Draft Principles for Public-Private Partnerships

Ensuring Beneficial Outcomes for Local/Regional Authorities and their Citizens

Background

Cities and sub-national governments are on the front lines for implementing the Sustainable Development Goals (SDGs), and the New Urban Agenda, but coming up with the resources to finance implementation – estimated at trillions of dollars per year globally – is a critical challenge facing all levels of government.

Public-private partnerships (PPPs) have been touted as a key mechanism for accessing private capital in support of implementation, particularly for the development and/or management of infrastructure and basic services at the city/regional level in developing countries.

PPPs are generally contractual agreements between one or more local/regional governments and, principally, private business partners. Such contractual partnerships may need to adhere to national guidelines/protocols. Similarly, while it may be useful to follow UN guidance and principles, these PPPs do not fall under UN auspices. Therefore there is a need to develop PPP guidelines and protocols separate from the multi-stakeholder partnership (MSP) discussions and negotiations at the UN.

There is both tremendous enthusiasm for and skepticism about the role and impact of PPPs for sustainable urbanization. The high level of interest is due both to the emphasis on partnerships in the 2030 Agenda for Sustainable Development and to the sheer magnitude of urban infrastructure investment requirements in developing countries. Among the potential benefits of PPPs to governments put forth by proponents are access to: private capital where public financing is unavailable or insufficient, advanced technologies from leading global businesses, and management expertise that may not exist locally. The potential benefits to businesses include access to markets and revenue streams, as well as understanding of local needs, expectations, and political conditions/constraints.

On the other hand, skeptics of PPPs point to a number of potential risks/challenges for governments: distortion of the public agenda, loss of local control over critical infrastructure and services, and co-option of government or civil society partners; commoditization of commons; lack of strong local legal/regulatory frameworks and the need for institutional capacity-building; lack of transparency and accountability, including hidden or "off-book" accounting treatment of

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PPP-related debt; the need for improved monitoring and evaluation; inadequate investment in maintenance; and displacement of public employees.

The following Draft Principles are intended to identify the necessary conditions for such partnerships to be potentially beneficial for local/regional authorities and their citizens, particularly in developing countries where the conditions for PPPs pose considerable challenges.

These Draft Principles are based on: (1) a review of relevant literature, (2) presentations and discussions at a June 7, 2016 workshop convened by the Communitas Coalition in New York City on Public-Private Partnerships for Urban Infrastructure: The Potential Benefits and Risks.

Objectives of PPPs

1. PPPs should result in improved outcomes for end users and citizens, through improved service quality, accessibility and affordability.

2. PPPs should be consistent with and support the long-range sustainable development plans of the public sector.

Conditions of Suitability

The following conditions need to be met in order for the local/regional authority to successfully engage in a PPP:

3. Need "sound enabling environment" – rule of law, high standards of public and corporate governance including: fair competition laws, transparency, accountability and enforcement mechanisms, and adequate anti-corruption provisions.

4. Public authority must have the capacity to negotiate and independently oversee implementation of PPP on an equal basis with private sector counterparts.

5. Public authorities should evaluate the potential life-cycle costs, benefits, and risks of a range of available infrastructure financing and management alternatives, including a careful "Value for Money" analysis, comparing the financial impacts of the PPP option against those of a traditional public financing option.

6. Transparency measures should be maintained throughout the lifecycle of the project, including full and proactive public disclosure of PPP agreements, with specific accountability instruments that establish performance-based responsibilities of all parties. Governments should include PPPs in national accounts rather than off-balance sheet, so they are part of debt sustainability analyses.

7. Meaningful and sustained consultation with and participation of end-users and other (local) stakeholders in decision making through a deliberative process, from design to implementation and evaluation, including prior to infrastructure project initiation.

Contracting Provisions

8. Appropriate (equitable) risk sharing should be included, based on assessment of public interest, with caution concerning any public sector guarantees.

9. Payment modalities and return should be commensurate with investment risk allocation. Remuneration to the private party(ies) should be linked to predetermined, mutually-agreed performance metrics.

10. The sources of revenue to pay the private partner should be clearly identified and made transparent from the outset of a PPP.

11. Employment preference should be specified for local labor and, where it exists, for unionized labor to ensure health and safety protections, honor prevailing wage rates, and maintain benefit commitments (e.g., pensions, holidays). At a minimum, jobs created must abide by the ILO's decent work framework.

12. Responsibilities concerning social and environmental aspects of the projects should be clearly identified, as well as risk allocation in case of unforeseen events.

13. Clear, independent performance monitoring and reporting mechanisms must be identified, including provisions to monitor private partner(s)' observance of human rights principles and coherence with the Sustainable Development Goals (SDGs).

14. Include clear, mutually acceptable dispute resolution procedures as well as defined mechanisms for renegotiation, with full public disclosure of renegotiation process and results.

15. Clearly identify the grounds and procedures for terminating the partnership, with full disclosure of the terms of termination within the PPP agreement.