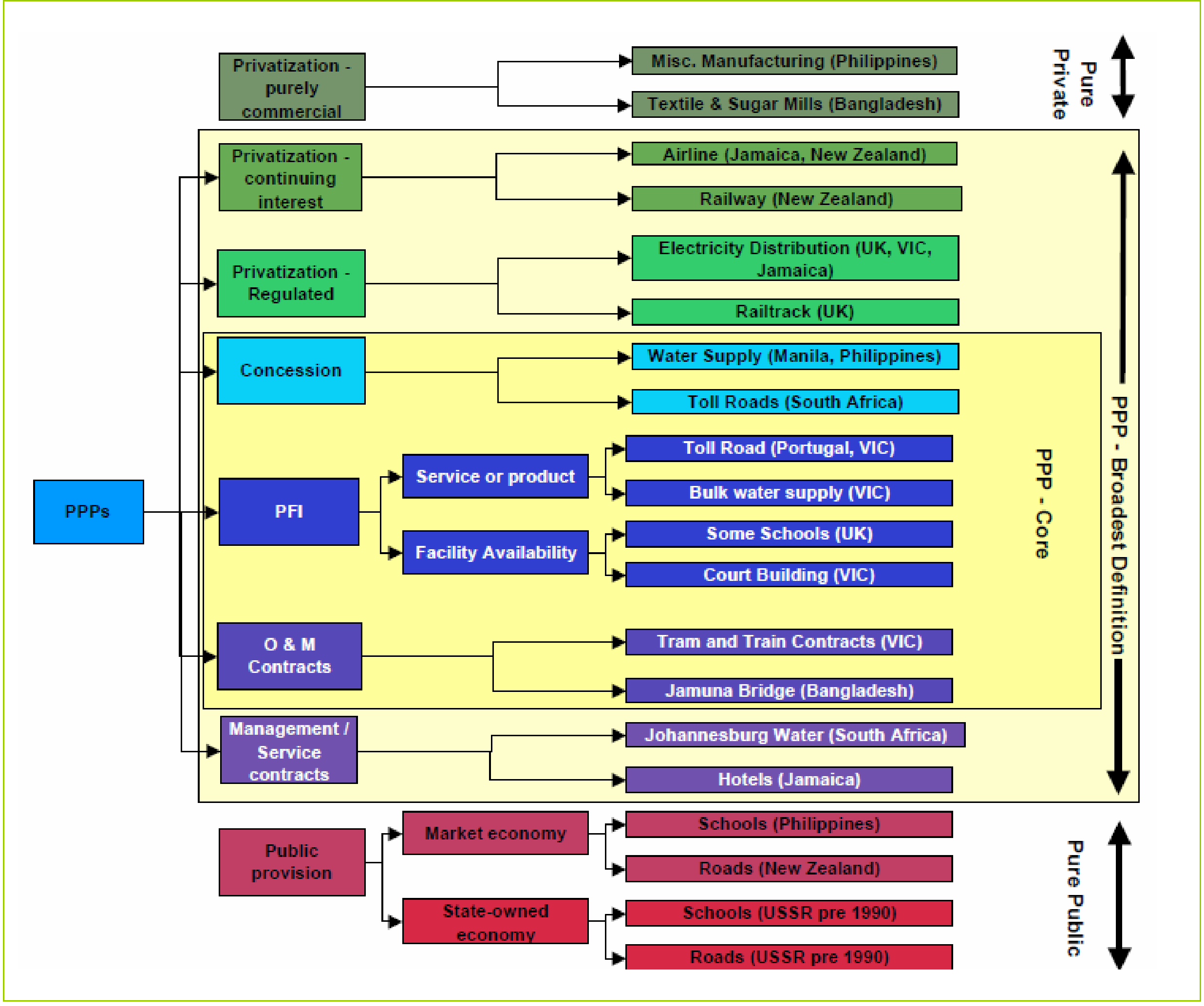
If a project is not well structured an inflow of capital investment is generally ill-fated. Although some very large projects could not be attempted without major outside capital investment, those projects rarely succeed unless the risks and responsibilities have been appropriately allocated across public and private sector

[2] See PPIAF, 2009, p.90 for a useful typology.

[3] Recently, in the context of the global recession beginning in 2008, PFIs have been criticized by some as very poor value for money, and an inappropriate / ineffective substitute for public provision. However, the issue seems to be more with possible "abuse" of the model (in particular the specification of the Public Sector Comparator) than with the PFI social infrastructure model *per se.* See for example: "Government may have to take on risk of PFI deals", Polly Curtis, Guardian, 27 January 2009; available at: http://www.guardian.co.uk/politics/2009/jan/27/pfi-deals-bsf-government-underwriting

parties to the deal, and technical, economical and financial feasibilty has been accuretly assessed and value for money assured.

Figure 1: Broad and Narrow Definitions of PPI



Source: PPIAF, *Public-Private Partnership Units,* (Washington DC: World Bank, 2007), p.17.

Why might countries prefer to finance infrastructure through PPP arrangements rather than through concessionary or grant funding?

- The Africa Infrastructure Country Diagnostic Overview (AICD, 2009, p.16) points out that PPI money is more expensive than concessionary money from a variety of overseas sovereign lenders (e.g. China, India, IDA), and clearly more expensive than grants. Obvious as this is, PPPs can provide a package of financing and management expertise that might not so easily be substituted by a turnkey project plus a management contract.
- Also, donors' concessionary money might not be available for targeted projects, and sovereign wealth fund-type money might come with unwanted strings.

- There is also a "buy-now, pay-later", and principal-agent danger with PPPs. A PPP project can be acquired now with payments hidden in another budget line, or postponed to a later date; and one department or subnational government could commit to something that ultimately the Ministry of Finance, not them, is responsible for guaranteeing. This principal-agent danger is very real. It is what has caused significant criticism of the UK's PFI program, and is why location of a PPP unit in the Ministry of Finance with its fiscal oversight responsibility is so attractive.
- Ultimately, a PPP is a partnership where both parties have a common interest in the project's success in contrast to simple procurement contracts.

In this period of global economic confusion, financing and investment prospects could develop in surprising directions. On one hand borrowing costs have increased and financing has become scarcer. On the other hand, the relative risk perception of frontier markets vis-à-vis developed markets has improved with investors, for example, potentially interested in lower returns for well-structured projects. Investors are certainly becoming more diligent about the projects they target, and about the operating environments for those projects. Meanwhile, amongst donors and development banks, there is an increased appetite for supporting projects that can demonstrate sustainability over time and value for money.

At the subnational level, other factors are at play making PPP-type financing attractive. Local governments may have no revenue raising powers of their own, or very tight budgets. If they can structure good projects that are self-financing with a revenue stream – i.e. project financing – then local economic development could enter a new dynamic plan. Often subnational (sub-sovereign) projects have less chance of attracting donor funding (which must often go to sovereign i.e. national borrowers), and subnational regions must compete with many of their peers for "trickle down" funding. Subnational projects are often smaller and more doable. In practice, at least as of 2006, the majority of closed, operational PPPs in South Africa were at the provincial level; and some two-thirds of the UK's over 200 PPPs have been health and education facilities which are overseen by local authorities (but note the principal-agent danger discussed earlier).

3. Categorizing PPPs by Revenue Format

Categorizing PPPs by who pays for the public services provided, and how, is a very useful alternative for this study's purposes, more useful for judging viability than categorization by project type. Especially as smaller and medium-sized PPP projects are considered, thinking about projects by how revenues are paid and collected helps considerably with strategy. It helps categorize potential projects by viability rather than descriptive management approach. Key observations in this regard are:

- The success of mobile telephony is in no small part due to the point of sale (POS) nature of payment capture, and the ease of controlling access to service.

- Revenue-generating user-fee based projects like water and electricity distribution are often quite difficult to set up, and there are "leakage“ problems, but ultimately there is a transparency benefit.
- Where user fees are involved there are many possible hybrid solutions involving subsidies for service provision from government.
- Projects based on shadow-toll or fee models are another category, but these can be difficult in poor governance environments, due to "inflated“ usage or misappropriation. For shadow-fee type projects the public counterpart needs to have the budget to cover the additional payments for these new services.

As central governments go about putting together a PPP strategy, and their line ministries and subnational governments go about preparing a project pipeline, thinking about the revenue aspect of potential PPP projects can help create a more viable set of projects with the chance of being realized more quickly.

4. Size and Sector Considerations in Planning an Infrastructure PPP Strategy

In preparing PPP strategies and pipelines, the viability and importance of projects varies considerably by size and sector.

Historically, the tendancy is to think of only larger projects as PPPs since they have formal appellations such as BOT and BOOT. Such projects have been handled by the line ministries for energy, telecommunications and other portfolios, and prepared on an *ad hoc,* contractual basis.

In fact, the fieldwork revealed many examples of small and medium-sized PPPs that seemed to have fallen under the radar, examples of smaller projects within energy ministries, and new ideas for small / micro projects that were to all intents and purposes PPPs.

- Smaller projects have great potential, are worth emphasizing for several reasons, and would benefit considerably from a central coordinating structure.
- Small projects are may be more “doable” because of lower costs and perhaps less complexity. Municipal markets and small scale power generation, for example, seem well suited to a PPP approach.
- Small scale projects, once designed, can be replicable and can be used to provide services in poorer and/or remote areas. PPP approaches to street lighting and sanitation blocks with advertising and other revenue streams.
- Municipal authorities, which have smaller budgets and limited fund-raising powers, can be very creative in the use of PPPs. Private provision of street-lighting or other services linked with advertising rights, or something like micro-franchising for water distribution, could be valuable applications of the PPP concept.
- Central coordination and knowledge consolidation is particularly important for smaller PPPs since replication depends upon the designs being consolidated and disseminated, and the costs of project preparation reduced.

- PPPs also offer innovative opportunities to serve previously un- or under-served communities, or to combine services for subsidized and unsubsidized users (e.g. rural telecoms and hospitals)

5. Challenges and Recommendations for Strengthening National Legal and Institutional Frameworks in COMESA

There are significant challenges in providing a coherent set of advice to the 19 COMESA members on legal and institutional frameworks for PPP, whether in their size, sophistication of economic governance, or different legal and institutional backgrounds. Nevertheless, in the few countries visited with more experience of PPPs, good proactive steps were being taken towards a stronger legal and institutional framework, and towards a pipeline of PPP projects.

- There seemed to be a clear understanding of the potential benefits of a central PPP unit, and of its functions such as knowledge sharing, training, coordination and supervision. The positive sum nature of knowledge sharing in the context of PPPs was well understood, and there was definite keenness to learn from other countries' experience within and beyond COMESA.
- There was some feeling among line ministries already active in PPPs that they might not need the supervision, and that it might lengthen the PPP process.
- Clearly there are potential rivalries regarding the locus of the supervisory function of the PPP Unit. More "interest" was found in the power / threat of the approval process perhaps, than in the potential opportunities of "making the pie bigger" through the knowledge sharing function. This is one reason why strategy, leadership and coordination are so important, both early on and throughout the evolution of a PPP framework.

6. Championship, Strategy and Coordination for PPPs

This project's fieldwork underlined the importance of a PPP champion to create the vision and the shared aspiration, to be firm on the locus of PPP authority, and to incentivize departments to explit the rich opportunities of PPPs. This was not always present, and this is one reason why a strategic vision statement or policy needs to be one of the first steps on the PPP road.

Thus, a national framework for PPPs in infrastructure could begin with a national vision for PPPs, showing that the highest authorities in a country encourage the use of this potentially effective and efficient mode of procurement. An overarching vision could lay out sectors and types of projects in which PPPs are encouraged.

The study team also observed attempts to achieve coordination through interministerial committee structures. Coordination and stakeholder involvement is very important, but there is a parallel need for transparency, accountability and time limits to ensure that the PPP process does not become bogged down.

7. National Legal Framework and *Getting Projects Done*

International good practice on the national legal and institutional enabling framework for PPPs has been summarized earlier, and many COMESA members have begun to implement new strategies and reforms. Mauritius continues to receive help from the Commonwealth Secretariat and the World Bank, while Uganda and Kenya have received specific enabling framework assistance from PPIAF. Rwanda is also proactively seeking assistance to strengthen its PPP regime. This Final Report also provides both a simple Self Diagnosis Tool (SDT) and PPPI Enabling Framework Roadmap (EFR) to help countries at all stages of PPP readiness take the next steps.

Getting the legal (and institutional) framework right is important, but so is ***getting PPP projects done***. "Getting Projects Done" can actually be an important entry point for improving the enabling framework. Thus, developing a strategy for smaller, replicable projects in some targeted sector identified in a PPP vision or strategy, and making those projects happen, quickly, can be a great energy booster. Get the help you as a country need, draw up the necessary documents and contracts, and make the pilot project happen. Then standardize those documents, prepare a project implementation manual, and make sure that project can be replicated across your country at minimal cost.

Getting viable PPP projects done, collecting the low-lying mangoes, is one of the most valuable lessons to be learned from successful countries, that can allow follower countries to move faster. This is the lesson of South Africa's Ecotourism PPP manual, of the UK's hundred or so PFI projects, and, in due course, Uganda's small scale PPP renewable energy efforts. Can COMESA Members make PPP hospital, street-lighting, renewable energy and ecotourism projects happen *en masse*?

8. A Regional Approach to PPPs in COMESA

Finally, a regional approach to infrastructure PPPs in COMESA can help plug Africa and COMESA's infrastructure gap, and help extend services to previously un- or underserved populations through small-scale innovative projects. A proper understanding of the partnership nature of PPPs in particular opens new possibilities to provide infrastructure services where the private sector alone is not interested, and the government alone doesn't have the money. The next chapter investigates further, and proposes a plan of action for helping realize, the great potential of a regional approach to PPPs:

- It will help share knowledge of especially smaller scale, successful PPP projects. Unlike, perhaps, in investment promotion there is a huge incentive to learn from each other regionally.
- It will stimulate small and medium scale PPP projects that can replicate easily across and within borders, thereby also stimulating regional investment flows.
- Finally, when countries adopt similar national legal and institutional PPP frameworks (drawn from regional guidelines such as those being prepared) companies are more likely to invest in PPPs in multiple countries. Similar

legal and institutional frameworks will also make larger cross-border PPP projects progress more smoothly.

