

# Providing Essential Infrastructure in Fragility, Conflict and Violence-Affected States:

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A toolkit for enabling SME participation



PPIAF provides technical assistance to governments to support the creation of a sound, enabling environment for the provision of basic infrastructure services by the private sector. PPIAF also supports the generation and dissemination of knowledge on emerging practices on matters relating to private sector involvement in infrastructure. The production of this report was funded by PPIAF.

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## Acronyms

<b>EU</b>	European Union
<b>FCV</b>	Fragility, conflict or violence affected countries or zones
<b>IDPs</b>	Internally displaced persons
<b>IFI</b>	International financial institution(s)
<b>IPP</b>	Independent Power Producer(s)
<b>OBA</b>	Output-based aid
<b>PO</b>	Private Operator
<b>PPIAF</b>	Public-Private Infrastructure Advisory Facility
<b>PPP(s)</b>	Public-private partnership(s)
<b>PPPIRC</b>	Public-Private Partnership Information Resource Center
<b>PSP</b>	Private Sector Participation
<b>PWS</b>	Piped Water System(s)
<b>SPSP or SSP</b>	Small-scale private sector provider
<b>SME</b>	Small and medium-sized enterprises; the term encompasses “micro enterprises”
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNEP</b>	United Nations Environment Program
<b>UNICEF</b>	United Nations Children’s Fund
<b>WBG</b>	World Bank Group

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# I. INTRODUCTION AND OVERVIEW

## A. Purpose and rationale of Toolkit

### 1. Purpose of Toolkit

The purpose of the Toolkit is to assist policymakers and practitioners in government to create an enabling environment for SMEs to be engaged in private sector participation initiatives (e.g., public-private partnerships (PPPs)) in countries affected by fragility, conflict and violence (FCV), and thereby generate benefits for delivery of essential services, recovery and reconstruction, regional job creation, SME growth and competitiveness, and shared prosperity. This is not as “niche” an issue as it might seem at first glance. It is expected that by 2030 fully half of the world’s poor will live in FCV countries<sup>1</sup> – though the FCV situation is not found only in low-income countries – and PSPs involving SMEs may in some cases be a primary or even the only available source of delivery of essential services and infrastructure. That is particularly the case in the water and energy sectors, where SMEs have been called upon in a number of FCV contexts to engage in the operation of essential infrastructure services in those sectors (e.g., through the operation of mini-grids).

**SMEs in general, but especially in FCV contexts, face major costs, risks and capacity and financial constraints.** Such challenges may be particularly acute in public procurement and related markets when PSP initiatives are being developed and implemented. Creating an enabling environment for SME participation in PSPs in FCV contexts involves an entire ecosystem. Accordingly, the Toolkit provides an overview of the types of challenges that may be encountered in such scenarios and highlights, based on actual case-studies, possible solutions and conditions that may enable the engagement of SMEs to delivery essential infrastructure services to FCV affected populations through PSPs.

**At the same time, the Toolkit is not intended to advocate for the use of any particular strategy for provision of essential infrastructure services.** Rather, the Toolkit aims to assist policy makers in considering how to deal with various issues that may arise when a PSP type of approach is applied. The Toolkit does not advocate for PSPs over use of traditional public sector approaches. As noted by the OECD with respect to the water sector, “Debate has now moved on from public vs. private ownership, to consider ways in which water services can be provided not only safely but also most efficiently, effectively and sustainably, regardless of ownership”.<sup>2</sup>

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<sup>1</sup> The World Bank. Fragility, Conflict and Violence.

<http://www.worldbank.org/en/topic/fragilityconflictviolence/overview>.

<sup>2</sup> OECD, *Managing Water for All: An OECD perspective on pricing and finance* (2009), p. 17; available at <http://www.oecd.org/tad/sustainable-agriculture/44476961.pdf>.



Accordingly, the Toolkit employs a broad notion of private-sector participation (PSP) and does not focus solely on PPPs. Traditionally, doing a PPP will be costly and complicated and often the cost of procuring through PPPs will outweigh the potential value-for-money. However, there are lower-barrier forms of private participation including licensing or fostering competitive markets (such as in small-scale power production) that could be much more suitable for FCVs and SMEs. The characteristics of owning the assets and having the direct relationship with consumers may be better secured with these types of arrangements, which, in some sense, may alleviate political risks. The Toolkit, thus, envisages a range of possible transaction models, with differing degrees and types of private sector and public sector involvement (see section I.C, concerning types and chief characteristics of various forms of PSP/PPP).

## 2. Case studies

### **The discussion in the Toolkit features a number of actual case-studies of SME participation in provision of essential infrastructure services in FCV contexts.**

Introductory information about the case-studies, which display a variety of forms of private sector involvement, is provided below. Specific aspects of those cases are mentioned at various places throughout the Toolkit.

#### **Box I.1 Introduction of case studies**

##### **Benin (water)<sup>3</sup>**

The “*affermage*” model began to be implemented in 2007 in order to connect decentralized municipalities and small-scale private operators (POs). According to a diagnostic carried out by Initiative EAU in 2010, only 16% of PWS were profitable and 27% had sufficient financial resources to renew assets. This was partly due, for some PWS, to high fees and charges paid by the POs to the municipalities (sometimes reaching 35% of the tariff). The World Bank Group-supported Small Scale Piped Water Schemes Inclusive Business Support Project piloted a subsidized concession for groups of PWS (“clusters”) as an alternative to the *affermage* model previously used, allowing private operators to be responsible for carrying out the investments in the water sector, supplemented with capacity building support for public and private partners, as well as financing support for private operators. That was meant to help overcome a lack of capacity of private operators due to limited technical skills, lack of experience with tendering processes, and limited access to finance to carry out required investments. Capacity was also lacking in municipalities (technical, monitoring and financing capacity).<sup>4</sup>

##### **Somalia (water)<sup>5</sup>**

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<sup>3</sup> World Bank. Report November ACS13867: Republic of Benin, Benin Small Scale Piped Water Schemes Inclusive Business Support Project, A Case Study.” June 10, 2015.

<sup>4</sup> *Ibid.*

<sup>5</sup> Hydroconseil. *Final Evaluation of UNICEF’s Programme “Making PPP Work for Rural Water Supply in Somalia* [https://www.unicef.org/evaluation/files/Somalia\\_2012-011\\_Rural\\_PPP\\_evaluation\\_final\\_evaluation\\_report.pdf](https://www.unicef.org/evaluation/files/Somalia_2012-011_Rural_PPP_evaluation_final_evaluation_report.pdf).

After the fall of the central government in 1991, the private sector took over the operation and management of public sources. Local committees were formed to facilitate and monitor projects funded by NGOs and UN agencies. In the late 1990s-2000s, PSPs formed in urban centers, largely guided by UNICEF, including in Jowhar in 1997, Bossaso in 2000, Gikayo in 2003, Borama in 2005, and in Gardho.

In the EU/UNICEF-supported Making Public-Private Partnership Work for Rural Committees in Somalia project, project components included:

- a. Design and establishment of Public-Private Partnerships for rural water supply.
- b. Documenting the PPP experiences to allow replication or improvement in other rural areas in Somalia=
- c. Improving the water supply infrastructure to make the private sector participation economically reasonable=

Urban utilities were broken into local PPP companies in Puntland and Somaliland. This arrangement resulted in reduced administrative burdens for local company managers enabling their ability to be more responsive to rural user demands and improved confidence in the community. Major challenges included: low capacity of government in running water supply for population in rural districts, partly because of difficulties in accessibility of smaller villages<sup>6</sup>; project locations in Puntland and Somaliland are water scarce; lack of willingness of urban water companies to extend services to rural areas because of anticipated low return to investment; low initial capacity of local private operators; fragile political situation making it difficult to maintain the project's presence in the field.

### **Mali (energy)<sup>7</sup>**

In 2014, the World Bank supported Mali in a project to expand, on the basis of private sector participation, rural access to modern energy services and to increase the share of renewable generation in rural electricity supply, including providing targeted technical assistance and training to operators in the hybrid systems.<sup>8</sup> A dual approach was applied (both top-down and bottom-up). The bottom-up component was driven by decisions from local private entrepreneurs/cooperatives to construct and operate small-scale mini-grids in rural areas based on their perception of the local market. Project components included:

- a) Creation of an Agency for Rural Electrification as single source of all rural initiatives and peri regulation
- b) Establishment of a Fund for Rural Electrification to finance subprojects ER IRON AER
- c) Development of a mechanism of flexible regulation to ensure adequate performance operators
- d) Strengthening and scaling up rural electrification through hybrid PV solar/diesel generation in rural mini-grids, including capacity building of rural private operators

Major challenges included low capacity of private operators and gaps in the legal framework on PSPs.

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<sup>6</sup> UNICEF. 2012. "Final Evaluation of UNICEF's Programme: 'making PPP work for rural water supply in Somalia.'" [http://www.unicef.org/evaluation/files/Somalia\\_2012-011\\_Rural\\_PPP\\_evaluation\\_final\\_evaluation\\_report.pdf](http://www.unicef.org/evaluation/files/Somalia_2012-011_Rural_PPP_evaluation_final_evaluation_report.pdf), 17.

<sup>7</sup> WBG, Project Concept Note on Mali Rural Electrification Hybrid System Project (P131084)

<sup>8</sup> WBG, Mali (P131084) Project Concept Note.

### **Cambodia (energy)<sup>9</sup>**

The World Bank, in partnership with the Asian Development Bank, provided support to Cambodia in 2003 in the power sector, aiming to:

- a) Improve power sector efficiency and reliability and reduce electricity supply costs
- b) Improve standards of living and foster economic growth in rural areas by expanding rural electricity supplies
- c) Strengthen electricity institutions, regulatory framework, and “enabling environment” for sector commercialization and privatization<sup>10</sup>

Through independent power producers (IPPs), private sector provides generation to state-run utilities. Relevant Project Components include:

- a) **Rural Electrification:** this element of the project included supporting the partnership between EDC and the Rural Energy Enterprises and using private sector providers in operation of rural distribution systems. EC would also identify existing enterprises and explore options for private sector participation (e.g. distribution licensing, billing and collection arrangements, management contracts, and leasing arrangements).
- b) **Pilot Rural Electrification Fund (REF):** Implement mini and off-grid electrification program, providing assistance to private sector developers.
- c) **Institutional development and sector reform:** consulting and advisory services for Ministry of Industry, Mines and Energy (renewable energy policy, power market analysis, power sector plan), Rural Electrification Fund (promote rural income generation options, capacity building), Energy Authority of Cambodia (EAC), and EDC (project implementation, creating independent monitoring agency, capacity building, etc).<sup>11</sup>

Most projects are small-scale and are targeted at the urban sector. POs in rural areas have been supported by donors through targeted subsidy incentives and Design-Build-Lease contracts intended to reduce investment risk.<sup>12</sup> 600-1000 small private power systems are operating in Cambodia, serving half a million customers, about 200 householders per business, (as many as the national power company) and provide half of country’s generating capacity (many of whom set up their businesses prior to interim government in mid 1990s). The majority of small operators meter their customers and charge either a flat rate or a single block decreasing tariff. They finance

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<sup>9</sup> PPIAF World Bank, *Private Solutions for Infrastructure in Cambodia* (2002); available at <https://openknowledge.worldbank.org/handle/10986/15223>.