V. RECOMMENDED STRATEGY AND NEXT ACTIONS FOR PURSUING A REGIONAL APPROACH TO INFRASTRUCTURE PPPS IN COMESA

COMESA members would benefit from a regional approach to promoting public private partnerships in infrastructure (PPPI). Doing so would lead to

- sharing of small and large scale PPP project experience,
- benefits from learning economies,
- increased intra-regional investment, and
- increased likelihood of successful large cross-border projects.

This proposal for action lays out four priority areas and related next actions. These emerged from the Fostering the Development of PPP Models in the COMESA Region assignment (desk research, field investigation and validation workshop) conducted for the COMESA Regional Investment Agency in April and May 2009. It is proposed that COMESA

1. Initiate a regional Community of Practice (CoP) to share knowledge and experience on PPPs in different infrastructure sectors; and initiate practical capacity building on a series of smaller-scale sub-sectors;

2. Encourage phased, steady strengthening of national legal and institutional frameworks for PPP around a set of guiding principles;

3. Identify one regional "mega"-project, perhaps in the context of the North-South Corridor to use as a demonstration project, and "on-the-job" capacity building and alignment of national legal and institutional frameworks with accepted good practice; and

4. Develop and pilot small and medium scale PPPs that can be replicated across the region, and where the regional knowledge sharing network (also proposed) can help build capacity and refine projects.

1. Background

Fieldwork for this assignment was carried out in March-May 2009 and a validation workshop was held in Swaziland on 6-7 May 2009. The workshop was an opportunity to present the experts' findings and recommendations, hear more about the PPP experience and aspirations of COMESA members, and to discuss and prioritize actions for promoting Infrastructure PPPs regionally in COMESA. It was attended by investment agency and PPP officials from fully 16 COMESA countries. Project investors, sponsors and officials from better-established PPP units including South Africa also shared practitioners' experiences. The very rapid investigation and reporting on this assignment will allow COMESA RIA to move quickly onto an implementation agenda.

Recommendations and next steps presented here focus on how to develop, and benefit from, a regional approach to PPPs, which was one of three objectives of the assignment.[4] Earlier fieldwork combined with expert and practitioner presentations, and discussions amongst delegates at the Swaziland workshop suggested some very clear priorities and opportunities for realizing the potential of PPPs in infrastructure sectors in COMESA. The objective in this chapter is to move the regional PPP agenda forward by laying out four priority areas / agendas to be developed, and proposing some specific actions or targets within each.

2. Benefits of a Regional Approach to PPPs in Infrastructure

A regional approach to PPPs could bring significant benefits to COMESA member countries, and greatly improve the provision of infrastructure services.

Promoting standardization of national legal and institutional frameworks around good practice guidelines can help larger cross-border projects progress more smoothly, shorten the learning cycle for follower countries, and generate pipelines of PPP projects more quickly. Leader countries do not lose by helping others catch up - indeed doing so will often provide investment opportunities for sponsors and investors from leader countries.

Sharing knowledge amongst countries will help standardize national PPP enabling frameworks around established good practice, and stimulate the flow of both larger and smaller PPP projects. There is a strong incentive to share knowledge on PPPs since sponsors will be inclined to repeat a successful experience.

Small and medium scale PPP projects replicate relatively easily across and within across national borders. They are less complex; quicker implementation will lay a successful track record; more project experience means project design can be improved and adapted more effectively.

Investment into PPP projects will be stimulated by a strong regional approach. International investors will be encouraged by upgrading of PPP enabling frameworks around global good practice. Greater emphasis on innovative small and medium size PPPs will stimulate intra-regional investment flows, since smaller PPPs can be better handled by African sponsors and financiers, and local investors who have a successful experience in (e.g.) their own country will look to capitalize by replicating a project in a similar neighbouring country (e.g. in healthcare or small-scale power generation).

[4] The three objectives were: (1) to lay out critical elements of an overarching policy and vision for effective PPPs in infrastructure sectors in COMESA; (2) analyze and summarize critical elements of a national legal and institutional enabling environment for PPPs; and (3) analyze where a regional approach to PPPs can be helpful, and how COMESA members should pursue such a regional agenda.

3. Delegates' Opinions and Observations from the Validation Workshop

Discussions at the validation workshop revealed strong PPP aspirations amongst all delegates, a good understanding of needs and willingness to learn amongst many, but also a few misconceptions. Of particular note are the following comments voiced mainly during the summary session.

- The definition of Public Private Partnerships in Infrastructure was much debated. Some delegates felt that PPPs included public-private equity joint ventures, and others that public sector contracting to the private sector was a PPP. Different countries do indeed have variations on the concept of PPP, but there are four core characteristics of a PPP: (1) a long term partnership; (2) optimal sharing of risks and responsibilities between public and private sectors; (3) value for money; and (4) providing a public service of some kind.
- Delegates (from both IPAs and PPP units) acknowledged the need for training and capacity building on PPPs. There was keen interest in the practical experience of South Africa's PPP unit presented at the workshop.
- Delegates showed great interest in the potential of small and medium-size PPPs, and in those presentations and discussions at the workshop.
- Delegates reacted very positively to the idea of regionally coordinated training and the sharing of experience amongst COMESA members and neighbours on both PPP enabling frameworks and smaller, less complex PPP opportunities in particular. The need for negotiation training was also raised.
- The need to improve national PPP enabling frameworks and intraregional coordination was endorsed, especially in the context of comments on the potential availability of infrastructure funds for well-structured, well-prepared larger projects.

4. Recommended COMESA Regional Strategy for Infrastructure PPPs and Next Actions

A regional approach to promoting infrastructure PPPs in COMESA should have four overlapping agendas. As discussed below, the very first action that will support the roll out of all four agendas is the establishment of a modest regional PPP coordinating function in COMESA. Initially, at least, it could be co-located with the COMESA-RIA, or perhaps in Lusaka or another self-selecting regionally-agreed member country. The four overlapping agendas are as follows.

4.1. Create a COMESA (or broader) Community of Practice for Public Private Partnerships in Infrastructure.

It is recommended that COMESA initiate a regional Community of Practice (CoP) to share knowledge and experience on PPPs in different infrastructure sectors, and initiate practical capacity building on a series of smaller-scale sub-sectors.

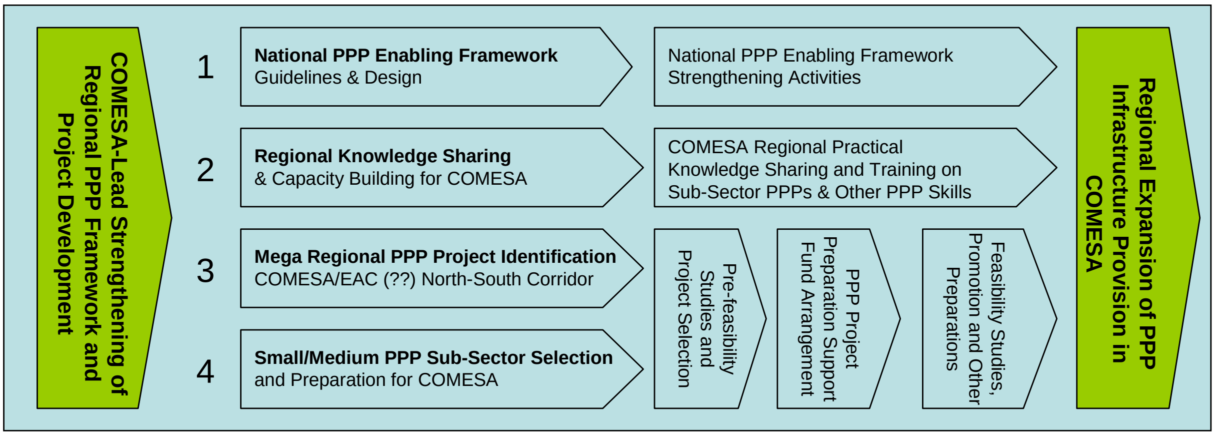
Why?

- PPPs by their nature will benefit from active sharing of knowledge and experience. Sharing of knowledge on national legal and institutional frameworks will lead to harmonization around good practice, and so make the PPP enabling environment more attractive to foreign financiers and sponsors, thereby making cross-border projects more viable. Sharing of knowledge will help replicate innovative, small and medium-size PPP projects across countries. With infrastructure services, competition rarely limits demand or interest, and so investors and sponsors will naturally want to replicate successful, well-structured, viable projects.
- Fieldwork for this project revealed good, innovative experience and ideas, especially on smaller scale projects, "hidden" in some of the countries and ministries visited. Propagating this knowledge and experience across the region is in everyone's interest.
- Various donors and international agencies are providing a variety of training and capacity building around the region, but with apparently limited coordination. A regional network will help gather information in one place or portal, and so make more efficient use of PPP Unit staff time in individual countries.

What?

- First, a website dedicated to PPP knowledge and experience in COMESA (or perhaps the broader COMESA/SADC/EAC region) is needed. (1) This could be a continuation of this assignment in some ways and could be incorporated within COMESA-RIA for the moment. In due course, depending on funding availability, and the growth of related regional knowledge sharing activities, it could take on a separate existence. (2) The website would collect regional experience of what works and how; disseminate wider global experience to COMESA countries; and serve as a rough filter for the most useful handbooks, guides and case studies (effective website design will be important). (3) The knowledge provided would cover both the legal and institutional framework issues and good practice, on the one hand, and specific PPP project models and experiences, on the other.

Figure 2: Regional PPP Approach to Expanding Infrastructure Service Provision in COMESA



- Second, the Regional PPP Unit would gather and disseminate knowledge thematically, and provide training on a similar thematic basis. In particular, the PPP Unit should undertake a research project to look at the track record of small and medium size PPPs in subsectors of interest and relevance to member countries. Examples include referral hospitals / clinics, municipal markets, small scale energy and water projects, and so on. It should then initiate and seek funding for a program of regional physical / virtual training courses - building upon the website's knowledge content by organizing practitioners to share implementation experience - in sub-sectors in which member countries show interest, and which have demonstrated success in similar political-economic situations. Such workshops will give successful sponsors face time with interested ministries, and allow countries to share experience of good and less good projects / investors.

Specific next actions:

1. Establish COMESA PPP Website collecting / screening pre-existing relevant materials on enabling frameworks, and relevant sectoral PPP experience. Modest funding will be needed to cover the staffing function, and website content population and maintenance.

2. Sponsor research / survey into smaller and medium size PPPs to enhance website, and canvass COMESA member preference for first physical / virtual training and practitioner exposure.

3. Design training on first in a series of smaller scale PPP sector opportunities. Secure funding from donor / multidonor infrastructure fund / corporates to convene.

4. Prepare standard documents / templates / handbooks for that sub-sector, and brief case studies of successful examples worldwide.

4.2. Encourage phased, steady strengthening of national legal and institutional frameworks for PPP around a set of guiding principles.

COMESA member interest in establishing / strengthening PPP units is very strong. Some countries are already in the process of establishing national PPP enabling frameworks, including regulations and PPP units; others are keen to do so. Also, several donors, including the World Bank (both WBI and PPIAF) and the Commonwealth Secretariat, are providing and/or funding capacity building projects. Still it would be useful if the most practical handbooks and training materials were gathered in one place or portal for the benefit of COMESA / Regional members. Clearly there is donor appetite to support national governments in funding such capacity building.

Why?

- Countries, in particular central planning or financial ministries, are proactively looking for such assistance;

- The PPP option needs to be systematically incorporated in national budgeting and procurement decision processes;
- It will help improve perceptions of viability of the general COMESA/African investment environment, and viability of large regional projects.
- A systematic approach and national framework, both for knowledge sharing and oversight, are essential for smaller projects where project preparation costs need to be defrayed with central help, and where feasibility studies and standardized documents need to be recycled to improve value for money (VFM) on replications.

What?

- A clear understanding of the nature and capabilities of true public private partnerships in infrastructure is an essential prerequisite for an effective PPP strategy. If countries do not understand where PPPs - with their optimal allocation of risks and responsibilities - lie on the spectrum ranging from pure public procurement through pure privatization (including partial divestiture and JVs), then the full potential of PPPs will not be realized. Countries that have not yet grasped the special nature of PPPs, and been "triggered" to see the value of a PPP program need first to appreciate that potential, lay out a vision for PPPs, and identify a PPP (policy) champion.
- Those countries that are already "triggered" regarding the need / desirability of a national framework should be drawing up a Vision or PPP Policy, and designing a central PPP Unit or coordinating mechanism. They should solicit advice and experience on how best to phase the introduction and refinement of a systematic regulatory and institutional approach to PPPs.

Specific next actions:

1. COMESA RIA should reach out through IPA members, or through World Bank Institute liaison, for example, to relevant officials in Ministries of Finance / Economic Planning / President's Office to (a) solicit interest in design workshop / capacity building, specifically for PPP Units; (b) request completion of a questionnaire based on the diagnostic tool provided under this assignment (or similar).

2. COMESA RIA (as a regional coordinating body), rather than a donor, should initiate a practitioner workshop on PPPs for PPP units (or the parts of central government that would oversee the PPP agenda - rather than investment promotion agency delegates). Capacity building should be based on existing guides and toolkits, but also importantly on practitioners from relevant PPP Units elsewhere in Africa and the world. The workshop will leave participants informed about good practice, what foundations should be in place, (once those foundations are in place) what assistance should be requested to help design and install capacity, and how strengthening of the enabling framework should be phased.

3. Central government agencies proactively responsible for PPP strategy should then approach potential supporters of country-specific capacity building with requests for very practical assistance, a template / timeline for which could be outlined as part of the workshop. This is already happening in some countries.

4. Establish COMESA PPP Website collecting / screening pre-existing relevant materials on enabling frameworks, and relevant sectoral PPP experience. Modest funding will be needed to cover the staffing function, and website content population and maintenance.

Getting PPP Projects Done in COMESA

Getting actual PPP projects done is obviously the ultimate objective of strengthening PPP enabling frameworks and promoting PPP investments, but a focus on *Getting Projects Done* also helps strengthen the enabling framework more quickly, leading to a virtuous cycle of more projects. For example, acknowledging that, "In order to get this PPP project done we need to explicitly incorporate PPPs in the Public Procurement Regulations," is likely to expedite adaptation of the aforementioned procurement regulations. Having an actual project to hand that needs changes to happen before it can move forward, and a powerful policy champion (e.g. Minister of Finance or Prime Minister) who is asking *why* PPP Project X is *not* moving is a valuable approach.

At the regional level, making projects happen has significant additional benefits.

- A regional or cross-border project can be used to improve the PPP investment environment in multiple countries
- It can stimulate intra-regional trade, and benefits from larger volume / usage forecasts, making the PPP route more viable
- It is visible to the outside world of sponsors and financiers. Groups of countries that can get one complex megaproject done transparently and well will surely be more likely to attract subsequent projects.
- For small and medium size replicable projects, a regional approach will encourage replication in multiple countries, reducing the preparation costs of projects, and providing services to many more un- or underserved populations. Without regional knowledge sharing small PPP projects will not spread as quickly.
- When neighbouring countries have similar PPP enabling environments international and local sponsors will have more confidence to start projects in new and multiple countries, thereby stimulating intra-regional investment in a big way also.

It is recommended that COMESA and its members (perhaps also in collaboration with other regional groupings, especially SADC and EAC) working on getting both larger and smaller PPP projects done, as pilots, learning by doing and a demonstration of what can be achieved by the region. After all, there are many infrastructure funds in Africa looking for well-structured, viable projects to invest in, often with some concessional support associated.

- One cross-border / regional COMESA projected should be targeted as a pilot - one (or perhaps two) not because there are not multiple needs, but because the region needs to be focussed on making sure a large complex project happens as smoothly, and as quickly as possible. Trying to do too much at once increases the chances of failure or delay.

- Simultaneously, and building upon the regional Community of Practice recommendation above, it is suggested that COMESA seek to encourage (replicable) small or medium-size PPPs in one or two infrastructure niches.

4.3. Identify a regional "mega"-project, perhaps in the context of the North-South Corridor to use as a pilot project.

The COMESA region should focus on making one regional / cross-border mega project happen as efficiently and transparently as possible.

Why?

- A successful flagship regional PPP megaproject should serve as a demonstration to the region and the world that COMESA can make complex projects happen;
- It should serve to improve the systems and institutions of involved countries such that subsequent projects can happen more quickly;
- It would give regional organizations and regional infrastructure funds a PPP-related mission, where sponsors and member countries have agreed to focus their energies to make the project a success;
- It will provide a visible learning-by-doing pilot that will improve prospects for subsequent regional PPPs.

What megaproject?

- Some element of the North-South Corridor is a strong candidate for such a flagship project. The N-S Corridor is a focus of regional and international high-level attention (including being part of aid for trade programs), and this high profile should help ensure success.[5]
- A brief review of N-S Corridor documents and priorities suggests that either a transport project (road section or bridge), or a cross-border energy production or distribution project, might be appropriate candidates.
- Key committees and regional leaders from the countries and regional groupings involved in the Corridor need to select a project that combines importance with viability. An important part of viability is the proactivity of champions and relevant government agencies in involved countries. This should be a critical factor in deciding which megaproject is prioritized, and a public Memorandum of Understanding (MoU) amongst relevant countries should be required by funders, sponsors and relevant regional organization leaderships.
- Project-related activities and development should be extremely transparent to ensure accountability, good governance, and efficiency. There should be a public website, with performance indicators and implementation timelines

[5] See for example: http://www.rtfp.org/news.php?id=83

clearly laid out. The public and other interested parties should be able to see how the project is progressing, and who, if anyone, is holding it up. The project experience, publicity and accountability should be used to strengthen the necessary national enabling procedures and institutions.

Specific next actions:

1. N-S Corridor planning committees in COMESA (and EAC/SADC) should discuss regional and cross-border infrastructure needs that could potentially work as PPPs. Inclusion of road/energy infrastructure experts during those discussions will be useful.

2. Organize (or co-opt another) high-level meeting to determine the enthusiasm of directly involved countries and their relevant government agencies / line ministries.

3. Sign preliminary MoU amongst involved top government leaders / regional bodies specifying, amongst other things, transparency, timelines and responsibilities.

4. Through (e.g.) COMESA approach donors / regional infrastructure funds to contribute to project preparation costs and feasibility study (in return for transparency assurances). Infrastructure funds or other "support" funding sources should help with these costs for a project with this degree of national / regional buy-in, and disclosure rules.

4.4. Encourage (replicable) small or medium-size PPPs in one or two infrastructure niches.

It is proposed that COMESA encourage small and medium scale PPPs that can be replicated relatively easily, and which address needs of unserved and underserved populations in particular. This agenda should grow naturally out of the proposal for early activities of the CoP above, and should encourage the rapid roll out of that regional PPP capacity building agenda.

Why?

- Fieldwork for this assignment revealed pockets of innovation and success in a range of infrastructure sub-sectors that could easily be propagated and replicated across the region. COMESA will forego significant PPP potential without some regional knowledge sharing mechanism for smaller projects.
- Small projects will have proportionately higher preparation costs, and it will be important to set up mechanisms to defray those costs for early projects, and to ensure that subsequent projects benefit from the early experience. A regional knowledge sharing mechanism will bring many benefits.
- Small PPP projects and innovative ideas (small scale energy and community grids are examples) can help reach small and underserved populations that are less likely to benefit from mega projects, often in collaboration with local community organizations and NGOs. Small projects are pro-poor.

- Municipal governments typically have constrained resources, are responsible for many infrastructure services, and can benefit substantially from smaller PPP initiatives. For example, there is no "prisoners' dilemma" at this level - a municipal market in a town in one country will not reduce the demand for one in other towns in the same country, let alone a neighbouring country. The follower will benefit from the leader's experience and contracts, perhaps with the latter serving as advisor.
- Small projects are less complex and often more doable than megaprojects.

What sub-sectors?

- Many infrastructure sub-sectors could be targeted for both small and medium size PPP projects. The choice of the initial one or two pilot sub-sectors for an implementation program should be generated from the regional knowledge sharing initiative outlined above. Ultimately, smaller PPPs should be pushed out in numerous sub-sectors, but, again, COMESA should focus on getting projects done in perhaps two sub-sectors. Then capture the lessons, prepare guidelines or a manual, and some standardized documentation; and then move on to the next three or four for a systematic approach.
- Potential sub-sectors for the initial stage could be small-scale energy (AICD underlines the persistent energy infrastructure gap), PPP referral hospitals, street lighting, municipal markets, or ecotourism. But, ultimately this should be a COMESA regional decision emerging from a succinct PPP research and workshop process as described above.
- Once the knowledge sharing process, and sub-sector PPP workshops have been initiated, and an initial two sub-sectors decided, COMESA can coordinate a plan for piloting PPPs in those sub-sectors. This will involve *inter alia* finding resources to (co)fund project preparation and feasibility studies, preparing a manual and guidelines, and tracking and capturing progress on initial projects.

Specific next actions:

It is essential that a regional focal point be established in COMESA to coordinate activities, and gather and disseminate knowledge on PPPs generally. Without that a certain degree of confusion will inevitably persist.

1. **This must begin with establishing a PPP coordinating function (initially at least) in COMESA (perhaps with the RIA, perhaps in Lusaka, or other COMESA member country).**

2. COMESA should sponsor research / a survey into smaller and medium size PPPs (which will also enhance the reputation and usefulness of the website), and canvass COMESA member preference for first round of physical / virtual training and practitioner exposure.

3. Design training on first in a series of smaller scale PPP sector opportunities. Secure funding from donor / multidonor infrastructure fund / corporates to convene the training event.

4. Prepare standard documents / templates / handbooks for that sub-sector, and brief case studies of successful examples worldwide.

5. Funding and Technical Support for the Four PPP Agendas

Various technical and financial support will be needed for these four PPP agendas and associated next actions.

- Funding and resources needed to initiate the regional knowledge sharing and capacity building, for the first 1-2 years would be modest, but it is critical that a regional organization should be driving this coordination agenda. First, a regional focal point needs to be established. In the short term at least this function might be grafted onto COMESA RIA, or other infrastructure group in the COMESA Secretariat. Early activities which require modest support include: a website resource for good practice guides and case studies (filtered for usefulness); guidance on donor resources and TA available for strengthening national PPP enabling frameworks; a program to identify smaller PPP sub-sectors; and regional meetings to identify / prioritize a mega-project to drive and showcase COMESA PPP efforts.
- Greater support will be needed once larger and smaller pilot projects / sub-sectors are identified, and feasibility studies and manuals need to be undertaken. The CIDA / SADC Banking Committee fund to support feasibility study preparation around Africa is proving to be a useful model in some way. This might be a good juncture for a COMESA-Regional PPP Unit to be formalized. It could have a small core staff, one or more outside advisers with key skills, and periodic secondments from the growing number of national PPP units. Having already built up a track record (e.g. whilst attached to COMESA-RIA) sponsors of regional infrastructure funds could be persuaded to provide some support for this critical regional support body.
- In reality, many donors and international organizations are supporting and funding PPP-related activities already. If these activities were to be regionally coordinated, existing support funds could also be used for the regional agenda proposed here.
- Larger scale financing for actual PPP pilots is already available. Africa's infrastructure gap is increasingly well broadcast, with richer countries and donor agencies committed to improving the situation. But this money is not being disbursed, often for a lack of implementation skills, and an absence of commercially viable, well-prepared projects.
- Many African infrastructure funds would be more active in spending the funds they have, in fact, already collected if there were viable, well-structured projects in strong or improving (and proactive) PPP enabling environments! A more systematic regional approach to PPPs, such as proposed here, can help release this funding stream for two reasons: first it will help build attractive enabling environments; second, it will help create a pipeline of proper, viable PPP projects where the capabilities of public and private partners are optimally combined.

6. In Summary

The above agenda and next actions have the potential to invigorate PPP-based infrastructure provision in COMESA countries. Much technical support is available, and potential funds for infrastructure investment in Africa are plentiful.

Infrastructure PPP efforts need to be regionally coordinated, and the region's ability to design and implement true PPP projects needs to be strengthened. But, above all, COMESA members, especially the more proactive leading countries, need to prove, as soon and as efficiently as possible, that it can be done in COMESA. Focus on a smaller number of projects and make them work; work on some smaller, less-complex PPPs and make them work; tell the world what has been achieved. Success breeds success.

ANNEXES

Annex 1: Selected Resources

AICDP (World Bank). 2009. *Africa's Infrastructure: A Time for Transformation. Summary of Main Findings.* Washington, DC: World Bank.

Briceno-Garmendia, C. *et al.* 2008. *Financing Public Infrastructure in Sub-Saharan Africa: Patterns, Issues and Options.* Africa Infrastructure Country Diagnostic (AICD) Program, Washington, DC: World Bank. Unpublished Background Paper.

Gassner, Katharina. 2008. *Does Private Sector Participation Improve Performance in Electricity and Water Distribution.* Washington, DC: World Bank, 2008.

PPIAF. 2007 (October). *Public-Private Partnership Units: Lessons for their Design and Use in Infrastructure.* World Bank: Washington, DC.

PPIAF. 2009 (January). *Attracting Investors to African Public-Private Partnerships: A Project Preparation Guide.* World Bank: Washington, DC.

Sanghi, Apurva, Alex Sundakov, and Denzel Hankinson. 2007. "Designing and Using Public-Private Partnership Units in Infrastructure: Lessons from Case Studies around the World." *Gridlines Note* 27. World Bank, PPIAF: Washington, DC.

Schur, Michael et al. 2006 (April). "The role of developing country firms in infrastructure." *Gridlines* 3. Washington, DC: World Bank.

World Bank. 2006 (June). *India: Building Capacities for Public Private Partnerships.* Washington, DC: World Bank, Energy and Infrastructure Unit and Finance and Private Sector Development Unit (South Asia Region).

This Report also benefited from discussions with experts in Washington at the World Bank and PPIAF. It was pointed out that feasibility studies and design work are currently ongoing in Kenya and Uganda regarding the formalization of PPP policies, legal frameworks and institutional structures.

Annex 2: Self-Diagnosis Tool

FOSTERING THE DEVELOPMENT OF PPP MODELS IN THE COMESA REGION: SELF-DIAGNOSTIC TOOL

(Carl Aaron, Monique Bolmin: June 2009)

The purpose of a self-diagnosis tool is to ask a set of questions to ascertain where a country is in terms of developing a framework for promoting successful PPPs in infrastructure sectors. It might be used by an institution of central government or by a donor / international organization project officer.

(1) Assessing Where You Are – The Track Record in Public Private Partnerships in Infrastructure (PPPIs)?

- Is there a clear agreed-upon definition of PPPs, of why, how and when they should be used?

<u>What exists in terms of PPPs already, carried out by individual ministries or subnational governments on an ad hoc basis?</u>

- What has been done already? Do you know what has been done already; has there been a systematic effort to collect this information?
  (N.B. Most authoritative source is PPIAF Database (although this does not cover social infrastructure sectors – are you aware of what the PPIAF Database says about your country?).
- What was the experience of past PPPIs? How successful; what problems encountered?
- What is the longest running PPP? Just launched? More than five years? What degree of central involvement / oversight?
- How many PPPs have been done?
- What implementation problems are there / were there? How long has it been running?
- Is there a formal attempt to monitor and evaluate impact, and other aspects of sponsor performance? Was the baseline captured?
- What smaller / medium-sized projects have been done? What social sector projects? What individual-user pays (or shadow pays) projects?
- Is there a track record of experience in a particular type of project e.g. telecoms / power?
- Did preparation time decline from one previous, comparable project to the next?

How have ministries or municipalities (i.e. a non-central PPP Unit) sought to systematize experience of PPPs?

- Is there replication of some types of projects in some sectors?
- Have individual ministries sought to develop tools and strategies to replicate projects? For example, standardized documents (off-take agreements) or development funds.
- What attempts have there been to publicize the potential of PPPs, or to stimulate interest?

Who is driving this self-diagnostic?

- Is there a champion?
- Who else needs to be involved? Are they involved?
- Why is there a proactive interest in systematizing the PPPI agenda, now?
- Whatever that is, can it be used to drive the PPP agenda and give it a practical / GTD focus? E.g. prisons, hospitals? (Pick a horse, learn about it, and run with it.)

(2) Self Diagnostic Questions If You Haven't Started Systematizing the PPP Process, But Aspire To Do So?