<sup>10</sup> IEG for P064844: “Rural Electrification and Transmission Project:” <http://wbdocs.worldbank.org/wbdocs/viewer/docViewer/index1.jsp?objectId=090224b082285b1c&standalone=true&respositoryId=WBDocs>.

<sup>11</sup> IEG for P064844: “Rural Electrification and Transmission Project:” <http://wbdocs.worldbank.org/wbdocs/viewer/docViewer/index1.jsp?objectId=090224b082285b1c&standalone=true&respositoryId=WBDocs>.

<sup>12</sup> Schwartz, Jordan, Shelly Hahn, and Ian Bannon. 2004. “The Private Sector’s Role in the Provision of Infrastructure in Post-Conflict Countries.” <http://www.ppiaf.org/sites/ppiaf.org/files/publication/Trends%20Policy%20Options-1-Private%20Sector%20in%20Post%20Conflict%20Countries%20-%20JSchwartz%20et%20al.pdf>, 10.

themselves through equity (49%), debt: family borrowing (22%), informal debt (23%), micro-finance (6%).

### **Rwanda (water)**<sup>13</sup>

The Law on Public Procurement includes PPP provisions. PPP arrangements are set on an individual contract basis. A PPP Law has been enacted in 2016.<sup>14</sup>

The World Bank Group provided support for a Rural Water Supply and Sanitation Project to Rwanda, targeting the rural population in 16 communes selected based on (1) low service coverage rates, (2) little external support for sector investments and (3) high demand for improved services. The project objectives included to:

- a) Increase availability of water supply and sanitation services in rural areas
- b) Strengthen the capacity of communities to pay water supply and sanitation investments and manage water supply and sanitation services, as well as of agencies in charge of water supply services, communes, water users, and private sector
- c) Ensure mobile community support for rehabilitation/expansion of major regional water systems and their operation by the private sector

**Subprojects Component:** grants to communities provided to finance construction of water and sanitation facilities from community development plans, technical assistance/training/outreach to plan, implement, and operate/maintain water and sanitation facilities sustainability and effectively, and use of a demand response approach.

**Major water supply systems:** decentralized and demand-responsive approach to water supply system rehabilitation and establishment of sustainable management arrangements for those systems tested in Mayaga system and groundwork for Lava Region systems.

**Capacity building** for private sector, NGOs as providers of works, goods, and services, as well as public sector (DEA, communes, CDC) as facilitators of sub-sector development and management process.

During implementation, (local) private operators were sought due to the worsening performance of community management of piped systems. PPPs were supported for the operation of water facilities.

- a) Selected on competitive basis based on price of water, fee paid by the operator to the district and quality and reliability of technical proposal
- b) Contracts created by each district, rather than using standardized contracts
- c) Bidding documents created by inter-district association in September 2005, composed of representatives from four districts served by the system
- d) Operating contract was similar to lease contract, where operator expected to be compensated from water sales without external subsidies (with provisions to relook at the economic conditions after a year due to demand uncertainties)

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<sup>13</sup> ICR0000750 IDA 3368A: Republic of Rwanda: Rural Water Supply and Sanitation Project, June 26, 2008.

<sup>14</sup> PPP Knowledge Lab. Rwanda. <https://pppknowledgelab.org/countries/rwanda>.

Major challenges included: top-down investment programming; low cost recovery; high per-capita investment costs for system construction in water sector; lack of dedicated PPP legal framework.

### 3. Rationale for SME PSPs in FCV contexts

#### Private sector activity in FCV contexts

**The private sector has an indispensable role to play in establishing resilience and sustainable development in FCV contexts.**

While the difficulties facing private sector activity in FCV circumstances can certainly be formidable, as recognized in a recent *g7plus Briefing Note*, there is a track record of successful private sector investment and other economic activity in FCV zones.<sup>15</sup>

“Reforms to improve the business environment are as difficult as any other reforms in a fragile political environment; if the classic business climate reforms had been in place, the country most likely would not be facing fragility”

- *g7plus Briefing Note 3: The Private Sector in Conflict-affected States*, p. 1

**The phenomenon of SME participation is set against a background of changing composition of actors involved in provision of certain types of infrastructure services.**

For example, in the water sector, there is a greater diversity of private sector participants than had been the case earlier (including state actors, large private companies, which may be foreign, and which may or may not be concentrated on water-related activities, SPSPs).<sup>16</sup>

**SMEs have a particularly crucial role to play in FCV zones.** In the first place, many fragile states have “SME economies”. SMEs provide employment, essential supplies and services, can flexibly adapt to prevailing circumstances in FCV zones and take advantage of opportunities other, bigger players may not be able to take, assist community cohesion, instill confidence.<sup>17</sup> In such ways, SMEs can play an important role in defusing factors contributing to fragility (e.g., by providing youth employment and re-integration of ex-combatants) and thereby help peace-building and demonstrate peace dividends. Conversely, neglect of the SME sector may feed fragility.

<sup>15</sup> *g7plus Briefing Note: The Private Sector in Conflict-affected States*, p. 1; available at [http://www.g7plus.org/sites/default/files/basic-page-downloads/FFD\\_side\\_event\\_BRIEF\\_3-private\\_sector.pdf](http://www.g7plus.org/sites/default/files/basic-page-downloads/FFD_side_event_BRIEF_3-private_sector.pdf). This cites the examples of investment in the Democratic Republic of Congo (DRC) and Liberia which have seen significant direct foreign investment.

<sup>16</sup> OECD, *Managing Water for All*, *supra*, note 2, p. 17.

<sup>17</sup> Anette Hoffmann and Paul Lange, *Growing or Coping? Evidence from Small and medium sized enterprises in fragile settings* (CRU Report from Clingendael – Netherlands Institute for International Relations, 2016), p. 10; available at [https://www.clingendael.nl/pub/2016/growing\\_or\\_coping/](https://www.clingendael.nl/pub/2016/growing_or_coping/).

“... compared with larger businesses, SMEs have been appreciated for their ability to accommodate workers in places where larger-scale investment is unlikely to become a more common reality”

- Hoffmann and Lange, *Growing or Coping?*, p. 11 (see note 18)

### *Areas of SME activity*

Empirical evidence suggests that SMEs are particularly active in the manufacturing and textile sectors, in addition to traditional activities including trading and agriculture. In sectors such as waste, water, and energy, SME participation may be at a lower level, and it is still, as a general rule, more likely that SME participation would be in the form of subcontracting rather than the direct award of PSP contracts. Nevertheless, there is a perception in FCV contexts of a greater need for SME activity in the above-mentioned utilities sectors, which often are underserved or not served at all, especially in the FCV context.<sup>18</sup>

### *Meeting infrastructure needs of underserved populations*

**The need for critical services in the FCV context is multifaceted.** For example, in the water sector, there may be competition among different groups, which may be linked to underlying tensions and conflict. Additionally, there may be competition among various potential uses of the water (e.g., between urban water supply and agriculture).<sup>19</sup>

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<sup>18</sup> See report on Survey on SME Participation in Public-Private Partnerships in Annex B.

<sup>19</sup> OECD, *Managing Water for All*, *supra*, note 2, p. 32.

**PSPs involving SMEs are potentially an important tool for meeting infrastructure and service delivery needs in FCV countries.** While the conditions for successful planning and

implementation of PSP projects are more likely to be found in stable countries, that does not diminish the fact that in scenarios where the government lacks capacity to provide essential services and infrastructure, where established utilities may not serve the needs of the local population, and where large contractors may not be available or interested to venture, there may be a significant role for PSPs involving SMEs. Such SME involvement may be crucial in filling the infrastructure and service gap, including in FCV contexts where the public sector's and utilities' ability to provide essential infrastructure and services may be weakened, and the ability of large contractors to operate may be limited (at the least without some involvement of SMEs). SMEs providing such infrastructure services (in sectors including water, electricity, sanitation, solid waste, transport and broader energy services) are also referred to broadly in some contexts as SPSPs.<sup>20</sup>

**Box I.2 Small-scale private service providers**

**Water sector** – services span small handcart vendors, water kiosks standpipes, tankers and private networks

**Electricity sector** – services span battery charging stations, solar home systems, isolated mini power grids, resale of electricity bought in bulk

- See Judy Baker, *Opportunities and Challenges for Small Scale Private Sector Service Providers in Electricity and Water Supply* (see note 21)

**Apart from the possibility that SMEs are in some cases the only option for providing essential services, they may have some comparative advantages over utilities.** While traditional utilities may offer advantages in terms of size and quality, their services have often not been available in the FCV context and it is SMEs that have stepped in to meet shortfalls and gaps in service. SMEs' comparative advantages include, in addition to being available and already being in the affected areas, knowledge of the concerned area, the population and its requirements.

**Apart from the job creation and entrepreneurship generated by SME-based PSPs, such activities can also catalyze broader private sector activity and development.** For example, such initiatives in the electricity sector may help to address what has been

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<sup>20</sup> See, for example, Judy L. Baker, *Opportunities and Challenges for Small Scale Private Sector Service Providers in Electricity and Water Supply: Evidence from Bangladesh, Cambodia, Kenya, and the Philippines*, World Bank and PPIAF (2009), p. 1; it is noted that services operated by SPSPs “range from well-organized networks such as electric mini-grids and small private water networks (SPNs), to mobile distributors of water (tankers), and smaller operations such as battery charging stations, water kiosks, and standpipes”; available at <http://documents.worldbank.org/curated/en/346781468047737167/pdf/535040WPOSSPSP10Box345611B01PUBLIC1.pdf>.

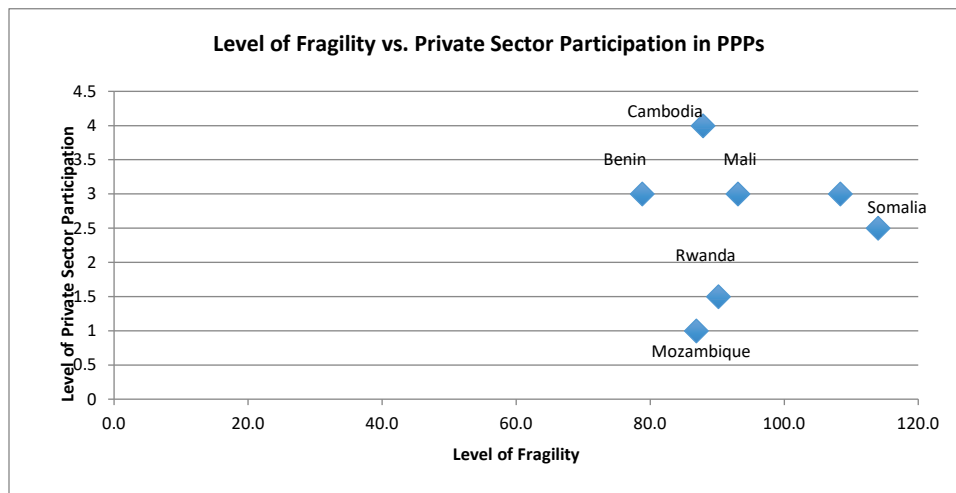


highlighted as the primary constraint encountered by the private sector in the FCV context – lack of electricity.<sup>21</sup>

The following quadrant shows the relationship between level of fragility and the extent of private sector participation. The fragility level reflects the 2015 Fragile States Index for each case study country, while the extent of private sector participation reflects the predominant PSP/PPP arrangement used in the case study country, drawing from the PPP contract graph (shown below). The range of private sector participation is from 1 (O&M Contracts) to 4 (licenses).