- Who is "you"? Are "you" the right person or institution? Who else needs to be at the table? Who doesn't want it to happen, and why?
- Are you clear about why you aspire to systematize an approach to mobilizing PPPs for infrastructure projects?
- Is there a champion?
- Is there a vision for PPPs? What sectors? What size projects? Who will be allowed to do them?
- Is there a clear agreed-upon definition of PPPs, of why, how and when they should be used?
- Is there an overarching legal framework? (if yes, consult questions under (3) below). If not, consider what foundations you do have (government and sponsor transaction lawyers will need to be consulted on these questions):
  - To what extent are procurement laws adapted to address the need of PPP projects (as opposed to public procurement)? To what extent are provisions of previous *ad hoc* PPP projects adaptable to the broader case?
  - To what extent are contractual dispute resolution provisions able to address the peculiarities of PPP projects, as opposed to public procurement or pure private-private disputes? To what extent are provisions of previous *ad hoc* PPP projects adaptable to the broader case?
  - To what extent are sectoral regulation / tariff setting procedures/ institutions transparent and adequate?
  - To what extent might components of ad hoc contractual PPP agreements help in the adapting of overarching PPP laws and regulations?

- Is there a central PPP Unit, or another that could be adapted (e.g. privatization agency)? If there is, you should still "review" the following sub-questions but also consult questions under (3) below)
    - Are there other contenders for the PPP Unit role? Who will decide?
    - Do you have a clear idea of how the institutional relationships and interactions will operate? Can you draw a flowchart / organizational chart of the envisaged relationships? Who have you missed? Have you consulted with these other institutions? Who is the champion standing above these organizational discussions?
- What resources do you need to get started, and where will you get them? For institutional running costs; for supporting the evolution of a pipeline of PPP projects – e.g. who will pay for feasibility studies?

(3) Self Diagnostic Questions If You Have Started Establishing a National Legal and Institutional Framework for PPPs in Infrastructure.

GENERAL QUESTIONS

- Is there a clear agreed-upon definition of PPPs, of why, how and when they should be used?
- Is there a clear vision for PPPs in the country?
- Are the architects of the new regime aware of what has been done already, or thinking creatively about how PPPs can be used?
- Is there a clear champion, or a systematic acceptance that PPPs can have a transformational impact on infrastructure service provision?

LEGAL READINESS
(Lawyers and previous transaction advisors to government and to sponsors will need to be asked these questions.)

<u>Is there a specific overarching / sectoral law or set of laws regulating PPP which reduces uncertainty for structuring and financially closing PPP projects?</u>

- Is there a clear definition of the boundaries and scope of application of the PPP legal framework? To whom does the PPP law apply, and in what ways?
- How does the legal framework for PPPs interact with that for public procurement?
- How is PPP defined? Is there a clear vision?
- In what sectors are PPP arrangements permitted, encouraged, prohibited by law
- Are the public bodies with the authority to enter into PPP project arrangements clearly specified?

- What are the restrictions / checks and balances on these PPP-authorized government bodies transferring public-sector powers to the private sector? For example, compulsory land purchase.
- Is there a statement regarding non-discrimination between foreign and local participation in PPPs? How is any positive discrimination / encouragement of local business handled?
- Is there a legal requirement for public consultation, and open and transparent bidding?
- Are process requirements for central government sign off / approval clear, and appropriate for different sizes of project?
- Are appropriate criteria in place for unsolicited proposals, including at the subsequent bidding stage?
- Is there a fair and efficient challenge process for award disputes?
- Are there statutory limits on the duration of a concession / other PPP?
- Who conducts and verifies public sector comparators (PSCs) on behalf of government?
- What provisions and sponsor / government roles are specified for performance monitoring and assurance of the project over its life in accordance with original performance criteria?
- Is a central PPP unit formally established by the legislation (law/regulation)?

INSTITUTIONAL READINESS

It is assumed that some form of centralized unit goes hand in hand with overarching legislation. Since some regulation or law will typically establish the PPP Unit, especially its oversight (rather than knowledge-center) functions, it may be formally established in response to (i.e.) after such a new law / regulation. However, the legal and institutional evolution of a PPP system are likely to go hand in hand.

<u>What are the status, functions and location of the PPPU?</u>

- Has a central PPPU been selected or established or mandated?
- What is its legal status?
- Where is it located / affiliated?
- Are its key functions clear? (Knowledge collecting and disseminating including training
- Do those key functions include: knowledge collecting; knowledge disseminating; approval of PPPs at various stages of project preparation; monitoring of impact and performance, etc.

- Does the PPPU have a mandated policy advisory role, advising on changes to other laws implicated by PPP projects? Does it have the capacity (human resources / skills) to do this?
- Is its role in assessing unsolicited proposals clear?

<u>How does the PPPU relate to other institutions and ministries?</u>

- How does the PPPU relate to originating ministries / agencies?
- How does the PPPU relate to other central institutions, like the public procurement office, privatization agency, investment promotion agency, etc?
- Does the unit itself take decisions on approvals? Or refer up to its reporting or host Ministry (e.g. Ministry of Finance / Treasury)?
- Or, is it designed as a Secretariat referring key approvals / decisions elsewhere? Is there an interministerial committee or similar?
- Does the PPPU have a clear project cycle process, including criteria and time limits for approval?

<u>How transparent and efficient is the PPPU?</u>

- How transparent are the operations of the PPPU? E.g. disclosure of interest and confidentiality, announcement of PPP projects at different stages of approval, description of approved projects and objectives, complaint procedures, accounting and reporting, and so on.
- Does the PPPU have an appropriate budget?
- Does it have appropriate staff, sufficiently motivated?
- What systems are in place for capturing knowledge of different PPPs?
- How is the Director General / CEO chosen?
- Are there arrangements overseen by PPPU to defray the costs of feasibility study costs, especially for smaller projects?
- Has the PPPU a clear and specific project cycle, with applicability to different types of projects laid out, and which also specifies the points of interaction / approval with the PPP unit?

(4) Additional Self-Diagnostic Questions (additional input?)

What other questions need to be asked in a country self-diagnostic for PPPIs in infrastructure? The above sets of questions are a starting point. Below are some additional questions that do not fit so neatly into the above categories.

- Is there a pipeline of potential PPP projects, a groundswell of interest? Do those projects show an intuitive grasp of what PPPs are, and how they can fill a gap, and provide public purposes to poor people?

- Do various government institutions tend to see PPPs as a way of getting infrastructure projects now for which they don't have current funding?
- What sources of support are there for the program? Are donor agencies talking to each other, and is the government clear what help it needs?
- Is there an understanding / has there been an evolution towards projects that are more viable?
- What experiences from other countries have you found useful?
- What sources of external support have you found useful?

Annex 3: PPPI Enabling Framework Roadmap

PPPI ENABLING FRAMEWORK ROADMAP: ELEMENTS, EVOLUTION AND PLANNING OF AN ENABLING FRAMEWORK FOR PUBLIC PRIVATE PARTNERSHIPS IN INFRASTRUCTURE IN COMESA

(Carl Aaron, Monique Bolmin: May 2009)

Introduction

This document is designed to be a general roadmap that will help with the strengthening or establishment of an enabling institutional, legal and regulatory framework for the realization of PPP projects in infrastructure sectors in COMESA. It lays out many key elements that need to be in a sequenced plan to create such an enabling framework; these would then need to be prioritized and adapted to the particular circumstances of different member countries.

The process of strengthening the enabling framework is clearly to be distinguished from a project cycle approach to any particular project. Applying a project cycle approach to PPP project development and approval is a core function of the central PPP Unit. South Africa's PPP Unit has turned this into a one-page flowchart mantra!

It would be foolhardy to propose a roadmap that could apply to all COMESA countries. Rather, we attempt a listing of key elements of a PPP framework for infrastructure, and what could or should take place under those elements in the course of the framework's evolution. The actual sequencing depends upon initial circumstances, and the different capabilities and aspirations of different countries.

The main elements of a good enabling framework for PPPs in infrastructure are: Vision and Policy; Legal Framework; Institutional Arrangements; Getting Projects Done. We offer thoughts on how these pillars of a national enabling framework might be sequenced. The main observation is that this is country specific.

"Getting Projects Done" may seem out of place as a pillar of the enabling framework, but not really. The best foundation for getting good PPP projects done is a track record of having single-mindedly made some happen. Learning from doing makes the enabling framework very strong, and shows investors and sponsors that it can be done in country X. It is all about getting projects done that provide public services more effectively than before, or that were not available before. Rivalries need to be overcome to this end. There is no other measure of success.

Four Pillars of the Enabling Framework for Public Private Partnerships for Infrastructure

The four pillars of a strong enabling framework for PPPs in infrastructure get constructed at different speeds, the architect constantly moving backwards and forwards to work on different columns. So, first let us consider each of the four pillars and their components, and then present them in tablular fashion to help us see possible patterns of construction. The four pillars are: Vision and Policy; Legal Framework; Institutional Arrangements; Getting Projects Done.

VISION and POLICY

- A clear champion should emerge for a national PPP framework, which will give the policy leadership when there are competing claims.
- There needs to be a clear vision for PPPs laid out in a policy statement covering:
    - A clear definition of PPPs (public service, value for money, long term partnership, optimal sharing of risks and responsibilities)
    - Objectives of a country's PPP program including types of contract, focus sectors, intention to improve accountability, efficiency and innovation in the provision of infrastructure services.
    - Principles of PPP projects, which build upon the definition of PPPs above. These should include: focus on end results and service delivery to clear standards, rather than on inputs; user charges will be transparently governed and laid out in a contract or other regulatory system; government subsidies or shadow payments can support provision of a public service; government may provide some equity or finance to the project company; risks held by the public and private parties will be clearly laid out; and so on.
    - Specifying the institutional structure for managing PPPs, for example: establishing the PPP unit, its location in government, and its reporting lines; how other central government institutions will be involved in the process; how line ministries and other government bodies will engage with a PPP unit in the management of PPPs as a form of procurement.

Legal Framework for PPPs

A PPP legal framework must evolve over time. To initiate the process an overarching PPP law is not necessary but will be advantageous in due course.

The PPP unit can be established and many of its functions specified through a lesser legal instrument. Its approval role may require more leverage but this will depend upon a country's particular circumstances. The need for a law also depends upon how well the PPP process is socialized, and the degree to which buy-in of other government agencies is achieved.

A PPP Legal Framework may include an overarching law as well as references to other laws relevant to procurement via PPPs.

A Framework PPP Law could cover many areas (and those needs are clearly country specific):

- Formally establishing (retroactively) the PPP unit.
- Specifying periodic evaluation of the PPP unit by the auditor general
- Specifying the procedures that other government departments must follow in carrying out procurement generally, and how they should consider the PPP option, and their interaction with the PPP Unit.
- Specifying how and when procurement / PPP approvals are carried out, and whether by the PPP Unit or some form of interministerial committee.
- Formally define PPPs and which entities are allowed to engage
- Laying out principles for allocation of project risks and types of support / subsidy that can be provided by governments.

Other aspects of the national legal framework that may need to be adapted or interpreted differently for the case of PPPs as opposed to traditional public procurement or divestiture could include:

- Procurement
- Dispute Resolution
- Financial Management
- Others...?

Institutional Arrangements

A central PPP unit is very important and should have a variety of functions, roles and relations with the rest of government, which may emerge, or be added, over time.

- Initially, for example, it may be simply a thinktank function set up by the key champion of PPP reform / innovation.
- In due course, it should develop a mandated oversight, coordination or approval role with that mandate set out in a regulation or law.
- The thinktank function will evolve into a knowledge sharing, gathering as well as a policy advocacy function.
- Although the thinktank / knowledge functions could initially float or be dispersed, relatively early the PPP Unit needs to be consolidated (or at least be very clearly specified), and anchored within the government.
- Global best practice survey suggests location in the Ministry of Finance / Treasury is ideal because of financial due diligence, approval and contingent

liabilities. When embraced within one institution but with so many stakeholders transparency and accountability will be critical.

- The PPPU may have a Secretarial Role, reporting to an interministerial committee, and/or a decision-making / approval role. This will emerge over time, may vary by size / type of project, and needs to be clearly laid out.

The PPP Unit itself should accordingly have several functions:

- Developing the PPP Policy and Program, and carrying out an advocacy / eyes and ears function;
- Supporting line ministries and other government units in developing and implementing PPP projects. Performance and impact monitoring is a critical element, as is an approach to handling unsolicited PPP proposals;
- Gathering and disseminating information on PPP projects and approaches, and providing training;
- Publicizing the PPP program to businesses as well as ministries;
- Developing clear project cycle procedures and manuals, gradually increasing treatment of different types, sizes and sectors of PPPs. In particular extending knowledge and activities to local government where much infrastructure service delivery is carried out is important.

Structuring and staffing of the PPP unit will clearly evolve over time with the functions.

- It will begin with a few core staff tasked with learning about the universe of PPPs and working on the vision statement or similar early strategic activities. Permanent staff are important, since the PPP absorptive capacity needs to be built.
- As the PPP units knowledge and procedures are codified, rotating staff of civil servants is possible / desirable.
- The core staff can soon be complemented by external / international advisors.
- Ultimately, once the management / approval role is in place a full set of skills will have evolved to include:
    - Legal skills and contract evaluation, preparation (including guarantees and liabilities),
    - economic analysis,
    - project finance analysis (e.g. value for money and Public Sector Comparator analysis),
    - technical knowledge of key traditional and innovative infrastructure sectors to complement that of specialized line ministries and (e.g.) local government and parastatal bodies,
    - performance and impact monitoring and contract oversight,
    - training and knowledge gathering and dissemination (e.g. manual / document preparation),
    - public relations and communication,
    - others (e.g. insurance)

Getting Projects Done and Project Pipeline

A good PPP program starts getting projects done as quickly as possible to show that it can be done.

- A country may have done large or smaller PPPs already, in which case that knowledge and track record needs to be captured and advertised and turned into a "product". This will already encourage sponsors and investors, and show that the country is serious about systematizing PPPs, creating a national knowledge and enabling framework, and being innovative in the use of PPPs.
- Out of the visioning process will come sectoral priorities, not just in terms of needs but in terms of doability. The process of categorizing PPP projects by size and doability is important and can accelerate the creation of a successful PPP track record.
- In due course a systematic pipeline can be developed, or larger and smaller projects from different sectors, but still with a strategic focus. Smaller projects are much more doable, obviously, than larger ones, and replicability is an important consideration. The South Africa and UK experience in PFIs both illustrate this point.

Annex 4: Draft Model PPP Main Standard Terms and Conditions

DRAFT MODEL PPP MAIN STANDARD TERMS AND CONDITIONS

BY AND BETWEEN

[PUBLIC CONTRACTING AUTHORITY]

AND

[NAME OF SPC / CONSORTIUM]

Important Notice: These standard terms form a basis upon which a PPP contract may be drafted. They shall be reviewed and amended on a case by case basis to meet the particulars of the project and context within which it will be implemented as well as the specific requirements of the transaction contemplated.

This Design Finance Build Operate and Transfer CONTRACT is made ___________ day of ___________

B Y A N D B E T W E E N:

[Name of the Contracting Authority], a having public legal personality constituted under the laws of [***insert the name of the host country*** having its principal office at _______________ (herein referred to as the " ");

and

[Consortium Member 1], a private **[insert legal form]** company incorporated under the laws of ***[insert the name of the host country***] , having its registered office at ________;

[Consortium Member 2], a private **[insert legal form]** company incorporated under the laws of ________, having its registered office at ________;

Consortium Member 1, **Consortium Member 2** and **…..**, acting on a joint and several basis **,** shall be hereinafter referred to collectively as the "**SPC**"/ "**Private Contractor**".

PREAMBLE

[*The Preamble should define the "genesis" of the Project and the legal grounds (approval process, legal texts….) upon which the Contract is entered into. This is an important part of the Contract to which the judge or the arbitrator will refer in order to explicit the actual intention of the parties when they concluded the contract*]

W H E R E A S

A. The [***insert name of the Contracting Authority***] launched an international bidding process for the ……………………………….(hereinafter referred to as the "Project") under a Design Finance Build Operate Transfer ("**DFBOT**") scheme,

AND

B. [***Insert name of the Consortium***], has been selected by the ***[insert name of the Contracting Authority***] has been awarded the Project. [***Name of the Consortium***] and has subsequently formed a special purpose company incorporated under [***insert the name of the host country***] in accordance with the bid requirements;

AND

C On______________ , the [Insert the name of the competent authority] has approved the implementation of the Project as per [***insert text of law /Decree/Government decision***]

The Contracting Authority now wishes to execute this Contract with the SPC to perform the Project on the terms and subject to the conditions set forth herein.

NOW IT IS HEREBY AGREED **AS FOLLOWS**:

1 DEFINITIONS AND INTERPRETATION

“**Affiliate/s**”

“**Applicable Standards and Norms**” shall mean the standards and norms as applicable and defined in / for:
(i)
(ii)
and (iii) any other industry standards and norms as may be applicable from time to time for the purpose of execution and implementation of the Project.

[This provision will allow for ongoing incorporation of standards]

“Best Industry Practice” shall mean the degree of skill, care, prudence and operating practice which would reasonably and ordinarily be expected from a skilled and experienced operator of [*insert here the nature of the works and services to be provided by the private contractor*] or EPC contractor or subcontractor under the same or similar circumstances. Best Industry Practice shall include, but not be limited to:

[*Define the compliance norms and standards according to which the private contractor's tasks and objectives shall be performed*]

"**Bid**"

"Contract" shall mean this Contract entered into by the Contracting Authority and the SPC including its Annexes and all subsequent amendments thereto.

"**Contract Performance Standards**" …………..

"**Completion Date**"

"**Consortium**"
[*The Members of the consortium selected as the preferred bidder may agree on the terms and conditions of the PPP contract with the Contracting authority prior to the formal incorporation of the SPC]*

"**Construction Guarantee**"

"**Direct Agreement**" shall have the meaning given to it in Section [ ].

"**Discriminatory Change of Law**"

"**Effective Date**"

"**EIA**" means the Environmental Impact Assessment to be conducted].

"**EPC Contract**" means the subcontract for the engineering, procurement, and construction of the Facilities and equipment entered into by the SPC and the EPC Contractor.

"**EPC Contractor**" means the contractor responsible to undertake the EPC Works under the EPC Contract as defined herein.

"**EPC Works**" means all the design, procurement, erection and construction works (including commissioning of the Facilities) to be carried out under the EPC Contract in accordance with the terms and conditions of this Contract.

"**Facility/ies**" means the [ ], the Government Assets and all related facilities thereto.

"**Service/Concession Fee**"

“**Financing Parties**”

“**Financing Agreements**”

“**Financial Close**”

“**Force Majeure Event**” means any exceptional event or circumstance or combination of events or circumstances beyond the reasonable control of either Party which materially and adversely affects the performance by such affected Party of its obligations under or pursuant to this Contract
Force Majeure Events shall include, but are not limited to, the following events and circumstances:

“**Government/ Public Assets**”
[List here all the assets or facilities transferred and used by the private

"**Government Authority**" means the Government of [***insert name of the host country***], or any ministry, department or political subdivision thereof and any other governmental entity, agency or authority under the direct or indirect control or supervision of the Government of [***insert name of the host country***] and any independent regulatory authority.

"**Governmental Authorizations**" means all authorizations, approvals, licenses, consents, permits, waivers, privileges, and filings with all Government Authority necessary for the execution, implementation, operation and maintenance of the Project as per [ ].

“**Hand Over Bond**”
[*Security to be issued by the private operator to guarantee its obligations with respect to the public facilities transferred back to the Contracting Authority upon expiration of the contract term*]

“**Implementation Schedule**” is the schedule for implementation of this Project as per Annex [ ].

“**Intellectual Property Rights**” means any and all patents, trade-marks, service-marks, copyright, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered in the [*insert name of the host country*]or abroad.

“**XXX**” means the currency of the [*insert name of the host country*].

“**Land Lease Agreement**”

"**Law(s)**"

“**Operation & Maintenance Contract**” / “**O&M Contract”**

“**Operation & Maintenance Contractor**”/ “**O&M Contractor”**

“Operation & Maintenance Services”/ “**O&M Services**

“**Operation Period**” means a period of [ ] years

“**Party/ies**” in singular means any signatory to this Contract, in plural it means all parties signatory hereto.

“**Plant**” means
[*insert description of the plant or facility*] and the Government Assets.

“**Performance Guarantee**”

“**Private Assets**”

"**Project**"

“**Project Assets**”

“**Project Documents / Documentation**” are the documents listed in Section [ ] and as amended from time to time.

“**Off – take / Purchase Agreement(s)**”
[*Concerns mostly the energy, waste and port utility sector*]

“**Request for Proposals**” means the documents issued to prequalified bidders for the purpose of the competitive bidding for this Project.

“**Services**” means all services related to the operation and maintenance of the Facilities, the management thereof, ………….., as applicable.

“**Service Area**” means the area located in [ ]

“**Shareholders’ Agreement**”

“**Site**”

“**SPC**” means Special Purpose Company.

“Supply Agreement (s)”

“**Technical Specifications**” means the technical designs, standards, norms, building, operating parameters and operation and maintenance manuals related to the performance of the Project and other technical specifications as per Annex [ ].

“**Term**” means a period of [ ] years, calculated from the Effective Date

“**Tradable Carbon Credits**” [*Electricity, waste sector*]

“**Transfer Date**” means.

“Tariff” means the tariff charged by the SPC to the Customers for the provision of Services.

“**Tariff Adjustment**”

2 CONSTRUCTION AND INTERPRETATION

3 AMBIGUITIES AND INCONSISTENCIES

4 PROJECT DOCUMENTS

The following documents shall form an integral part of this Contract and are to be taken *as mutually explanatory* of one another:

This Contract and its following Annexes, as amended from time to time:
Annex 1: Technical Specifications
Annex 2: Financing Agreements
Annex 3: Land Lease Agreement
Annex 4: Licenses and Permits
Annex 5: Fee Structure
Annex 6: Implementation / Work/Service Schedule
Annex 7: Guarantees
Annex 8: Environmental Impact Assessment
Annex 9: Insurance
Annex 10: List of Public Assets
Annex 11: Supply Agreement(s)
Annex 12: Off take/Purchase Agreement(s)
[Electricity – Water – Waste sector]
Annex 13: Monitoring Procedure

5 SCOPE OF CONTRACT

5.1 Objectives

The subject of this Contract is to establish the terms and conditions pursuant to which the SPC will design, finance, build, operate, maintain and transfer the Facilities in accordance with the Technical Specifications and the Applicable Standards and Norms within the Service Area, encompassing the following:

[*Define accurately all tasks to be performed by the SPC*]

5.2 Duration

This Contract shall become effective on the Effective Date. The Term of this Contract shall commence on the Effective Date and shall expire on the date of the [ ] anniversary of the Effective Date, unless:

5.2.1 terminated earlier in accordance with the provisions of this Contract, or

5.2.2 extended in accordance with Section [ ].

5.3 Grant of rights

Subject to the terms and conditions of this Contract, the Contracting Authority grants the SPC, for the Term of this Contract the right, license and authority to:

[*Define the tasks to be performed by the Private Contractor and the responsibilities assumed by it*]

and in each case, to do those things which are necessarily incidental to those activities.

6 CONDITIONS PRECEDENT TO COMING INTO FORCE

6.1 This Contract shall come into full force upon the fulfillment of the following Conditions Precedent:

6.1.1 Conditions Precedent to be fulfilled by the SPC :

[*ie: financial closing, grant of lease and access to the Site, issuance of all financial guarantees etc..]*

6.1.2 Conditions Precedent to be fulfilled by the Contracting Authority

7 . *THE SITE*

7.1 Access to the Site

7.2 Access to Lands Other than the Site

7.3 Safety, Security and Cleaning

8 TRANSFER OF GOVERNMENT ASSETS

(*Ownership of Public Assets shall remained vested in the Contracting Authority*)

8.1 Government/Public Assets

8.2 Project Assets

8.3 Private Assets

8.4 Maintenance and Replacement of the Project and Public Assets

9 OBLIGATIONS

9.1 Financing

9.2 Design and Construction of the Facilities and Provision of O&M Services

The SPC shall in accordance with the Applicable Standards and Norms and as contemplated hereunder and as applicable:

[*Insert here all tasks to be performed by the Private Contractor as described in the Scope of Works/Services hereinabove*]

9.3 Supply of Water/ sale of electricity to the Customers

9.3.1 The SPC shall perform the Services [*define the service to be performed*] in such a manner as ***to ensure the continuity, regularity, quality of the supply thereof*** pursuant to the basic principles set out in Annex [ ] and in accordance with the Technical Specifications and Applicable Standards and Norms.

9.4 Permits and Licenses

9.5 Compliance with Applicable Standards and Norms

The SPC shall comply with all binding Applicable Standards and Norms in connection with the implementation of the Project, the provision of Services and / or any of the activities related thereof and shall be responsible for ensuring that all equipment and Services used in carrying out of the Project comply with environmental, health and safety requirements in accordance with all Applicable Standards and Norms and all [*insert name of the host country*]Laws which relates to any or all of the Project and activities.

9.6 Quality Management System

9.7 The Contracting Authority shall:

[*Insert all tasks to be carried out and all obligations to be undertaken by the Contracting Authority, which shall include:*

- *The grant of the right to access the Site/Facilities, use and occupy the land*
- *The transfer of Public Assets*
- *The provision of assistance to obtain permits and licences*
- *The implementation of any financial instruments/arrangements in accordance with the payment mechanism*]

10 THE SPC

10.1 Corporate Object

[*The SPC's sole corporate object shall be to carry out the Works and/or to provide the Services and all activities required for the proper performance of the Project in accordance with the terms and conditions of this Contract*.

10.2 SPC's Shareholding Structure

[*Shall be in accordance with the terms indicated by the selected bidder and the Request for Proposals*

Third parties may be entitled to take equity into the SPC. However, the selected consortium members to whom the performance of the works and services was entrusted because of their technical and financial qualifications should remain in control of the SPC during a certain period of time after the coming into force of the contract]

11 MONITORING OF THE PROJECT

[*This Section shall set out the right for the Contracting Authority its representatives/and or advisers and the existing regulatory authority of the Sector to monitor and audit the proper compliance by the SPC with its obligations* *under the PPP contract according to monitoring and supervision procedures to be established or under the existing legislation or regulation* *The private operator/SPC must cooperate with the regulatory entity and the Contracting authority's representative in good faith to facilitate the oversight of the Services*]

11.1 The Contracting Authority and/or any of their duly appointed representatives shall have the right, in particular, to:

11.2 The purpose of the monitoring and review referred to above includes, but is not limited to:

(i)

(ii)

(iii)

12 DESIGN PROCUREMENT AND CONSTRUCTION OF THE FACILITIES

12.1 The SPC shall be responsible for the design, construction, procurement, testing and commissioning of the Facilities and all related equipment and materials in accordance with the Implementation Schedule and the Technical Specifications set out in Annex [ ] and the Applicable Standards and Norms as defined herein.

12.2 Commencement and Completion of the EPC Works

12.3 Extension of anticipated Completion Date:

12.4 Protection of the Environment, Persons and Property

12.5 Finds of Historical / Architectural Value

13 TESTING AND COMMISSIONING OF THE FACILITIES

[*Insert here the testing procedure which shall be approved by Upon Completion of the respective EPC Works*]

14 OPERATION AND MAINTENANCE OF THE FACILITIES

14.1 The SPC shall be responsible for the commissioning, operation, maintenance and repair of the Facilities and ***the provision of uninterrupted Services***, save as to planned and scheduled interruptions for the maintenance of the Facilities.

14.2 The SPC shall ensure that the Facilities are in good operating condition and capable of operating in a safe and stable manner consistent with

14.2.1 Best Industry Practice and

14.2.2 the Applicable Standards and Norms,

in accordance with the operating standards and the required capacity as specified in the Technical Specifications in Annex 1.