**Figure I.1 Levels of fragility and private sector participation**

	Lower Fragility	Higher Fragility
Lower Private Sector Participation	Mozambique	Rwanda
Higher Private Sector Participation	Benin	Mali



The y-axis in the above graph is based on the spectrum of different forms of PSP/PPP, with differing degrees of private sector participation, outlined in section IV; the cases referred to in the above graph employed the following forms: Mozambique, Rwanda (O&M-lease hybrid); Benin (pre-2010 – *affermage*; post-2010 – subsidized concession introduced in some cases); Somalia (concessions); Mali (concession); Cambodia (license).

<sup>21</sup> World Development Report 2011 – Conflict, Security and Development, p. 257; available at [https://siteresources.worldbank.org/INTWDRS/Resources/WDR2011\\_Full\\_Text.pdf](https://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf).



As can be seen in the graph above, case study countries with relatively lower levels of fragility may offer lower levels of private sector participation (e.g. Mozambique), or, in some cases, higher levels (Cambodia). Countries with relatively higher levels of fragility may host projects with varying degrees of private sector participation (compare Rwanda and Mali). The limited sample of the case studies does not suggest that the level of fragility is a clear determinant of a country's PSP/PPP readiness, or the degree of feasible private sector participation, as there are a variety of factors that may play a role (e.g., legal framework, business environment, private sector capacity, access to finance). It does, however, reflect that a relatively higher degree of fragility is not, in and of itself, a bar to PSP/PPP projects.

### *Critical role of SMEs*

**PSPs can provide a viable basis for engaging SMEs in the delivery of essential infrastructure and services in the FCV context.** As already noted above, in particular in key sectors such as water and sanitation, and energy, SMEs can play a crucial role in the provision of essential services including for the reason that SMEs may be the only viable option in terms of available private sector operators in an FCV zone. With the weakness of the public sector that is prevalent in many FCV scenarios, making available a PSP contracting approach may provide a feasible way in which to ensure delivery of essential infrastructure and services in an FCV context when the public sector is incapable of doing so.

**Apart from the scenarios in which only SMEs are involved, there is the possibility, if not the imperative, for a larger company executing a PPP project to engage local SMEs.** Such an approach seeks to be mindful of the impact of a large company's operations on local economies and builds local value chains can help to promote diffusion of tensions and peaceful development, while helping develop a company's corporate-social-responsibility profile.<sup>22</sup> (See III.A.3, concerning SME policies or promotion of SME participation in public procurement markets and in PSP/PPP projects.)

### *Enabling humanitarian response and resilient development*

**Involvement of SMEs in PSPs can help not only to achieve essential humanitarian response objectives, but also promote resilient development.** SMEs are important catalysts of growth and sustainability, making up 90% of registered businesses,<sup>23</sup> 25-35%

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<sup>22</sup> "Value Chains in Fragile States: Success Factors for Job Creation," a panel of Sacha Rwamibango, Michel Botzung (IFC), Sarah Drost (Clingendael), Alain Prenat (SPARK), moderated by Aissatou Ba (AfDB), in IGNITE 2015 Conference, *Doing Business in Fragile States*, available at [www.spark-online.org/wp-content/uploads/2015/10/IGNITE-2015-report.pdf](http://www.spark-online.org/wp-content/uploads/2015/10/IGNITE-2015-report.pdf).

<sup>23</sup> IFC. *IFC and Small and Medium Enterprises* (2012), [http://www.ifc.org/wps/wcm/connect/277d1680486a831abec2fff995bd23db/AM11IFC+IssueBrief\\_SME.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/277d1680486a831abec2fff995bd23db/AM11IFC+IssueBrief_SME.pdf?MOD=AJPERES).

of GDP,<sup>24</sup> and 50% of employment worldwide.<sup>25</sup> SME-based private sector participation projects are an innovative way to promote private sector development and local community participation, as well as to address development challenges, including in fragile and conflict-affected states. Such development challenges may include, for example, elite capture and crowding-out of local businesses, particularly evident in infrastructure projects in the water, energy, and transportation sectors. SME inclusion in PSPs in those sectors, as well as others (e.g. social sector) may overcome these effects. It can do so by enhancing the capacity and competitiveness of SMEs, promoting job creation, and supporting inclusive growth, thereby enhancing the overall positive economic development and resilience effects of PSPs. In the fragile and conflict-affected context, PSPs are particularly fruitful pathways because they facilitate the delivery of services usually provided by the state through private sector participation while maintaining the legitimacy of the government.<sup>26</sup>

**SME-based PSPs have the potential to yield a positive-sum result for public and private stakeholders.** SMEs benefit from potential long-term contract arrangements with stable income streams (in the case of long-term contracts), greater visibility, and increased access to global value chains. Larger private and public stakeholders benefit from SMEs' specialized or local knowledge for particular projects. In fragile and conflict-affected states, in particular, SMEs' understanding of the local context makes them adaptable to volatile political and social situations and therefore able to provide a stable source of supply/services in case of disruptions in the local environment. Furthermore, SME participation promotes sustainability and self-sufficiency in local operations: after the duration of a project, the SMEs may then continue to operate services or facilities (e.g. a power plant) for the community. These benefits have been realized in several infrastructure projects globally, including in Somalia, Chad, Benin, and Vietnam, among others.

**Despite the benefits for both SMEs and larger contractors, SME-based PSPs remain limited.** Even in developed economies such as in the EU, no SME won a PSP/PPP valued above about 17 Million USD, and 85 percent of participation was at the subcontractor level. Various obstacles stand in the way of SME participation including policy, legal, and administrative burdens, as well as deficiencies in SMEs' capacity and access to financing in relation to PSPs' large contract size and requirements particularly in the water, transportation, and energy sectors. Further challenges arise from general barriers to PSPs in the FCV context, such as weak public investment planning preventing the state from

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<sup>24</sup> United Nations Conference on Trade and Development. Competition Policy and Public Procurement. 24 April 2012. [http://unctad.org/meetings/en/SessionalDocuments/ciclpd14\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/ciclpd14_en.pdf).

<sup>25</sup> The Asian Development Bank. *SME Development: Government Procurement and Inclusive Growth*, November 2012. <http://www.adb.org/sites/default/files/publication/30070/sme-development.pdf>.

<sup>26</sup> Mac Sweeney, Naoise. *Private Sector Development in Post-Conflict Countries: a Review of Current Literature and Practice*, from Donor Committee for Enterprise Development (DCED) and Swiss Agency for Development and Cooperation (SDC); available at [https://ira.le.ac.uk/bitstream/2381/27928/4/PostConflict\\_PSD\\_EN\\_rev2.pdf](https://ira.le.ac.uk/bitstream/2381/27928/4/PostConflict_PSD_EN_rev2.pdf).

efficiently assessing projects requiring private sector investment, as well as donor coordination and state capacity issues.

Given these barriers, the Toolkit seeks to increase the awareness of policymakers and managers in FCV contexts of policies and practices that enhance SME opportunities in PSPs (particularly in water and energy infrastructure services sectors) by creating an enabling environment for such participation.

### *Public-private sector synergy*

**PSPs involving SMEs may benefit from synergies that provide more sustainable solutions.** A PSP approach may be favored in certain cases as more self-sustaining when it is less likely that public sector management of an infrastructure facility that received donor support would provide adequate maintenance levels. At the same time, the public sector can play the indispensable regulatory role, counter-balancing the for-profit nature of the private sector.

### *Supporting policies that alleviate tensions*

**Involvement of SMEs in PPPs can contribute to alleviating some of the sources of tension in FCV contexts.** In some cases, by contributing to improved delivery of essential infrastructure and services, as well as promoting inclusive economic development, SME-based PSPs can contribute to alleviating some of the root causes fueling conflict and fragility in a given country, in particular factors stemming from lack of shared prosperity and essential services. That it is not to deny the possibility that in some instances projects might have the effect of exacerbating tensions (e.g., depending upon the nature and context of a conflict, for example, if groups that have had a conflict are artificially brought together under a project (while, by contrast, in another context it may be that not covering all groups under a project may give rise to or exacerbate inter-group tensions). The possibility of such alternative scenarios highlights the importance of “group sensitivity” in selecting, designing and implementing projects.<sup>27</sup>

**SME-based PSPs at the sub-central level can also help to solidify the implementation of decentralization policies and participatory development.** As illustrated in the case studies, SME involvement in PSPs providing infrastructure and services often takes place at the local or community level. That may well be coupled with decentralization policies that empower communities to take charge of infrastructure facilities serving the local population and establish approaches that are more responsive to demand levels. In the FCV context, the empowerment of local populations and their closest forms of representative government offered by decentralization strategies are furthered by the involvement of SMEs drawn from those local populations. That in turn fosters

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<sup>27</sup> See, for example, the discussion in *Fragile Settings – Lasting Impact: 12<sup>th</sup> Evaluation Report on Projects and Programmes in Developing Countries 2011-2012*, KfW Development Bank, p. 39; available at [https://www.kfw-entwicklungsbank.de/PDF/Download-Center/Dokumente-Evaluierung/12\\_Englisch.pdf](https://www.kfw-entwicklungsbank.de/PDF/Download-Center/Dokumente-Evaluierung/12_Englisch.pdf).

participatory and inclusive development, all of which may help to overcome some of the challenges and root causes of fragility and conflict.

## B. Scope of Toolkit

**The Toolkit has a somewhat specific, limited scope.** It is therefore important to note at the outset what subjects this Toolkit covers and what subjects it does not address. The Toolkit is concerned with issues related to the potential role of SMEs in providing essential infrastructure and services on a PSP basis in FCV contexts from the standpoint of how government can help to create an enabling environment for such endeavors. The Toolkit is neither intended to provide a general treatment of PSPs nor to discuss overall policy initiatives to grow the SME sector. Guidance and information resources on PSPs generally are available from other publications and sources.<sup>28</sup> That being said, some information generally relevant to PSPs and the participation of SMEs in public procurement markets is mentioned where necessary to provide sufficient context and also to highlight issues that are relevant to all PSPs, including those involving SMEs.

**The focus of this Toolkit is on enabling SMEs as operators of small-scale infrastructure facilities.** That of course does not exclude the possibility that, as noted above, SMEs may be engaged in PSP/PPPs as sub-contractors to larger firms, or may be included in a consortium (with larger firms, or with other SMEs).