14.3 Operation and Maintenance Performance

14.4 Water, Energy and Telecommunication Connection Supply

[*Facilities necessary to perform the PPP contract should be provided at cost by the Contracting Authority to the Private Contractor*]

14.5 Environment

14.6 Operation Co-ordination

15 MEASUREMENT AND RECORDING [*Water / Electricity Sector*]

15.1 Installation and Testing of Metering Systems

15.2 Reading of Meters Procedures

15.3 Repair, Replacement or Re-calibration of Metering Systems.

16 **SERVICE FEE** (*To be paid to the Contracting Authority*)

The fee to be paid by the private contractor/SPC as well as its mode of calculation in consideration of the right to operate the facilities and derive revenue therefrom shall be set out in details. The conditions under which this fee may be adjusted and the procedure to do so should also be clearly provided for in the contract.]

17 BILLING AND PAYMENT

17.1 Payment of the Service Fee

17.2 Billing

17.3 Late Payments

18 TARIFF (*to be paid by the consumers, users*)

[*This Section shall set out the conditions under which the private operator is authorised to charge the users in accordance with the tariff schedule as well as the terms of amendment, variation, adjustment or re-basing of the tariff*].

19 COMPENSATION FOR GUARANTEED THROUGHPUT (*Demand /Waste*)

19.1 Guaranteed Throughput

19.2 Adjustment

[*Sometimes to ensure payment of guarantee compensation by the State / Contracting Authority an escrow account or a guarantee fund may be established by the State*]

20 GUARANTEES

20.1 Construction Guarantee

20.2 Performance Guarantee

20.3 Handover Bond

21 COVENANTS AND NEGATIVE PLEDGES

21.1 Compliance with Laws

21.2 Consents

21.3 Maintenance of status

21.4 Negative pledge

21.5 Facilities

21.6 Reporting

22 RECORDS AND AUDIT

22.1 The SPC must keep and maintain all such information and records necessary to provide accurate and complete information to the Contracting Authority and its duly authorized representatives ***regarding the performance and quality of the Services*** and the operation of the Facilities after the Effective Date, in accordance with Best Industry Practice and as the Contracting Authority , the Contracting Authority 's duly authorized representatives may from time to time require pursuant to the Monitoring Procedure set fort in Annex [ ]

22.2 The SPC must:

22.2.1 prepare, maintain and keep separate, up to date books of account relevant to the performance of its obligations under this Contract;

22.2.2 maintain proper and true accounts relevant to the performance of its obligations under this Contract in accordance with the applicable accounting principles; and

23 LIABILITY

23.1 ***Liquidated Damages***

23.1.1 EPC Works

23.2 Liquidated Damages for Abandonment.

23.3 Third Party Liability

23.4 Indirect and Consequential Damages

24 INDEMNIFICATION BY SPC

25 INDEMNIFICATION BY THE CONTRACTING AUTHORITY

26 TAXATION

[*The tax benefits and other duty or fee exemptions granted to the SPC shall be inserted here*]

27 FORCE MAJEURE

[*This Section shall provide for the procedure to be followed by the Parties in case of Force Majeure ie: notification period, acknowledgement of the occurrence of a force majeure event etc*]

28 TERMINATION

28.1 Termination Due to Force Majeure

28.1.1 Compensation for Termination due to Force Majeure Event

28.1.2 Insurance Proceeds

28.2 ***Termination for SPC's Default***

The Contracting Authority may terminate this Contract for SPC default in any of the following events: *[List the events here]*

In the event of this Contract being terminated as a result of the occurrence of the event listed above the Contracting Authority shall pay to the SPC an amount corresponding to [.....]

28.3 ***Termination For the Contracting Authority 's Default***

Subject to Section [ ] the SPC may terminate this Contract for the Contracting Authority default in any of the following events:

(i) expropriation, sequestration

(ii) a Change of Law and Circumstances,

(iii) a material disruption in delivery of [Water/Electricity] to the Plant or making available of [Water/ electricity], not attributable to Force Majeure nor to an act or omission of the SPC .

In the event of this Contract being terminated as a result of the occurrence of the event listed above, the Contracting Authority shall pay to the SPC the following:

28.4 ***Assessment of Compensation***

[*The assessment of the compensation due shall be made on a fair, equitable and transparent basis. A panel of qualified technical and financial experts of the respective parties may be appointed to make this assessment*]

29 CHANGE OF LAW AND CIRCUMSTANCES

"*Change of Law and Circumstances of laws or regulations, instructions or any applicable judgment of a relevant court of law after the Effective Date of the Contract which materially reduced, prejudiced and adversely significantly affects the implementation and / or execution of the Project and the provision of Services.*'

30 COMPENSATION EVENTS

[The SPC should be entitled to receive compensation from the Contracting Authority if any Change of Law and Circumstances as defined in the Section 29 above arises during the term of this Contract, provided that the SPC is not defaulting]

31 DIRECT AGREEMENT

[*The Contracting Authority may enter into an agreement with the lenders to provide solutions to remedy the situation of default of the SPC This Section shall define the principles to be included in these direct agreements, according to which the lenders may exercise their step-in rights*"

32 CONTRACTING AUTHORITY STEP-IN RIGHTS

[*The Contracting Authority shall be entitled to take the operation and maintenance of the Plant and Facilities in case of continued failure on the part of the SPC to perform its obligations hereunder*]

33 TRANSFER

On the Transfer Date, the right, license and authority granted to the SPC by the Contracting Authority and the relevant governmental authorities should terminate.

The SPC shall transfer, free and clear of all liens and ***at no cost*** [This may differ according to the specific transfer terms of the PPP agreement] to the Contracting Authority all SPC's right of use of the Facilities, the Site and the Project, including, insofar as they are part of or used in the Project, all SPC's right, title and interest in, to and under:

[*The Handover Bond which the security to be provided by the SPC shall secure the SPC's fulfilment of its obligations under this Section and be valid for a certain period of time following the Transfer Date*]

34 INSURANCE COVERAGE

The SPC shall, as its own expenses obtain and maintain in force the following insurance policies:

- Construction/Erection All Risks Insurance (CEAR)
- Marine Cargo Insurance
- All Risks Property/Machinery Insurance
- Comprehensive General Liability Insurance
- Workmen's Compensation Insurance

[*The nature of the coverage and the risks covered, the duration and the amount of the insurance policy to be subscribed should be provided for in this Section*]

35 REPRESENTATION AND WARRANTIES

35.1 The SPC and the shareholders of the SPC warrant, represent and undertake to the Contracting Authority that at the Effective Date:

35.2 The Contracting Authority warrants, undertakes and represents:

36 ASSIGNEMENT AND SUB-CONTRACTING

[*The private contractor should not be entitled to assign its rights and obligations to third parties but should be entitled to subcontract part thereof with the prior written consent of the Contracting Authority. The former shall, however, remain liable vis-à-vis the Contracting Authority for the proper performance of the subcontracted works or services*.]

37 INTELLECTUAL PROPERTY RIGHTS

38 CONFIDENTIALITY

39 WAIVER OF SOVEREIGN IMMUNITY [Standard Clause]

[*It is generally requested from the State/Contracting authority to waive its sovereign immunity (, immunity from service of process, immunity from jurisdiction), from any legal proceedings to enforce the terms and obligations of the PPP Contract*.]

40 APPLICABLE LAW

This Contract shall be governed and construed in accordance with the Law of [***insert law of the host country***]

41 SETTLEMENT OF DISPUTES

41.1 Any dispute arising between the Parties in relation to any aspect of this Contract shall be resolved in accordance with this Section 40.

41.2 If a dispute arises in relation to any aspects of this Contract, the Party attempt in good faith to settle amicably the disputed matter.

41.3 The Adjudication Board shall consist of the following Experts:

41.4 If either Party is dissatisfied with the Adjudication Board's decision, then either Party may, if not initially agreed otherwise, refer the matter to arbitration for final resolution. [*The Arbitration rules for the settlement of the disputes as well as the procedure which shall govern the production of evidence and testimony shall be set out here*]

42 ENTIRETY

43 LANGUAGE

[*This section may be used when the contract is translated into two different languages. Hence the prevailing version in case of dispute over the interpretation of the contract terms and conditions shall be determined*.]

44 NOTICES

For the Contracting Authority: _______________

For the SPC: _______________

45 MISCELLANEOUS

45.1 Waiver

45.2 Severability

IN WITNESS WHEREOF this Contract has been executed in duplicate the day and year first before written.

THE CONTRACTING AUTHORITY

THE SPC

Annex 5: Validation Workshop Agenda

Fostering the Development of PPP Models in the COMESA Region

Regional Validation Workshop
Swaziland, 06-07 May 2009

AGENDA

Fostering the Development
of PPP Models in the COMESA Region

Regional Validation Workshop
Swaziland, 06-07 May 2009

Objective

The workshop is part of a project, supported by the ACP Business Climate Facility (BizClim), the objective of which is to help foster private investment in infrastructure construction and service provision in COMESA countries.

The objective of the workshop is, based on a regional study which is currently under preparation, to discuss the levels of PPP readiness in the 19 COMESA countries compared to benchmarks including the example of best practice African countries. It also serves to disseminate self-diagnosis tools directed at IPAs and road maps based upon observed best practices. Moreover, the workshop will present standardised PPP contracts which are to be complemented with specific provisions relating to the sectors utilities, energy, transports, ports and water supply; and a standardised procurement process. Delegates from all COMESA countries will attend the workshop in Mbabane.

Day 1 – Wednesday, 06 May 2009

08.30 – 09.00

Registration (Royal Swazi Sun @ Libandla room)

09.00 – 10.30

Opening and Introductory Session
Chairperson: Richard Mbaiwa, Board Member, COMESA RIA

Opening statements:

- Minister of Commerce, Industry and Trade, Kingdom of Swaziland
- Delegation of the EU – Jorge Nieto Rey
- COMESA Representative – Stephen Karangizi, Assistant Secretary General

Priorities and Bottlenecks in Infrastructure PPPs: Observations, Findings, Conclusions from Field Mission and Research – Carl Aaron

Q&A and Discussion

10.30 – 11.00

Coffee Break

11.00 – 12.30

PPP in the COMESA Region: Country by Country Situation – Regional Cross-fertilization
Moderators: Carl Aaron / Monique Bolmin

- Mauritius – Premcoomar Beeharry
- Uganda – Orono Otweyo
- Swaziland – Richard Martin and Johan Kruger
- Egypt – Mohamed Tarek
- Others – Brief Overviews by IPA Delegates of COMESA Countries

Regional Opportunities: Capacity Building and Projects

Q&A and Discussion

12.30 – 14.00

Lunch Break

14.00 – 15.30	**Defining PPPs and Pursuing Different Types of PPPs** Presenters: Carl Aaron / Monique Bolmin PPP Definition Criteria: How do we Decide? Working out where we are: Self-diagnosis Tool Role of PPP Units and Overarching Legislation Roadmap for a Systematized PPP Enabling Framework Panel Discussion: What do you need? Sources of Capacity Building / Project Preparation Funding / Supporting Regional Approach
15.30 – 15.45	Coffee Break
15.45 – 18.30	**Factory visits for Delegates** Peterstouw Aquapower Swaziland Polypack
19.30 – 21.00	Cocktails @ Lugogo Sun Terrace

Day 2 – Thursday, 07 May 2009

9.00 – 10.30	**PPP – Institutional, Financial and Practical Issues** Moderator: Carl Aaron Institutional Setting for PPP – William Dachs Financing Opportunities for PPP Projects: The Role of capital market – Mohamed Omran The PPP Project Cycle: Practical Challenges – Monique Bolmin Q&A and Discussion
10.30 – 11.00	Coffee Break
11.00 – 12.30	**PPP Case Studies** Carl Aaron / Monique Bolmin Larger Infrastructure PPPs – Phuti Malabie Smaller Infrastructure PPPs – Divyash Keshav Q&A and Discussion
12.30 – 14.00	Lunch Break

14.00 – 15.30	**PPP Guidelines and Model PPP Documentation** Monique Bolmin Q&A and Discussion
15.30 – 15.45	Coffee Break
15.45 – 17.00	**Concluding Session** Chair: Phiwayinkosi Elphas Ginindza, CEO, SIPA Where do we go from here? Regional Community of Practice? Capacity Building Needs / Sources of Support Cross Border PPP Infrastructure Projects – possibilities? Adoption of Principles of PPP in the COMESA Region – how realistic is this? Wrap-up and Closing Remarks

Speakers

- **Carl Aaron** is a specialist in investment, trade and business environment reform with a particular emphasis on institutional strengthening. He has advised governments and corporations worldwide including many in English- and French-speaking Africa whilst working in investment banking, the World Bank and in private sector trade consulting. He is currently Director of Economic Development and Sustainability Initiatives at the East West Management Institute, and holds a Ph.D. in International Relations and Political Economy from Oxford University.
- **Prem Coomar Beeharry** is the Director of the Procurement Policy Office in Mauritius, a body set up in November 2007 under the Public Procurement Act to monitor compliance with the Act and its regulations, and to advise government on the reform of the public procurement system. In his capacity as Director of the Policy Office he also chairs the PPP Committee set up under the PPP Act. Prior to his appointment as Director of the PPO, he served as Permanent Secretary at the Ministry of Finance and Economic Development for 9 years.
- **Monique Bolmin** has 20 years of professional experience as attorney-at-law and legal consultant advising on legal and institutional aspects relating to project and structured finance transactions (PPPs, Concession, and privatization) in connection with major infrastructure projects and public utilities in emerging countries. She worked for major industrial groups where she held managerial positions, as well as for the African Development Bank as a consultant where she was in charge of private sector projects. Ms Bolmin graduated from Harvard Law School and from Sorbonne University holding two post graduate degrees in International and European Economic Law.
- **William Dachs** is Head of the PPP Unit at National Treasury, South Africa and is one of the Unit's founding members. Prior to joining Treasury in 2000, he worked as a consulting civil engineer in transport and water related projects in the Eastern Cape and Western Cape. He was appointed Head in March 2005. Between 2007 and 2009 Mr Dachs worked for the World Bank as a senior finance specialist focusing on infrastructure finance in Central and East Asia. During this time he was involved in the Bank's new municipal Financial Intermediary Loan program and PPP program advisory work. He is a civil engineer and also has a degree in law
- **Phiwayinkosi Elphas Ginindza** is the Chief Executive Officer of the Swaziland Investment Promotion Authority (SIPA). He has gained extensive management experience in various government departments (e.g. Ministry of Finance, Prime Minister's Office) and has been in the management and also cooperated with a number of national, sub-regional and international institutions. In 2004 he was seconded to the ADB and joined SIPA in June 2007. He holds a Bachelor of Arts in Social Science with majors in Economics and Statistics from the University of Swaziland as well as a Masters of Arts Degree in Economics majoring in Development Finance from the University of Manchester.
- **Divyash Keshav** is a Chartered Accountant with 13 years experience in financial management. Mr Keshav joined the Group Management Services department of Netcare in 2004. Netcare Limited is an investment holding company that operates through its subsidiaries the largest private hospital networks in South Africa (SA) and the United Kingdom (UK) and a strong proponent of Private Public Partnership (PPP) models. Mr Keshav's personal experience with PPPs includes project feasibilities, financial management and analysis, project funding and financial reporting for three hospitals and three clinics.
- **Johan Kruger** has been working in the financial sector for the last 30 years. His educational background in civil engineering enables him to understand and interpret both financial elements and technical aspects in PPP implementation. He has worked in the Development Bank of

Southern Africa and in the Infrastructure Finance Corporation (Inca) on specific risk allocation and pricing in project finance.

- **Phuti Malabie** is the Managing Director of Shanduka Energy (Pty) Ltd, a subsidiary company to Shanduka Group led by Cyril Ramaphosa. Shanduka Energy is an investment company primarily focused on electricity, oil and gas throughout the African continent. She joined Shanduka in 2004. Previously, Ms Malabie was head of the Project Finance South Africa unit at the Development Bank of Southern Africa and prior to that, Vice President at Fieldstone, an international firm specialising in the financing of infrastructure assets. Ms Malabie holds a BA in Economics from Rutgers University and an MBA from De Montfort University, UK.

- **Richard Martin** has worked in Africa for more than 30 years, and has undertaken many projects concerning infrastructure provision and the role of the private sector. He assisted in the management of the recent Infrastructure Consortium for Africa conference in Dakar on Financing water for Growth in Africa which aimed to raise private sector awareness of the potential for investment in water. He has undertaken studies for the Public Private Infrastructure Advisory Facility (PPIAF) in Ghana and Swaziland, and advised the NEPAD-Infrastructure Project Preparation Advisory Facility on project management. He is currently, together with Johan Kruger, advising the government of Swaziland on establishing and implementing a PPP Policy.

- **Richard Mbaiwa** is the Chief Executive Officer of Zimbabwe Investment Authority and Vice Chairman of the Board of Directors of COMESA RIA. He has over 22 years of service in the public, private and quasi-government sectors and has specialized in the area of trade and investment promotion. He joined the Zimbabwe Ministry of Industry and International Trade in 1986 as a trade negotiator and later joined the Confederation of Zimbabwe Industries as an Economist. In 1994 he was part of the first group of people who established Zimbabwe's first Investment Promotion Agency. Mr Mbaiwa holds a Masters of Business Administration (MBA) degree and a Bachelor of Science Honours Degree in Economics, both obtained from the University of Zimbabwe. In addition, he has a number of post graduate certificates.

- **Mohammed Omran** is the Vice Chairman of the Egyptian Exchange and Professor of Finance at the Arab Academy for Science and Technology. Professor Omran served several years as an Economist at both the Arab Monetary Fund in Abu Dhabi and the International Monetary Fund in Washington D.C. He was an advisor to the Minister of Investment and an Acting Executive Director of the Egyptian Institute of Directors. He is recently appointed as non-executive International Board Member in the Privatization Agency of Kosovo. Professor Omran specializes in financial markets, corporate governance, corporate finance and privatization concentrating on the MENA region and has published around 40 papers for international economics and finance journals.

- **Orono Otweyo** has been involved in managing privatization transactions for more than 15 years. In Uganda, he led teams on the privatization of more than 30 public enterprises and spend five years in Botswana assisting with the start of the privatization process. His expertise is in preparing public enterprises for privatization, developing the framework for outsourcing of public services and the development of a PPP framework. Currently, Mr Otweyo is Technical Advisor at the Privatization Unit and responsible for the development of the PPP framework in Uganda.

- **Mohamed Tarek** joined the PPP Central Unit at the Ministry of Finance of the Egyptian Government in 2007 in the capacity of Sector Officer / Utilities Sector. He has been engaged in two pilot PPP projects in Egypt in the education and wastewater sectors. Previously, he was part of the Holding Company for Water & Wastewater working in the Technical Office of the Chairman. Eng. Tarek has a B.Sc. of Civil Engineering and holds an M.Sc. Degree in Environmental Engineering.

Annex 6: Validation Workshop List of Participants

FOSTERING THE DEVELOPMENT OF PPP MODELS - REGIONAL VALIDATION WORKSHOP
Mbabane, Swaziland on 06 - 07 May 2009

List of participants

	Title	First	Last	Organisation	Email	Position	Country	Tel	Fax
1	Mr	Carl	Aaron	BKP Development	caaron@ewmi.org	Investment Promotion Expert	Germany/US	+49.89.1787.6047	+49.89.1787.6049
2	Mr	Hosam	Al Kaweesh	Ministry of Foreign Affairs	kaweesh-kaweesh@hotmail.com	Counselor	Egypt	+2 018 233 9005	
3	Mr	Stephen	Amase	Nigerian Investment Promotion Commission	amase@nipc.gov.ng	Director, Finance & Admin	Nigeria	+234 033117498	
4	Mr.	Roger	Amisi	Kenya Investment Authority	amisi@investmentkenya.com	Manager, Investor Services	Kenya	+254 20 2221401	
5	Mr.	Mohamed	Aref	COMESA RIA	maref@comesaria.org	Research Analyst	Egypt	+202 2405 5428	+202 2405 5421
6	Ms	Carol	Ayoung	CAIC	carolayoung@tstt.net.tt	CEO	Trinidad	+1 868 622 1148	+1 868 622 7810
7	Mr.	Awad El Karim	Ballah el Tayeb	Ministry of Investment	mohadi1997@hotmail.com	Undersecretary	Sudan	+249.912.397.470	
8	Mr.	Premcoomar	Beeharry	Ministry of Finance and Economic Empowerment	pbeeharry@mail.gov.mu	Chairman PPP Unit	Mauritius	+230 213 2003	
9	Mr	Derk	Bienen	BKP Development	bkp@bkp-development.de	Managing Partner	Germany	+49.89.1787.6047	+49.89.1787.6049
10	Ms	Monique	Bolmin	BKP Development	mbolmin@hotmail.com	PPP Legal Expert	Germany/ France	+49.89.1787.6047	+49.89.1787.6049
11	Mr	Ernest	Chirwa	Zambia Development Agency	echirwa@zda.org.zm	Senior Planning and Policy Officer	Zambia		
12	Mr.	Daniel	Chiwadamira	DPC & Associates	dpco@telkomsa.net	Managing Consultant	South Africa	+27 828532122	
13	Mr.	William	Dachs	National Treasury	William.Dachs@Treasury.gov.za	Head of PPP Unit	South Africa	+27 12 315 5455	+27 12 315 5477
14	Ms	Busisiwe	Dlamini	ASBC, Swaziland	asbc@africaonline.sz	Secretary	Swaziland	+268 611 88 47/505837	+268 5058372
15	Mr	Petersons	Dlamini	Ministry of Natural Resources	dlaminipe@gov.sz	Senior Energy Officer	Swaziland	+268 404 6244 / 4047252	+268 404 2436 / 404 7252
16	Mrs	Valerie	Dorel	ITC Consulting	valeriedorel@itcconsulting.eu	Project Manager	UK	+ 44 (0) 20 8133 7552	+44 808 208 3732
17	Mr.	Canaan	Dube	RIA	efdube@dmh.co.zw	Consultant	Zimbabwe	+263 4 792973	+263 4 78 0351
18	Mr	Muzikayise	Dube	Swaziland Investment Promotion Authority	muzikayised@sipa.org.sz	Director, Research & Policy Analysis	Swaziland	+268 4040470	

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Mbabane, Swaziland on 06 - 07 May 2009
List of participants

	Title	First	Last	Organisation	Email	Position	Country	Tel	Fax
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20	Mr	Michel	Fobain	UNIPACE	fobainmichel@yahoo.fr	General Secretary of UNPC	Central African Republic	+236 21 61 93 33	
21	Mr	Phiwayinkosi	Ginindza	Swaziland Investment Promotion Authority	p.ginindza@sipa.org.sz	Chief Executive Officer	Swaziland	+268 602 7555 (cell)	+268 404 3374
22	Ms.	Eugenia	Ingabire	Rwanda Development Board	eingabire@rwandainvest.com	Investor Service and after care executive	Rwanda		
23	Ms.	Nirmala	Jeetah	Board of Investment	nirmala@investmauritius.com	Assistant Director	Mauritius	+230 203 3853	+230 203 2924
24	Mr	Thierry	Kalonji	COMESA	tkalonji@comesa.int	Senior Investment Promotion Officer	Zambia	+260 211 229752 / +260 979 211367	
25	Mr.	JR	Kaphweleza-Banda	Malawi Investmen Promotion Agency	jrkbanda@mipamw.org	General Manager/CEO	Malawi		
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27	Mr.	Abdul	Kasule	Uganda Investment Authority	akasule@ugandainvest.com	Business Development specialist	Uganda		
28	Mr.	Divyash	Keshav	Netcare	Divyash.Keshav@netcare.co.za	Corporate Finance Manager	South Africa	+27 11 301 0356	+27 11 217 9760
29	Ms.	Ramona	Kettenstock	BKP Development	bkp@bkp-development.de	Managing Partner	Germany	+49.89.1787.6047	+49.89.1787.6049
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31	Mr	Johan	Kruger	Afcap Consulting	johan@3024.co.za	PPP Implementation expert	South Africa	+27 83 2020966	
32	Mr	Kurt	Lange	CAIC	Kurt.Lange@ghl.co.tt	VICE President Shared Services	Trinidad	868 6287796	868 628 9691
33	Ms.	Gertrude	Lukika Otshumba	National Agency for Investment Promotion (ANAPI)	florykakamba@hotmail.com	Chief Offcier in charge of Investment	DR Congo	+243.9982.357.84	+243.812.610.882
34	Mr.	Sabelo	Mabuza	Swaziland Investment Promotion Authority	mabuzas@sipa.org.sz	Director - Domestic Development	Swaziland	+268 404 0470	+268 404 3374
35	Ms	Nontobeko	Mabuza	EC Delegation to Swaziland	Nontobeko.Mabuza@ec.europa.eu	Economist	Swaziland	+268 4042908	+268 4046729
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List of participants

	Title	First	Last	Organisation	Email	Position	Country	Tel	Fax
37	Mrs	Michelle	Makaroff de Bosscher	Microsoft	mmakarof@microsoft.com	EU Business Development Manager	Belgium	+32 479960332	
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40	Ms	Srakele	Masuku	Ministry of Finance	masukusiza@gov.sz	Director, Corporate & Supply Chain	Swaziland	+268 404 8145/7	+268 404 3187
41	Mr.	Richard	Mbaiwa	Zimbabwe Investment Authority	mbaiwa@zia.co.zw	CEO	Zimbabwe	+263 4 780141	
42	Ms	AP	Mkhonza	BizClim	apm@realnet.co.sz	National Ass. Expert	Swaziland		
43	Mr.	Amos	Msibi	National Disaster Management Agency		Assistant Community Dev. Office	Swaziland	+268 6059483	+268 4048107
44	Ms.	Florence	Mumba	Zambia Development Agency	fmumba@zda.org.zm	Director Investment Promotion and Privatisation	Zambia		
45	Mr.	Gérard	Muringa	Ministry of Planning	murigerdam@yahoo.fr	General Director of Development Planification	Burundi	+257.2225.4482 +257.7992.0308 (mobile)	+257.2222.4193
46	Mr	Zenzo	Ndabula	Netcare	zenzo.ndabula@netcare.co.za	Manager	South Africa	+27 4 301 0232	
47	Mr.	Donald	Ndwandwe	Ministry of Economic Planning	ndwandwed@gov.sz	Senior Economist	Swaziland	+268 4043765	
48	Mr	Jorge	Nieto Rey	EC Delegation to Swaziland	Jorge.NIETO-REY@ec.europa.eu	Head of Economic Section	Swaziland	+268 4042908	+268 4046729
49	Mr.	Mandla	Nkambule	Swaziland Investment Promotion Authority	mandlan@sipa.org.sz	Director - Investor Facilitation & Aftercare	Swaziland	+268 404 0470	+268 404 3374
50	Mr	Orono	Otweyo	PPP Unit, Ministry of Finance	oorono@perds.go.ug	Technical Advisor	Uganda	+256 41 4470 5607 +256 77 723 0684 (cell)	
51	Mr.	Chalimba	Phiri	COMESA RIA	chalimba@email.com	Chairman COMESA RIA	Zambia		
52	Mrs	Harinjanahary	Razanarisoa	Economic Development Board of Madagascar	hrazan@edbm.org	Director of Reforms and Business	Madagascar	+261 340 720 232	
53	Ms.	Sherin	Renaud	Seychelles Investment Authority	srenaud@sib.gov.sc	Managing Director	Seychelles		
54	Mr.	Mohamed Adaweh	Robleh	National Agency for Investment Promotion	medadawa@gmail.com	Assistant to General Director	Djibouti	+253.312117 +253.828568	+253.358837

FOSTERING THE DEVELOPMENT OF PPP MODELS - REGIONAL VALIDATION WORKSHOP
Mbabane, Swaziland on 06 - 07 May 2009

List of participants

	Title	First	Last	Organisation	Email	Position	Country	Tel	Fax
55	Ms.	Heba	Salama	COMESA RIA	hsalama@comesaria.org	Manager	Egypt	+202 2405 5428	+202 2405 5421
56	Mrs	Lonkululeko	Sibandze	Ministry of Economic Planning		Principal Economist	Swaziland	+268 404 8155	
57	Mr	Mohamed	Tarek	Ministry of Finance	mtarek@mof.gov.eg	Sector Officer	Egypt	+202.2342.1283/84	+202.2342.1283/84
58	Mr	Martin	Tofinga	PIPSO	martintofinga@gmail.com, martintofinga@yahoo.com	PIPSO Board Member	Kiribati	(686) 50166 or (686) 28218	
59	Mr	Zizwe Paul	Vilane	Swaziland Investment Promotion Authority	vilanez@sipa.org.sz	Foreign Direct Investment	Swaziland	+268 602 3138 (cell)	+268 404 3374
60	Mr.	Abi	Woldemeskel	Ethiopian Investment Agency	Abi.eia@ethionet.et	Director General	Ethiopia	251 911 225384 (mobile) 251 11 5539474	251 11 5514396