## C. PSP/PPP definitions and terminology

**In practice, there is diversity in definitions of the term “public-private partnership” (PPP) as well as in other terms associated with the notions of PPP or PSP.** While there is no single, universally agreed definition of the term PPP, the following is an example of a broad definition that encompasses many sectors, services and types of PPP arrangements (of which there are many): “A long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance.”<sup>29</sup>

**Other terms utilized in the PSP/PPP context are also defined variously in practice.** It should also be noted that in practice there is diversity and lack of harmonization with respect to various other terms commonly encountered when dealing with PSP/PPP issues, including terms that are used to refer to PPP as a whole as well as to describe particular

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<sup>28</sup> See, for example, the guidance material, samples of legislation, regulations and contracts available at the website of the World Bank’s Public-Private Partnership in Infrastructure Resource Center (PPPIRC) (<https://ppp.worldbank.org/public-private-partnership/>). A comprehensive overview with various cross-references and links to further details is found in the *PPP Reference Guide*, a joint product of the World Bank Group, ADB, EBRD, GI Hub, IADB, IsDB, OECD, UNECE, and UNESCAP (version 3.0 having been issued in 2017 (see <https://ppp.worldbank.org/public-private-partnership/library/ppp-reference-guide-3-0>)).

<sup>29</sup> *Ibid.*, p. 1.

forms or models of PPP. For example, depending upon the applicable usage, the term “concession” is sometimes used to refer to PPPs generally, and sometimes to refer to particular types of PPP arrangements. It is not the aim of this Toolkit to attempt to harmonize or standardize terminology, in this Toolkit the terms PSP and PPP are used in a general and comprehensive sense, while limiting, to the extent possible, the use of terms that may have diverse understandings.

**The Toolkit is not limited to any particular form or model of PSP.** The broad notion of PSP encompasses a variety of commercial and legal forms, including the different allocations of responsibility, risk and cost as between the public sector and private sector parties. Various types of activities may be performed by the private sector party in a PSP, with the exact mix of activities dependent upon the nature of the transaction and the agreement of the parties that defines the scope of the PSP and the allocation of responsibilities as between the parties. Those possible component activities of a PSP may include: design, building or rehabilitation of an infrastructure facility, operation of the facility and provision of services to end-users, financing, operation and maintenance. In some PSPs, each of those activities may be undertaken by the private sector party. In others, a more limited range of activities may be involved (e.g., operation and maintenance of an existing infrastructure facility). Other aspects of flexibility that are possible through customizing solutions from a menu of options include the ability of local communities to decide on service levels and their possible contribution to a portion of investment costs.

#### **D. FCV context**

**The Toolkit focuses on SME participation in PSPs in the FCV context.** Countries that are categorized as FCV affected are classified as unstable in their political, economic, social and security spheres. As regards the aspect of fragility, the World Bank defines a “fragile” state by reference to criteria including eligibility for assistance from the International Development Association (IDA) (e.g., a grant), involvement of a UN peacekeeping mission in the last three years, or assignment of a ‘governance’<sup>30</sup> score of less than 3.2. Other sources of classification of countries as being fragile include the Fragile States Index compiled annually by the Fund for Peace, which applies a combination of social, economic and political and military indicators,<sup>31</sup> as well as the annual OECD report *States of Fragility*.<sup>32</sup>

**In the post-Millennium Development Goals era, the notion of “fragility” is evolving.** As evidenced in the 2016 edition of the OECD report, the notion of “fragility” is evolving and not necessarily confined to particular countries that may appear on a list of fragile states,

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<sup>30</sup> Based on the Country Performance and Institutional Assessment (CPIA) Index; see <https://data.worldbank.org/data-catalog/CPIA>.

<sup>31</sup> Fund for Peace. 2016. Fragile States Index 2016. <http://library.fundforpeace.org/fsi16-report>

<sup>32</sup> <http://www.oecd.org/dac/states-of-fragility-2015-9789264227699-en.htm>.

but rather is a universal notion that may potentially affect all states to one extent or another. Indicators applied in such a broadened notion of fragility include violence, access to justice, accountable and inclusive institutions, economic inclusion and stability, and capacities to prevent and adapt to social, economic and environmental shocks and disasters (with countries showing vulnerability to more than one of those aspects deemed to be affected by fragility).

**To the extent that fragility is a function of economic instability and exclusion, SME involvement in PSPs may help to remedy that dimension of fragility.** Involvement of SMEs in PSPs to provide infrastructure and services can contribute directly to economic development and inclusion, thus addressing a key dimension of fragility where applicable. Thus, such participation by SMEs can not only fill a void essential service delivery, it also can provide an important engine for promoting economic growth, shared prosperity and resilience. That is in line with the trend in an increasing number of countries to harness public procurement and related types of expenditures to promote the SME sector, thereby contributing to enhanced job creation and economic development.

**Box I.3 Approaching fragility in design & implementation of projects and programs**

**Dual objectives:**

- Infrastructure goals
- Conflict management, stabilization & promotion of peace

**Avoiding parallel structures**

- Use of state structures to the extent feasible to strengthen them

- *Fragile Settings – Lasting Impact*, KFW 12<sup>th</sup> Evaluation Report on Projects and Programmes in Developing Countries (see note 27)

**Box I.4 Fragility background in case-study countries**

**Benin (water)**

With the majority of population being rural (57%), the rate of access to piped water in Benin remains low, with only 4% of rural areas having access by 2012, compared to 12% in urban areas. Benin is classified under the “warning” status of the 2015 Fragile States Index, ranked 73<sup>rd</sup> most fragile out of 178 countries.<sup>33</sup> Major challenges to stability arise from exogenous shocks, such as developments in its neighboring states, Nigeria and Niger (on high alert and alert, respectively, by the 2015 Fragile States Index). In a population of about 10.6 million, 38.4% have access to electricity, 77.9% to an improved water source, and 19.7% to improved sanitation facilities.<sup>34</sup>

<sup>33</sup> The Fragile States Index is based on the twelve, primary social, economic and political indicators of the CAST methodology, developed by The Fund for Peace. Indicators include demographic pressures, refugees and IDPs, group grievance, human flight and brain drain, uneven economic development, poverty and economic decline, state legitimacy, public services, human rights and rule of law, security apparatus, factionalized elites, external intervention; available at <http://fsi.fundforpeace.org/rankings-2015>.

<sup>34</sup> PPP Knowledge Lab. Benin. <https://pppknowledgelab.org/countries/benin>.



**Somalia (water)**

The fragile political situation in Somalia, classified as a fragile state in the FY15 Harmonized List of Fragile Situations and ranked the second most fragile state (on very high alert) as of the 2015 Fragile States Index, has resulted in fluctuating management of its water sector and difficulties in distributing necessary access to water to its population, the majority of which (61%) live in rural areas. In a population over 10.5 million, 32.7% have access to electricity; the national coverage for safe drinking water stands at 53% with South-Central Region at 51%, Somaliland at 56% and Puntland at 62%, and the coverage by population group stands at 69% for IDPs, 24% for Nomads, 76% for urban, and 37% for rural. The national sanitation coverage stands at 63%, with South-Central Region at 59%, Somaliland at 74%, and Puntland at 65%. The sanitation coverage by population group includes IDPs (75%), nomads (34%), urban (87%) and rural (49%) (JMP/WHO and UNICEF: Progress on drinking water, sanitation and hygiene: 2017 update and SDG baselines, available at <http://www.who.int/mediacentre/news/releases/2017/launch-version-report-jmp-water-sanitation-hygiene.pdf>).

**Mali (energy)**

The country suffered from complex crisis on three fronts (conflict and insecurity in the North, institutional and political turmoil in the South, and humanitarian and food insecurity across the country). It is classified as on “alert” on the 2015 Fragile States Index, ranked 30<sup>th</sup> most fragile out of 178 countries, and is included in harmonized list of fragile situations FY15.<sup>35</sup> In a population of about 17 million, on average, 25.6% of the population have access to electricity; however, while about 50 percent of the population in urban areas has access to electricity, less than 12% do in rural areas, as of 2012 (World Bank Development Indicators).

**Cambodia (energy)**

Cambodia is classified on “high warning” in the 2015 Fragile States Index, ranking 41<sup>st</sup> most fragile (out of 178 total countries, 1 being the most fragile). In a population of about 15.3 million, 32.7% have access to electricity, 75.5% to an improved water source, and 42.4% to improved sanitation services. In the electricity sector in particular, only about 17.3% of the population in rural areas have access to electricity, compared to 57.7% in urban areas.

**Rwanda (water)**

The 1994 genocide and post-war reconstruction resulted in severe challenges on the community level due to high levels of mistrust and water management, prioritizing emergency response over sustainable development. In the aftermath of this conflict, only 44 percent of population had access to a water delivery point. Rwanda is classified as on “alert” in the 2015 Fragile States Index and is ranked 37<sup>th</sup> most fragile out of 178 countries. In a population of over 11.3 million, 18% have access to electricity, 76.1% have access to improved water sources, and 61.6% have access to improved sanitation facilities. In the water sector in particular, while 89.6% of the urban population have access to improved water sources, only 56.9% of the rural population have access to these water sources. The World Bank had worked with Rwanda in 1987 on a Second Water Supply Project that aimed to ensure community participation and transferring of responsibility of ownership of RWS facilities to communes, which did not succeed partly due to the fragile context such as the 1995 genocide and post-war reconstruction demands.

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<sup>35</sup> The World Bank. The Harmonized List of Fragile Situations FY15. <http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1269623894864/FY15FragileSituationList.pdf>

## E. Identification of SMEs

**The Toolkit does not purport to establish a universal norm for classifying businesses as SMEs.** What is or is not deemed to be an SME will vary from country to country, depending on the prevailing circumstances, including the legal and regulatory regime, and the size of the economy and the composition of the commercial market of a country. Various approaches are used in practice to identify a business as an SME. Possible criteria that are typically applied include number of employees and annual turnover of a business. Other considerations that may be relevant include the independent character of the business (i.e., that it is not a subsidiary of or otherwise controlled by another company).

**Purely for the purposes of illustration, below is the matrix of criteria underlying the definition according to the SME development policy in Rwanda.** It should be noted that SME size standards are not uniform and vary from country to country, and perhaps also from sector to sector.<sup>36</sup>

**Table I.1 SME size standards: Example from Rwanda**

Size of the Enterprise	Net capital investments (Million RwF)	Annual Turn over (Million RwF)	Number of Employees
Micro Enterprises	Less than 0.5	Less than 0.3	1 to 3
Small Enterprises	0.5 to 15	0.3 to 12	4 to 30
Medium Enterprises	15 to 75	12 to 50	31 to 100
Large Enterprises	More than 75	More than 50	More than 100

### **Notes on definition**

- *Two of the three conditions should be met*
- *Rwanda Revenue Authority (RRA) has a different definition of SMEs for tax purposes*
- *Informal companies are defined as those not registered in accordance with the Companies Act or other legislation related to SMEs and cooperatives*
- *In this policy, SME is used to describe micro as well as small and medium enterprises*

## F. Customization of the Toolkit for specific countries

**Elements of the Toolkit are meant to be used in relevance to the needs of individual countries.** States in the FCV context are “more vulnerable to external shocks (e.g.

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<sup>36</sup> Rwanda Ministry of Trade and Industry, Small and Medium Enterprises (SMEs) Development Policy (June 2010), available at [http://www.minicom.gov.rw/fileadmin/minicom\\_publications/policies/SME\\_Devt\\_policy\\_V180610.pdf](http://www.minicom.gov.rw/fileadmin/minicom_publications/policies/SME_Devt_policy_V180610.pdf); it may be noted, that, as practices in setting SME size standards evolve, fixed asset investment (FAI) may, in the age of asset-light trends in business, no longer be as relevant (see [http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)).



economic crisis, natural disasters)”<sup>37</sup> and therefore are in need of organized strategies (and resources such as the Toolkit) to better their economies. At the same time, the Toolkit does not purport to offer one-size-fits-all solutions that should be applied in a uniform fashion in all contexts. Rather, the Toolkit describes challenges faced by SMEs in the PSP context in FCV environments, elements of an enabling environment for implementation of PSPs operated by SMEs, and a range of PSP techniques that may be selected and customized to fit the applicable conditions.

## G. Survey results

For the purposes of preparing this Toolkit, a survey was conducted for country representatives from fragile countries across regions at a global workshop in Beirut. The survey examined five categories of issues: SME enabling environment, regulatory environment, procedural environment, challenges and solutions, and next steps. The survey revealed the willingness of representatives to enhance SMEs’ involvement in PSP projects, particularly in the infrastructure sector, and their realization of the obstacles needed to be overcome in order to do so. Representatives from Bosnia and Herzegovina, Egypt, Republic of Congo, Republic of Djibouti, Morocco, Tunisia, Yemen, Lebanon, Afghanistan, Somalia, and Gambia participated in the survey.<sup>38</sup> The results of the survey are summarized in Annex B.

## II. OPPORTUNITIES AND CHALLENGES FOR SME IN PSPs

### A. Trends in private sector participation

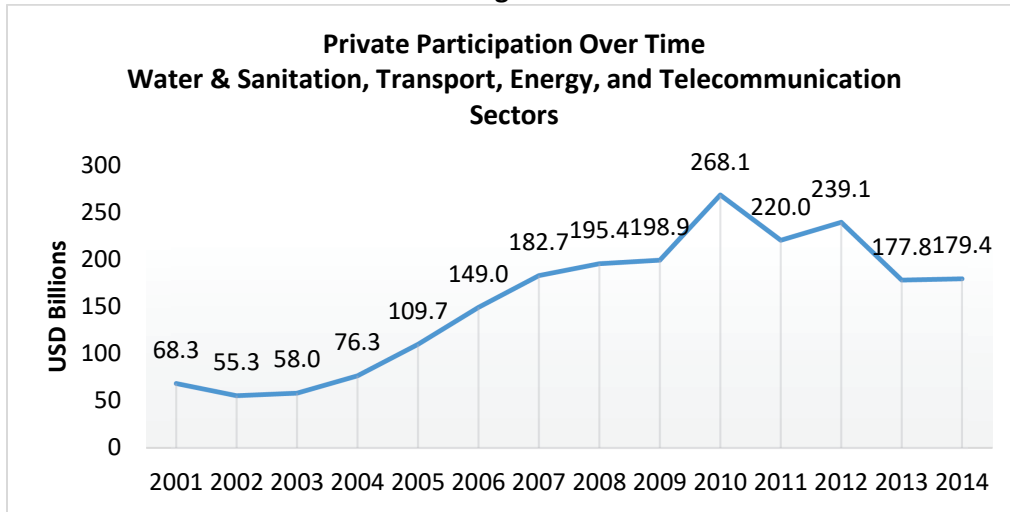
**In the background of participation of SMEs in PSPs in FCV scenarios, there has been a general trend toward enhanced private sector participation in provision of public infrastructure and related services.** As shown in Figure 1, below, there is a generally upward trajectory in the role of the private sector in key infrastructure and service delivery sectors, in particular in water and sanitation, transport, energy, and telecommunications (though in recent years that trend has leveled off to some extent (e.g., due to low interest rates in public borrowing). Those happen to be sectors in which SMEs may be positioned to fill unmet needs, in particular in the FCV context.

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<sup>37</sup> Woolcock, Michael. “Engaging with Fragile and Conflict-Affected States” (2014), p. 3; available at <https://research.hks.harvard.edu/publications/getFile.aspx?id=1091>.

<sup>38</sup> The survey was administered to public and private sector officials in dissemination events to ensure that the Toolkit addresses the current concerns of major stakeholders.

Figure II.1

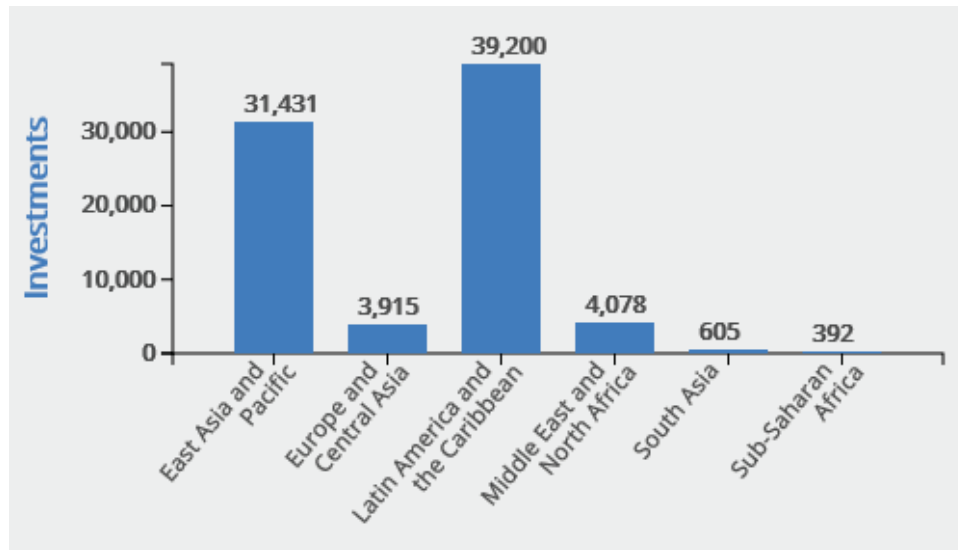


Source: World Bank Development Indicators, as of May 2016.

**The volume of private sector participation varies from region to region.** As shown in Figures 2 and 3, there are significant differences among the various regions as regards the level of private investment in some of those sectors.

Figure II.2

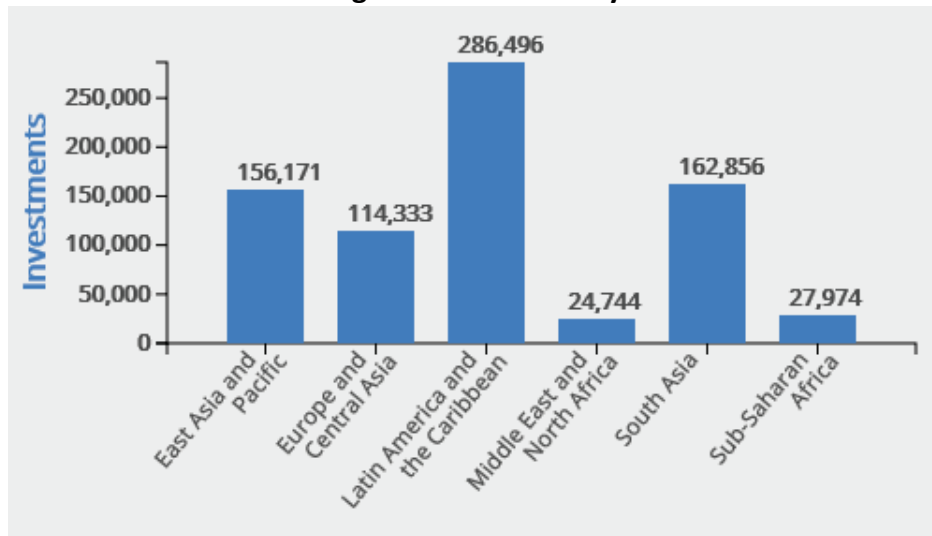
Investment in Projects by Region (USD Millions)<sup>39</sup>  
Water and Sanitation



Source: Private Participation in Infrastructure (PPI) Database, May 2016. It should be noted that PPI database only tracks a certain size of project and does not indicate the extent to which projects, if any, have been sponsored by an SME.

<sup>39</sup> Private Participation in Infrastructure Database. <http://ppi.worldbank.org/snapshots/sector>.

Figure II.3 – Electricity



Source: Private Participation in Infrastructure (PPI) Database, May 2016.

## B. Possible challenges confronting PSPs and SME participation

**Various obstacles may complicate access of SMEs to participation in PSPs.** Outlined below are obstacles typically found in the way of SME participation in PSPs. To one extent or another, those obstacles may be encountered in any context, but they are likely to be particularly exacerbated in an FCV environment.

**In considering a possible PSP transaction involving SME participation, it should be recalled that various of the possible challenges to be met are not necessarily specific to SMEs, but related to private sector participation generally.** However, for SMEs, those challenges, even if they are not unique to SMEs, may be more acute for SMEs. One must also consider SMEs' capital and resources and therefore the likely types of PSPs in which they are able to be involved and what public sector support may be needed to enable SME participation. Thus, one can easily see SMEs involved in user-pay O&M (where government is an unreliable counterparty) but they might not necessarily be able to provide expansion or rehabilitation of systems, and other forms of participation requiring investment.

### Box II.1 Challenges for SME participation: Example from Cambodia

- **Lack of standardized approach to procurement** in PPPs, which is conducted on a “reactive, unsolicited and negotiated basis.”<sup>40</sup>
- **Asymmetrical focus on urban areas**, compared to rural areas that house 80% of the population.
- **Financing challenges for private operators**: lack of credit or medium-term financing available in Cambodia. SPSPs must largely fund themselves.
- **Low capacity of public sector** in terms of technical skills and funds to prepare, tender, and manage PPP projects – rely on the private sector to conduct functions on an unsolicited and noncompetitive basis.<sup>41</sup>

#### 1. Challenges in the FCV context

**Private sector activity is particularly challenging in the FCV context.** The World Bank’s *Doing Business* database and other studies cite various features of fragile environments that make them particularly challenging for conducting business activities.<sup>42</sup> Those include in particular weakness in formal institutions and rule of law, existence of parallel structures of authority (state and non-state) and habituation to practices of the informal sector, a glut in labor supply that may depress already low wages (due, for example, to the appearance of ex-combatants in the labor market, or by virtue of the fact that in communities with increased numbers of skilled workers among displaced or refugee populations, there is bound to be a glut in labor supply), political instability and physical

insecurity, both of which have direct impacts on business activity and may make it difficult to maintain a project’s presence in the field,<sup>43</sup> low degrees of community unity,

### Box II.2 Legacy of war risks that may hinder entrepreneurship

- Possibility of conflict reigniting, which tends to push the private sector to focus on short-term perspectives and plans
- Stratification of resources and power among groups resulting in income inequality
- Steering, monopolization or oligopolization of opportunities and resources on the basis of rent-seeking behavior and regulatory capture

- Wim Naudé, *Peace, Prosperity, and Pro-Growth Entrepreneurship*, pp. 11-13 ([see note 63](#))

<sup>40</sup> PPP Knowledge Lab. Cambodia. <https://pppknowledgelab.org/countries/cambodia>.