Annex 7: Validation Workshop Evaluation Report

WORKSHOP EVALUATION

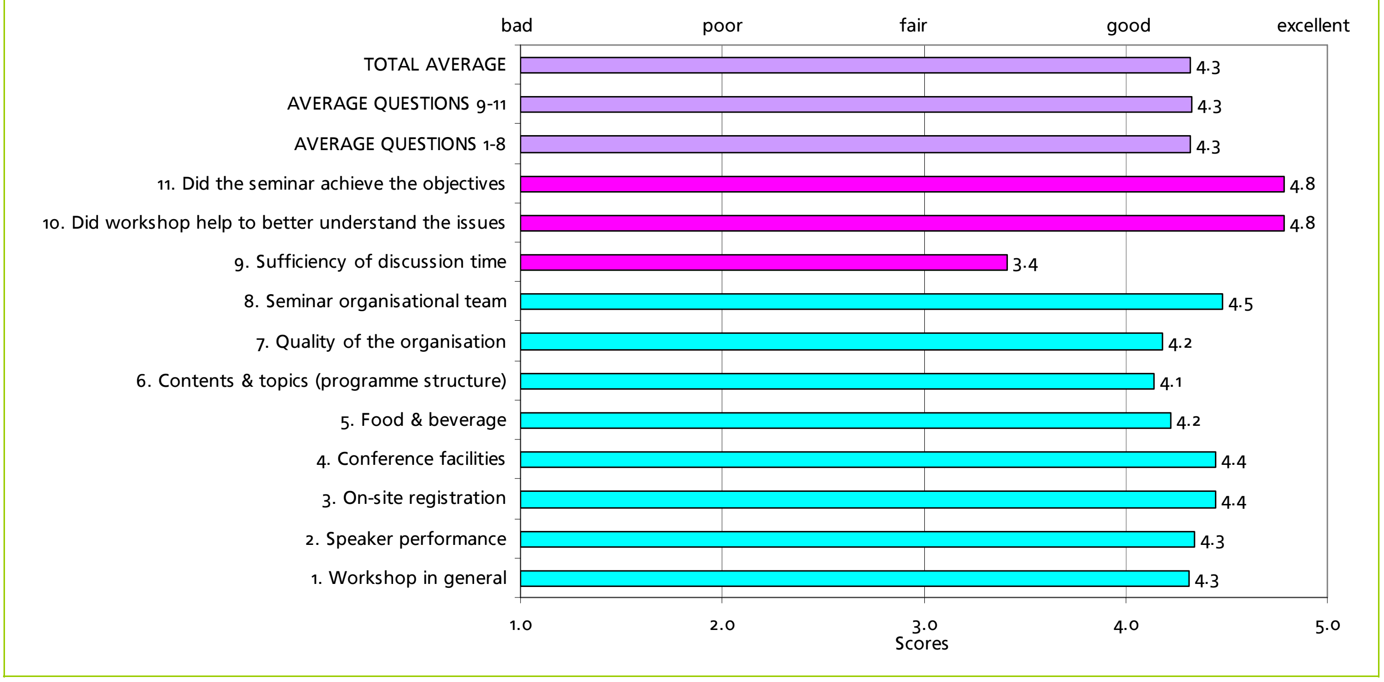
The workshop was evaluated by using the evaluation sheets provided by BizClim. These were handed out to participants on the second workshop day and collected at the end of the workshop. 29 completed questionnaires were collected.

For the quantitative evaluation, grades from 1 ("bad") to 5 ("excellent") were assigned to responses for questions 1 to 8, and grades 1 ("no"), 3 ("partially") and 5 ("yes") to questions 9 to 11, where only three options for response were possible.

The following chart provides a summary of the evaluation. Overall, participants expressed a high degree of satisfaction with the workshop (score 4.3 out of 5). Satisfaction was even higher with regard to the two main overall outcome indicators. Participants gave an excellent 4.8 out of 5 with regard to the questions whether or not the workshop achieved its objectives and whether it helped participants to better understand PPP issues.

The only "complaint" of participants related to the discussion time which was felt to be not sufficient.

Workshop evaluation results



Source: Table 1 below.

With regard to the qualitative comments provided by participants, these are presented below. They confirm the high degree of satisfaction with most aspects of the workshop, in particular the partipatory approach used, but suggest that a longer workshop would have been even more fruitful.

Participants' comments

Do you feel the seminar achieved its objectives? Can you explain why?

- It provided all it sought to provide and there were no qualms from participants;
- Experience with PPPs were shared and helped focus on what needs to be done to implement PPPs;
- It helped to understand PPPs main issues and knowledge sharing and experience among participants;
- By giving the opportunity to each country to explain their experience in PPPs;
- To gather relevant people and share experience on this important topic is good;
- Informative and practical;
- Time constraints is an issue;
- Having a better understanding of PPP than before;
- Le temps insuffisant;
- Le séminaire nous a permis de mieux appréhender le concept de PPP et de mieux orienter leur mise en œuvre (modèle) dans l'espace CEMAC ;
- Les échanges d'expériences ont été appréciables.

What were the major strengths & weaknesses of the seminar?

- The choice of speakers was exceptionally outstanding as they were able to meet the goals of the seminar whereas the programme was not well structured;
- Well organised, knowledgeable speakers;
- Knowledgeable speaker, real examples given and good organisation BUT period of workshop too short, not all speakers had formal presentations;
- Very informative, I particularly benefited a lot from William Dachs' presentation;
- Regular seminars of this sort to ensure correct PPP project to start in all COMESA countries since the time was so short;
- Major strengths were the quality of speakers & information provided;
- Well organised seminar but would have needed three days to allow more discussions;
- A lot of issues/topics covered in a short time BUT not enough time to discuss;
- Very complete topics and regional experience;
- Participation of delegates (strength)
- Strengths: practical experience shared by speakers and clarity in the definition of PPP;
- Bringing experts to talk about PPPs, case studies BUT weakness: asking people to make presentations they did not prepare for;
- Strengths: organisation and logistics BUT weakness: programme and time for discussion;
- Insufficient time to countries for experience sharing;
- Strengths: practical, sharing of countries' experiences, and excellent speakers; BUT: content of programme too long;

- Good sharing of experience BUT time was too short;
- Very educative;
- Lots of important information BUT little time;
- Understanding the definition of PPP and getting the experience of successful PPP Programmes especially the South African experience. The believe that PPP works is a major strengths for countries like Kenya who have just gazetted the regulatory framework;
- A specific time should be determined to speakers;
- Forts: la qualité des intervenants ; Le temps insuffisants et le qualité de l'interprétation
- Les présentations de la situation des PPP dans les différents pays et leur évolution constituent des points forts ;
- Point faible : traduction ; point fort : lieu, la convivialité ;
- Forts : accueil et convivialité ; PPPs : expérience Sud-Africaine ; PPPs : expérience des délégués ; Faible : la traduction était très mauvaise
- Faibles : absence de l'effort de la partie (employés) du privé; absence du fonctionnement des PPP.

Please indicate the priority areas which need improvement for future seminar (venue, organization of the seminar, content of programme, choice of speakers, etc.)

- In future it might help you to know that Royal Swazi Sun do not have the best cooks in the world;
- Invite political leaders/MPs within the country that host the seminar;
- No need to change;
- Need more time to cover the programme. Include more speakers with regional experience;
- Much more exchange, invite private sector in order for them to know what can be implemented;
- Contents of programme;
- More discussion time;
- Use local organisers for local arrangements and logistics as they know the place, venues etc, better;
- Time factor: three days would be appropriate;
- What we need to do to encourage PPPs in our countries and COMESA region;
- The allocated time did not suffice the presentations. The content was very intense but necessary and important;
- More time should be allocated for Q&A which facilitate discussions and sharing ideas among the participants;
- Réservez le temps suffisant pour les échanges et la qualité de l'interprétation;
- La promotion des PME-PMI, le secteur informel, les marchés publics et le commerce dans les pays de la CEMAC et de la CEDEAO avec des orateurs divers (francophone et anglophones) ;
- Documentation bilingues
- Le suivi et la mise en oeuvre des résolutions et recommandations. Les objectifs du prochain séminaire : mécanisme de contrôle et application.

Which topics would like to see included in future events?

- Should include issues of relief in the event that the original contract has been frustrated;
- Topics covered were good;
- Clear definition of PPP;
- Example of an actual PPP process being implemented from identification to negotiation and closure from government side;
- How to make IPAs more effective on the development of PPPs and the development of the regional investment

promotion strategy;

- Policy advocacy, Investor targeting; project feasibility;
- Resolution and way forward;
- An example of implementation of PPP laws, what was done in a typical PPP, what were the results;
- Policy advocacy in improving investment climate;
- Support to member countries in identifying suitable PPPs and carrying out feasibility studies;
- What are the available capacity building windows?
- PPP projects: failed projects and strategies to revive them;
- Government's role in PPP implementation;
- PPP case study from private sector point of view;
- Strengthening the domestic private sector as a tool for attracting FDI in COMESA region;
- Toutes les questions liées à l'environnement des affaires (juridiques, fiscales, marchés publics, transports, l'énergie, l'économie, les finances et le commerce….) ;
- S'inviter au moins un représentant par partenaire du PPP (soit part pays Etat & Privé).

Other comments and suggestions

- The cocktail should have been held at the end of the seminar. Level of participation was compromised on the second day with a sizeable number of participants showing signs of fatigue and sleepiness;
- COMESA should assist or advice the countries on the importance and benefit of PPP;
- As a country (Zimbabwe), we will need assistance with developing a legal framework and institutional arrangements for PPP;
- More methodologies should be used to enable participants more participation, e.g. group work, simulations, etc;
- COMESA should develop regional guidelines/standard docs which can be used by the COMESA countries; Need for a Regional PPP Unit within COMESA; Form COMESA Regional PPP Network;
- Very insightful and enriching experience;
- Create time to explore on the host country's rich African culture;
- Follow-up workshop/meeting on the development of PPP model and success stories;
- Share the negative sides of PPP projects, failed project experiences and ways to put them back on track;
- To frequently hold such workshops until PPPs are fully understood;
- Respect de l'Agenda et des thèmes annoncés. Organiser une formation des Francophones à part et des Anglophones à part.
- La traduction en Anglais ou Français semble une bonne initiative à pérenniser car résolvant les problèmes de communication ;
- Un CD de toutes les présentations.

Table 1: Participants' responses to workshop evaluation questions

Fostering the development of PPP Models in the COMESA Region - Regional Validation Workshop Swaziland, 06-07 May 2009

EVALUATION BY PARTICIPANTS

SCORES:	Questions 1-8	Questions 9-11
	5 Exellent	5 yes
	4 Good	
	3 Fair	3 partially
	2 Poor	
	1 Bad	1 no

Evaluation Items	Avrg Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	Total # Answers	Score
1. Workshop in general	4.3	4	5	5	4	5	5	4	5	4	4	5	4	5	4	4	4	5	4	5	4	4	4	5	4	4	3	4	4	4	29	125
2. Speaker performance	4.3	5	4	4	4	5	5	4	4	5	4	5	4	5	4	4	4	4	4	5	4	4	5	5	4	4	3	5	5	4	29	126
3. On-site registration	4.4	4	4	5	5	5	5	3	4	4	4	5	5	5	3	4	4	5	4	5	5	4	4	5	5	5	4	5	4	5	29	129
4. Conference facilities	4.4	3	4	5	4	5	5	4	4	4	3	5	5	4	4	4	4	5	4	5	5	5	4	5	5	5	4	5	5	5	29	129
5. Food & beverage	4.2	4	4		4	3	3	3	5	4	4	5	5	4	5	3	3	5	4	5	4	5		5	5	4	4	5	5	4	27	114
6. Contents & topics (programme structure)	4.1	4	4	5	4	4	4	4	4	4	4	5	4	4	4	5	4	5	4	5	4	3	4	4	4	4	4	4	4	4	29	120
7. Quality of the organisation	4.2	4	4	5	4	4	4	4	3		3	5	4	5	4	4	4	5	4	5	4	4	4	5	5	4	4	5	5	2	28	117
8. Seminar organisational team	4.5	4	4	5	5	4	5	4	4	5	4	5	5	5	4	4	4	5	4	5	5	4	4	5	5	4	4	5	5	4	29	130
9. Sufficiency of discussion time	3.4	5	3	5	5	3	3	5	3	3	3	5	3	1	5	3	1	5	3	3	3	1	5	5	1	1	3	3	5	5	29	99
10. Did workshop help to better understand the issues	4.8	5		5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	3	5	5	5	5	3	5	3	5	28	134
11. Did the seminar achieve the objectives	4.8	5	5	5	5	5	5	5	5	5	3	5	5		5	5	5	5	5	5	5	3	5	5	5	3	5	5	5	5	28	134
AVERAGE QUESTIONS 1-8	4.3	4.0	4.1	4.9	4.3	4.4	4.5	3.8	4.1	4.3	3.8	5.0	4.5	4.6	4.0	4.0	3.9	4.9	4.0	5.0	4.4	4.1	4.1	4.9	4.6	4.3	3.8	4.8	4.6	4.0	28.6	123.8
AVERAGE QUESTIONS 9-11	4.3	5.0	4.0	5.0	5.0	4.3	4.3	5.0	4.3	4.3	3.7	5.0	4.3	3.0	5.0	4.3	3.7	5.0	4.3	4.3	4.3	2.3	5.0	5.0	3.7	3.0	3.7	4.3	4.3	5.0	28.3	122.3
TOTAL AVERAGE	4.3	4.3	4.1	4.9	4.5	4.4	4.5	4.1	4.2	4.3	3.7	5.0	4.5	4.3	4.3	4.1	3.8	4.9	4.1	4.8	4.4	3.6	4.4	4.9	4.4	3.9	3.7	4.6	4.5	4.3	28.5	123.4

Annex 8: Validation Workshop Media Coverage