<sup>41</sup> Asian Development Bank. “Assessment of Public-Private Partnerships in Cambodia.” <http://www.adb.org/sites/default/files/publication/29921/assessment-ppp-cambodia.pdf>, xii.

<sup>42</sup> Mary Porter Peschka, *The Role of the Private Sector in Fragile and Conflict-Affected*, World Bank Development Report 2011 Background Paper (July 2010, updated April 2011), pp. 10-11; available at [http://web.worldbank.org/archive/website01306/web/pdf/wdr\\_background\\_paper\\_peschka\\_0.pdf](http://web.worldbank.org/archive/website01306/web/pdf/wdr_background_paper_peschka_0.pdf).

<sup>43</sup> This has been a challenge encountered, for example, in the Somalia case study.

corruption, for which the FCV context provides a breeding ground (e.g., selective enforcement of law and of customs duties and taxes), loss of business assets, which complicates restoration and resumption of business activity, infrastructure issues including access to electricity.

It is hardly surprising that, in such circumstances, the economies at the bottom of the *Doing Business* rankings are heavily dominated by fragile states. Such difficulties tend to persist, beyond the actual conclusion of the conflict.

### **Box II.3 Risks of low community unity: Example from Somalia case study**

For example, the PPP concept was not as easily accepted in Lowya'ad in the context of low community unity, inhibiting the creation of PPP companies. In this situation, a formal tender process may be available way to ensure the legitimacy of the company.

**The FCV context may well exacerbate challenges typically faced by PSP programs.** Implementation aspects prone to be more complicated in the FCV context include infrastructure planning (which should be rationalized rather than opportunistic), donor coordination, and capacity.<sup>44</sup> Challenges typically faced by SMEs in accessing public procurement markets and PSP arrangements are also likely to be exacerbated in FCV contexts, including in particular accessing finance as well as access to the site (which may be difficult even without FCV conditions, for example if remote areas are involved and the road network is not nearby). FCV environments may well compound such difficulties with political instability, security risks and prevalence of corrupt practices.

## *2. Inadequate or non-existent policy framework*

**A policy framework for PSPs is an important element, the absence of which may complicate efforts to engage SMEs on a PSP basis.** Without an adequate policy framework for PSPs, there is a significant probability of uncertainty as to the rationale and nature of PSPs and the availability of PSP mechanisms in any given case. Uncertainty may surround the question of which sectors if any are open to use of PSPs, lack of awareness as to the potential benefits that use of a PSP arrangement may provide, and uncertainty and opaqueness as to the process of identifying and implementing PSP projects. The lack of a policy framework, or uncertainty as to the commitment of the government to PSP strategies intended to involve SMEs (e.g., in operating mini-grids), may hamper the mobilization of private sector resources and impact in particular on the possibilities of utilizing SMEs through PSP arrangements.

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<sup>44</sup> Andrew Jones, *Making PPPs work in fragile situations*, World Bank Public-Private Partnership Blog, available at <http://blogs.worldbank.org/ppps/making-ppps-work-fragile-situations>.

**Weakness in the policy framework for SMEs may hamper SME participation on a PSP basis.** It appears that a significant percentage of FCV countries do not have a formal definition of the term “SME.” Another common weakness of particular note is the lack of data collection mechanisms for monitoring activities of SMEs, including monitoring of SME participation on a PSP basis.<sup>45</sup>

**In some cases, however, the lack of a developed policy framework, rather than constituting a constraint, may present opportunities.** That might be the effect to the extent that underdeveloped policy frameworks mean that barriers to entry are lower than they otherwise might be. Yet, the lack of a policy framework might also be symptomatic of situations in which it may be difficult to muster political support for projects.

### 3. *Weakness in infrastructure planning*

**Inadequacy in infrastructure planning is likely to be encountered in FCV contexts.** As a result, governments and donors engage in ad hoc, opportunistic infrastructure, rather than efficient, systematic planning. Identifying opportunities for PSP projects, including those involving SMEs, may entail a broader assessment of the landscape for potential public sector investment than would otherwise be the case.<sup>46</sup>

### 4. *Inadequate or non-existent legal framework*

**The legal system may well be one of the primary components of societal and governance structures that is weakened in the FCV context.** Instability in law and inconsistency between formal rules and actual practice may be a primary effect of conflict.<sup>47</sup> For example, war can decimate not only the perceived legitimacy of the judiciary, but also decimate the physical infrastructure of the court system, as well as destroying records and weakening the human resources that operate the court system. That feeds into what is a common effect of fragility and conflict – weakness in enforcement of contracts and unreliability of property protections, which inhibit reconstruction and development.

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<sup>45</sup> Based on findings of the Survey on SME participation in PPPs (see Annex B).

<sup>46</sup> This phenomenon has been observed, for example, in Afghanistan and in Palestine; see Andrew Jones, *supra*, note 45.

<sup>47</sup> See Mary Porter Peschka, *supra*, note 42, pp. 12-13.

#### Box II. 4 Stages and steps in restoring rule of law in FCV contexts<sup>48</sup>

##### Early recovery efforts

Identifying entry points that will limit/end violence & violations  
Empowering communities, especially women, youth and displaced populations  
Partnering with humanitarian actors  
Engaging international police and peacekeepers

##### Post-conflict recovery – rule of law in peacebuilding

Long-term commitment from international partners  
Access to justice and security at the community level  
Transitional justice  
Security and justice sector reform to support rule of law  
Rule of law for economic recovery (e.g., housing, land, water, property, labor law aspects)<sup>49</sup>

**Additionally, lack of an adequate legal framework for implementing PSPs is likely to result in uncertainty and lack of confidence on the part of potential private sector parties as well as potential public sector parties.** Without an adequate legal framework, doubts may arise in particular as to the permissibility of procurement on a PSP basis, the procedures to be applied for gaining the necessary approval of such projects, and the procedures to be applied in procurement on a PSP basis.

**Weakness in land law and insufficient clarity in title to real property is another potential area of challenge for private sector activity in the FCV context.** That impacts on a wide spectrum of private sector activity and investment, including in contemplating whether there is sufficient legal security to engage in PSP projects.<sup>50</sup>

**Weaknesses at the level of contractual instruments may be another challenge.** Inadequacies in the quality of contractual instruments that are utilized in implementing PSPs with SMEs which might not contain all the provisions essential to ensuring that there is clarity as to the rights and obligations of the parties, and to establishing accountability. Even in legal systems which rely less on contracts and more on legislative codes for

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<sup>48</sup> *The Rule of Law in Fragile and Post-Conflict Situations*, UNDP Bureau for Crisis Prevention and Recovery (UNDP/BCPR 17 July 2009), pp. 3-6; available at [http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1224016350914/5474500-1257528293370/HS\\_July\\_21\\_Paper\\_by\\_Jordan\\_Ryan\\_UNPD.pdf](http://siteresources.worldbank.org/EXTLICUS/Resources/511777-1224016350914/5474500-1257528293370/HS_July_21_Paper_by_Jordan_Ryan_UNPD.pdf).

<sup>49</sup> *Strengthening the rule of law in crisis-affected and fragile situations: A UNDP global programme for justice and security (Phase II, 2015)*, p. 7; available at <http://www.undp.org/content/dam/undp/library/crisis%20prevention/Global%20Programme%20Phase%20II%20-%20FINAL.pdf>

<sup>50</sup> As catalogued in *Land & Conflict: A Toolkit for Intervention*, prepared by the USAID Office of Conflict Management and Mitigation, land issues in conflict affected States, the resolution of which is important for stabilization efforts as well as for private sector activity, include: land tenure (rights of access and use of land) failures and insecurity; competing land claims and uses; land-holding inequities; displacement and return of populations; post-conflict land issues; available at [http://pdf.usaid.gov/pdf\\_docs/Pnadb335.pdf](http://pdf.usaid.gov/pdf_docs/Pnadb335.pdf)

definition of the rights and obligations of the parties, gaps and uncertainties may arise to the extent that PSP-specific issues are not defined in the legislative code or in the contractual instruments with sufficient precision.

#### 5. *Low capacity of SMEs*

**A significant obstacle facing many SMEs seeking to participate in public procurement markets is the lack of capacity.** Such capacity shortfalls may be particularly exacerbated in the PSP context, and even more so in the FCV environment. Capacity challenges may concern technological capacity for managing and building infrastructure and availability of skilled personnel (e.g., shortage of engineers which may be particularly acute in situations of humanitarian crisis), in addition to access to debt finance and equity investment.

#### 6. *Low regard for SMEs*

**Reliance by SMEs on subsidization may perpetuate a stereotype, held by some, that SMEs are dependent on such assistance.** That in turn may feed the impression that subsidized projects are therefore somehow less worthy of being considered to have a demonstration effect. This has been referred to as a “paradoxical demonstrative effect.”<sup>51</sup>

#### 7. *Inadequate market development*

**Implementing PSPs on the basis of SME involvement may be hindered to the extent that the level of competition in awarding contracts for such arrangement is inadequate.** The lack of market development may mean that the contracting authority’s options may be limited when inadequate performance issues arise during implementation and there may be a shortage of replacement operators to tap. That may be the case in particular in rural areas, and especially in the FCV context.<sup>52</sup>

#### 8. *Capacity shortfalls on the public sector side*

**It is not only the private sector (SME) side that faces capacity challenges.** Capacity shortfalls on the public sector side may include not only inadequate understanding of how to engage SMEs in PSPs, but, more fundamentally, in experience with PSPs and inadequate ability to identify and assess potential PSP projects, weaknesses in the process and capacity of developing, implementing and monitoring such projects (which may be on top of overall weakness in the project cycle, from preparation to approval), risk-sharing

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<sup>51</sup> Haselip, James Arthur; Desdain, Denis DR; Mackenzie, Gordon A., *Energy SMEs in sub-Saharan Africa: Outcomes, barriers and prospects in Ghana, Senegal, Tanzania and Zambia* (2013), p. xi; available at [http://orbit.dtu.dk/files/56433833/Energy\\_SMEsin\\_Sub\\_Saharan\\_Africa\\_full\\_report\\_May\\_2013.pdf](http://orbit.dtu.dk/files/56433833/Energy_SMEsin_Sub_Saharan_Africa_full_report_May_2013.pdf).

<sup>52</sup> See Somalia Final Evaluation report, *supra*, note 6, p. 37.



mechanisms that leave the public sector shouldering a share of risks beyond its capacity, and low implementation capacity, in particular regarding procurement, negotiation and supervision of PSP arrangements. Furthermore, there may be a lack of effective communications with stakeholders, including the public and private sectors, and civil society.<sup>53</sup> Such capacity shortfalls on the public sector side are particularly likely to be encountered at the local government level, with which SMEs are more likely to interact in the delivery of infrastructure and services. Moreover, capacity shortfalls on the public sector side may be exacerbated in the FCV context by institutional changes and departures of key staff.<sup>54</sup>

**Access to finance may be another capacity challenge for the public sector.** To the extent that a project is not able to cover costs and sustain itself on the basis of tariffs (“full cost recovery” approach), necessary supplemental funding may come from taxes or other sources such as development funding institutions.<sup>55</sup>

## 9. *Weakness in institutional structures*

**Inadequacies in the institutional and regulatory framework may present an additional set of serious challenges.** To one extent or another, capacity issues in the public sector may be linked to weakness in the institutional arrangements related to planning and implementation. Reduced authority and poor capacity and performance of governmental institutions hampers bringing about needed change, providing security and delivering essential services, as well as possibly bureaucratic obstacles and weaknesses in permit issuance, contract enforcement and regulatory structures in particular sectors in which SME participation in PSPs may be considered. Such weaknesses tend to be more pronounced at the local and community levels.

**In the absence of, or weakness or mistrust in, state institutions, informal institutions may acquire greater influence.** Relying on informal institutions may be a part of the “coping strategy” of SMEs in the FCV context as they struggle to maintain operations, obtain supplies for production, and reach the market.<sup>56</sup>

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<sup>53</sup> See Adiat A Abiodun, “The Challenges and Solutions of PPPs in Fragile Countries and Conflict Affected Areas,” in *International Affairs Forum*, available at <http://www.ia-forum.org/Content/ViewInternalDocument.cfm?ContentID=8369>.

<sup>54</sup> That is what occurred, for example, in the case of AMADER in Mali; see Output-Based Aid in Mali Rural Electrification Hybrid System Project, in OBA [Output-Based Aid] Approaches, June 2015, Note No. 45; available at <https://www.gpoba.org/sites/gpoba/files/OBA45%20Mali%20Electrification.pdf>.

<sup>55</sup> Possible funding sources in the water sector have been referred to as the “3Ts” – tariffs, taxes and transfers (including official development assistance grants) (see *OECD, Managing Water for All, supra*, note 2, p. 15).

<sup>56</sup> Regarding the possible role of informal institutions and related practices such as payment of protection money, hiring on the basis of social background, as such coping practices may relate to SMEs in fragile states, see Hoffman and Lange, *Growing or Coping, supra*, note 17, p. 4.

## 10. Deficiencies in quality control

One of the main difficulties impacting on the possibilities of SMEs as providers on a PSP basis concerns the control of quality of services provided on such a basis. Any lack of, or deficiencies in, quality control, in particular in a field such as water supply and sanitation services, can pose a significant public health risk (e.g., due to water being distributed without disinfection).<sup>57</sup>

“As in most fragile and conflict-affected economies, the lack of access to credit remains a key challenge to enterprise development in Liberia.”

- *World Development Report 2017*, p. 54

## 11. Diminished access to finance

**FCV situations can have a particularly devastating impact on the financial sector.** The spectrum of possible impacts include looting of banks and destructions of records, shutdown or impairment of banking operations and services, vulnerability of banks to being caught up in the struggle of factions to secure financing, and a weakened capital base for surviving banks.<sup>58</sup> While micro-financing may be available for micro-enterprises, and bank financing for large companies, SMEs may be left without access to bank financing.<sup>59</sup> As a result, it may be that financing is obtained through social ties or diaspora investors, or from public sources. That is in addition to business activity that may result from migrant entrepreneurship.<sup>60</sup>

### Box II.6 Financial issues for municipalities: example from Benin (water)

Municipalities lacked sufficient funds to carry out major rehabilitations. The profitability of each PWS varied greatly, including within municipalities: this was due to variable asset conditions, the presence of alternative water sources and varying population densities.

<sup>57</sup> See, for example, *Evaluation of Small-scale Providers of Water Supply and Sanitation Services in Peru*, p. 5; available at <https://openknowledge.worldbank.org/handle/10986/17261?show=full>.

<sup>58</sup> See Mary Porter Peschka, *supra*, note 42, p. 16.

<sup>59</sup> *Ibid.*, pp. 10-11.

<sup>60</sup> See summary of presentations by Bogdan and Roxanna Romanica, “Doing Business: A Social Affair,” at the IGNITE! 2015 Conference, Doing Business in Fragile States, as well as, at the same event, the presentation on “Inclusive finance for entrepreneurs”, by a panel of Mirwais Momand, René Kim, Nicola Armacost, Ben White, moderated by Aissatou Ba (AfDB); “Entrepreneurship and Migration”, panel of Roelof van Laar, Robert Kloosterman, Raheil Aziz and Michael Newson, moderated by Khaalid Hassan; available at [www.spark-online.org/wp-content/uploads/2015/10/IGNITE-2015-report.pdf](http://www.spark-online.org/wp-content/uploads/2015/10/IGNITE-2015-report.pdf).

Moreover, difficulty in accessing financing is an obstacle commonly faced by SMEs in penetrating public procurement markets, and one that is not necessarily resolved by the restoration of commercial banking services. That difficulty may be particularly important in the context of PSP projects that entail some investment on the part of the project company, and exacerbated in the FCV environment.

**Box II.5 Financing challenges of private operators Benin (water)**

A 2010 diagnostic study found that only 27% of private operators in Benin had sufficient financial resources to renew assets, at least partly due to high fees and charges paid to municipalities.

**Accessing finance may also be an obstacle to the public sector side in the FCV context.** Such financial obstacles may make it difficult for a potential public sector sponsor of a PSP to contemplate systematically and thoroughly all the possible implications of establishing PSP arrangements with SMEs for delivery of infrastructure and services. That may be the case when the public sector side has to incur financial responsibilities for subsidization, or even if access to finance is needed only for the purposes of preparation of projects, conducting capacity building of targeted communities and the private sector, and exercising regulatory responsibilities.

## 12. *Low-levels of awareness*

**Low levels of familiarity with PSPs present another potential challenge to introducing PSPs operated by SMEs.** In the public and private sectors, including SMEs, and other stakeholders, including civil society, there may be a lack of awareness of the nature and potential applications of PSP to meet infrastructure and service needs.

## III. ENABLING SME PARTICIPATION

**While there are considerable obstacles and risks in FCV contexts, the private sector typically continues to be active.** There is an established track record of private sector investment in fragile countries.<sup>61</sup> Private sector activity, including that of SMEs, can play a key role in securing peaceful conditions and establishing the basis for a recovery and reconstruction process. The private sector can do so in particular through job creation for the unemployed, for example, former combatants, and for those that are being resettled.

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<sup>61</sup> For examples of private sector business activity and investment in fragile contexts, and supporting and facilitating initiatives, see IFC, *Rebuilding for Tomorrow: Private Sector Development in Fragile and Conflict-Affected Situations in Africa* (2015); available at [http://www.ifc.org/wps/wcm/connect/7440fe80485e6a868cacfd299ede9589/IFC\\_CASA\\_SmartLessons\\_Booklet.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/7440fe80485e6a868cacfd299ede9589/IFC_CASA_SmartLessons_Booklet.pdf?MOD=AJPERES).

**To deal with the various challenges in an FCV context, SMEs may adopt a “coping strategy” aimed at survival rather than focusing on a growth strategy.** Included in such a coping strategy may be, for example, relying on personal and social networks,<sup>62</sup> and dealing with traditional or informal institutions, or parallel authority structures.<sup>63</sup>

**Below is an outline of key elements in an enabling environment for SME participation in infrastructure PSPs in FCV contexts.** Creating an enabling environment includes, in addition to the positive development of systemic aspects (e.g., policy framework), addressing systemic obstacles as well as improving capacity building and other types of technical support to empower SME activity. All the while it is important to bear in mind that, depending upon the context, support strategies for SMEs need to be “conflict sensitive.” It may also be useful to consider the elements of an enabling environment for PSPs more broadly, as those may be relevant in addition to various SME-specific elements of an enabling environment.<sup>64</sup>

**The establishment of an enabling environment in a comprehensive manner will not necessarily be feasible in any particular case.** In assessing which aspects of an enabling environment are most relevant, it cannot be assumed that any and all possible elements will be relevant or feasible. In particular, it cannot be assumed that in all cases there will be a public sector counterpart (i.e., a government) capable of driving the establishment of such an environment. Instead, there may be informal systems or institutions that are not yet mature. Moreover, the extent to which various elements of an enabling environment are feasible may depend on the stage of conflict, with more becoming feasible during the transition away from the conflict phase.

## **A. Policy framework**

**Policy instruments at more than one level of government may be relevant to promoting and facilitating SME participation in PSPs.** Possible levels and aspects of a policy framework are outlined below.

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<sup>62</sup> The post-Apartheid experience of South Africa demonstrates how private sector networks can, in the context of diminished public sector capacity, provide public goods and infrastructure, including roads, water, energy, education and health; see Wim Naudé, *Peace, Prosperity, and Pro-Growth Entrepreneurship*, United Nations University UNU-WIDER Discussion Paper No. 2007/02, p. 8; available at <https://www.wider.unu.edu/publication/peace-prosperity-and-pro-growth-entrepreneurship>. An example of the network role would be when reputational implications play an ascendant role in enforcement of obligations in the context of weak or lacking judicial enforcement mechanisms.

<sup>63</sup> Annette Hoffman and Paul Lange, *Growing or Coping*, *supra*, note 17.

<sup>64</sup> A useful enumeration of possible elements of an enabling environment for PPPs is found in the “Due Diligence Checklist for Legal and Institutional Enabling Environment for PPP” (2016); available at <https://ppp.worldbank.org/public-private-partnership/ppp-overview/practical-tools/checklists-and-risk-matrices/due-diligence-checklist>.

1. *Establishment of general PSP policy framework*

**Adoption of a policy governing the identification, development and implementation of PSPs is an important foundational element in an overall PSP framework.** If there is a public sector counterpart capable of doing this, such a policy can set the stage for effective PSP processes, including those in which SME participation is sought and accommodated. Possible elements of a PSP policy statement include:

- a. Scope of the PSP policy including definition of key PSP concepts
- b. Rationale for engaging in PSPs and statement of objectives and principles
- c. Identification of priority sectors for PSP
- d. Description of the need for policy, legal and institutional/regulatory framework for PSPs
- e. Criteria applicable to assessment of feasibility of proposed PSP projects (e.g., technical, financial, economic factors, as well as public interest considerations including environmental, public access, accountability, sustainability)
- f. Indication of types of PSP contracting arrangements utilized for operation of existing facilities, and types of PSP arrangements utilized for development and operation of new facilities
- g. Roles of stakeholders
- h. Call for the development of a communications strategy to raise awareness of a range of stakeholders about PSPs (including policy makers and other public officials, legislators, private sector including SMEs, civil society)
- i. Mandate for capacity building initiatives on various aspects of the PSP project cycle, including for public officials and SMEs as regards SME participation in PSPs, and capacity-building-related aspects concerning technology and skills transfer
- j. Pricing policy that ensures affordability for beneficiaries/users
- k. Call for steps to promote PSPs in geographically and economically marginal areas, in which SMEs may have a particular role to play in providing infrastructure and services on a PSP basis
- l. Key aspects of setting up and implementing a monitoring and evaluation framework

**Box III.1 Policy framework: Example from Rwanda**

The 2009 National Public Investment Policy laid out broad guiding principles for implementation of PPPs, regarding eligibility criteria, competitive selection, risk-sharing, budgeting and accounting. PPPs are defined as a tool for rural and sector development in the 2012 Decentralization Implementation Policy. Previously, the RWSS Strategy (1998) supported the private sector as a provider for all works, goods and services, sought to decentralize planning and management of services, such as by delegating decision-making, ownership, and management of water facilities to water users' associations, as well as promoted a demand-responsive approach (communities decide based on willingness to pay, contribute to investment costs, and pay operation and maintenance costs of facilities).

**When FCV conditions and available public sector capacity permit, policy-making may include discerning market behaviors and facilitating a specific market structure using policy instruments and rules.** For example, if the market is regulating prices and standards, services are being provided to populations in need, this may need to simply be allowed by government and the policy prescription could be not to increase cost burdens. As the markets mature or the 'prime' (i.e., relatively more affluent) markets, with better prospects for payment by service users, are cherry-picked and become saturated, or if there is monopoly pricing, then government needs to think about how it can incentivize more classical types of public private partnerships or address these failures through regulation.

## 2. *Sectorial policies and programs*

**Apart from a general PSP policy framework, policies at the sectorial level are another potentially important component in an enabling environment for SME-based PSPs.** Sectorial policies calling for greater private sector participation, which may be coupled with a decentralization policy (e.g., in the water or energy sectors), can be an important

element in mandating and facilitating SME participation in those sectors on a PSP basis. Such initiatives may form a part of sectorial reform policies, which may in turn be part of a broader economic and business environment reform policy of the government.

**In and of themselves, policy statements are not sufficient and they need to be backed up by programs.** Policy statements of themselves do not influence investment decisions of the private sector. The question of practical import is "what is the government or donor doing to address risks in the specific case of FCV?"

### **Box III.2 Policy support for private sector participation: Benin (water)**

2009 National Water Policy emphasizes the need for greater private sector participation through delegated management of water infrastructure/systems in rural areas and PWS in semi-urban areas.

- World Bank Report ACS13867: "Republic of Benin, Benin Small Scale Piped Water Schemes Inclusive Business Support Project, A Case Study." June 10, 2015

### **Box III.3 Policy Framework: Examples from Puntland and Somaliland**

The country's water sector was overseen by centralized government operation in the 1980s-90s under the Water Development Authority. Private sector participation is a key pillar of both Puntland and Somaliland's policy frameworks, despite difficulties in implementation. The Puntland Water Policy encourages further growth of the private sector's role in the water sector. Somaliland's National Water Policy encourages PSPs for water delivery. Policy instruments in Somaliland include:

**Somaliland Water Policy:** Sets out the objectives, general principles and guidelines to be followed by the MoWR in developing the water sector - Passed on 22 June 2004 by the Council of Ministers chaired by the President.

**Somaliland Water Strategy:** Indicates priorities, detailed measures to be taken to permit the National Water Policy to be implemented - Passed in September 2004 by the Council of Ministers chaired by the President.

**The main principles of such sectorial reform policies may include:** focusing of the central government role in development of sectorial policy; establishment of regulatory bodies; and transfer of operational activities to the private sector.<sup>65</sup> For example, such a sectorial policy instrument may emphasize delegated management of water infrastructure/systems and PWS in semi-urban areas, PSP mechanisms that may be particularly suitable for involvement of SMEs (see examples in the Benin case study). Such policies can help to defuse tension and distrust between communities and higher authorities in the FCV context by promoting local control and participatory development, thus also helping to defuse factors that may be fueling fragility and conflict.<sup>66</sup>

**Box III.4 Policy Framework:  
Example from Cambodia**

Rural Electrification Strategy seeks “convergence of small power providers into local distribution companies” so that transmission is rolled out across the country.

### 3. *SME policy*

**A policy framework that promotes SME participation in PSPs could be developed taking into account policy initiatives that promote a greater SME share of the public procurement market in a country or part thereof.** Such programs may apply to SMEs generally, and/or may be targeted at specific types of SMEs and sectors of activity (e.g., women-owned or managed SMEs). Programs of that type may have particular resonance in the FCV context, where women’s entrepreneurship may be called upon to play an enhanced role.<sup>67</sup> Steps that public procurement systems take to promote and facilitate greater access of SMEs to public procurement markets include:

- a) Public-private dialogue and assessment of needs
- b) A policy framework that mandates and promotes greater access of SMEs to public contracts (including set-asides and other forms of preferential policies, and measures to foster innovation by SMEs)

<sup>65</sup> See reform of the electricity sector in the Mali case study, *supra*, note 7.

<sup>66</sup> Rwanda ICR, *supra*, note 13, p. 5.

<sup>67</sup> Carmen Niethammer, *Women Entrepreneurship and the Opportunity to Promote Development and Business*, *The 2013 Brookings Blum Roundtable Policy Briefs – Enterprising Solutions: The Role of the Private Sector in Eradicating Global Poverty*, p. 31; available at <https://www.brookings.edu/wp-content/uploads/2016/06/2013-BBR-Women-Entrepreneurship.pdf>.



- c) Inclusion in the legal and procedural framework of provisions that promote and facilitate SME participation, including easing administrative burdens of participation (e.g., procurement planning requirements that include preparation and publication of annual procurement plans; division of procurement into lots where appropriate; allowing procuring entities to forego imposition of bid securities and, where appropriate, applying the bid-securing-declaration technique; ensuring application of qualification requirements proportional to the nature of the contract and streamlining of documentation of eligibility; enablement of bidding by joint ventures and consortia)
- d) Establishment of financing facilities to assist SMEs in bidding for and implementing procurement contracts (e.g., online factoring of receivables under procurement contracts)
- e) Capacity building programs for public officials and SMEs that facilitate implementation of pro-SME procurement policies
- f) Appointment of focal points and inter-ministerial commissions focused on promoting SME access to public procurement

**Various countries have adopted policies to promote inclusion of SMEs in PSP/PPP projects.** Possible ways in which such policies are expressed in practical terms include:

- Recognizing and legitimizing the possibility of SME participation on a PSP basis (e.g., as small scale private service providers)<sup>68</sup>
- Authorizing SMEs to bid alone or in association with other bidders<sup>69</sup>
- Establishment of small-scale projects which tend to use SMEs as operators
- Creation of projects at the sub-national and municipal levels, which typically are smaller in scale and may be more accessible for SMEs
- Reserving certain selection processes only for SMEs
- Requiring PSP project companies that are not SMEs to engage SMEs in the implementation of the projects (this could be formulated in terms, for example, of sub-contracting a percentage of the cost of construction, or specified portions of project)<sup>70</sup>, or to include local partners
- Rated proposal evaluation criteria that give credit to and incentivize proposals that include SMEs
- Steps of various types to take cognizance of gender inclusion and impact issues in the PPP context
- Special notification procedures directed at SMEs

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<sup>68</sup> Baker, *supra*, note 20, p.2.

<sup>69</sup> Argentina - *Regimen para la promocion de la participacion privada en el desarrollo de infraestructura* Decreto 676/2001 [Regulation for the Promotion of the Private Participation in Infrastructure Development - Decree 676/2001], available at <https://ppp.worldbank.org/public-private-partnership/library/argentina-ley-regimen-promocion-participacion-publico-privada>.

<sup>70</sup> *Ibid*; this is a provision found in the Argentine Decree, art. 12; that provision also states that the SMEs must be independent from the project company and that half of the subcontractors must be specifically identified in the proposal.



- Monetary advances to facilitate strengthened financial capacity
- Facilitation of access to credit
- Use of rated criteria (merit points) in the evaluation and comparison of proposals to credit proposals that include SME subcontracting or that exceed minimum levels of SME subcontracting is such minimums are established in the request for proposals
- Obligatory division of projects into lots
- Provision of a “light” regulatory framework for small-scale private sector providers that ensure quality and safety, while avoiding increased costs to providers<sup>71</sup>

(For additional examples and information resources, including on how pro-SME PPP regulations and policies have worked in various sectors, see <https://ppp.worldbank.org/public-private-partnership/small-and-medium-enterprises-and-ppps>; see also, in Annex A of the Toolkit, the Chad case study describing the SME Linkages Program for inclusion of SMEs in the oil pipeline construction value chain. That program, developed by IFC, includes SME mapping, an SME rating system, e-procurement, information awareness, capacity building, connectivity access, and access to finance.)

**Another tool may be to establish the standard that, to the greatest possible extent, existing operators should be included (e.g., in particular in the transport sector).** A requirement of that sort was included, for example, in the Mayoral Decree establishing the Integrated Public Transport System in Bogota, Colombia. It is referred to as the principle of “democratization.”<sup>72</sup>

**In defining SME support policies and tools, due regard may be given to making the support policies “conflict sensitive”.** That includes taking into account coping strategies that may be unavoidable features of SME operations in FCV zones and “conflict sensitive” business operations.<sup>73</sup>

**Apart from sectorial policies that call for SME participation in PSP arrangements, establishment of policies and strategies that promote economic development inclusive of SMEs is another potentially helpful component of the overall policy framework that may facilitate participation of SMEs.** Coordination with such policies and strategies may to one extent or another assist in creating opportunities for SME participation, building

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<sup>71</sup> Baker, *supra*, note 20, p. 3; the author refers to the possibility that, in countries where quality, safety and environmental standards for operators are low, consideration may be given to issuing regulations for SPSPs which are flexible in respect of service rules.

<sup>72</sup> See Decreto 309 de 2009 - by which the Integrated System of Public Transportation (Sistema integrado de Transporte Público, SITP by its acronym in Spanish) is adopted for Bogota (in Spanish), art. 15; available at <https://ppp.worldbank.org/public-private-partnership/library/decreto-309-de-2009-by-which-integrated-system-of-public-transportation-sistema-integrado-de-transporte-p%C3%BAblico-sitp-by-its-acronym-spanish-adopted-for-bogota>.

<sup>73</sup> Hoffmann and Lange, *Growing or Coping?*, *supra*, note 17, p. 5.

SME capacity, facilitating access to finance, and simplifying SME participation in public procurement proceedings, including those connected with PSPs.

**Apart for policy issues related to inclusion of SMEs, general policy objectives relating to the effectiveness of PSP arrangements in service delivery are of paramount importance.** Those objectives center on the quality, reliability, safety and affordability aspects of the services being delivered.

#### 4. *Government commitment*

**Strong government commitment to policies that enable SME participation on a PSP basis can be a key success factor.** Adoption of a policy framework provides a visible vehicle for expressing a strong government commitment to a sectorial decentralization policy that provides for community management of water infrastructure works with operation by SMEs on a PSP basis.<sup>74</sup>

#### 5. *Taxation*

**One of the key challenges faced in the FCV context is the rebuilding of fiscal institutions and systems.** It is widely understood that healthy fiscal institutions, effectively performing revenue and expenditure operations, are key to recovery, transparency and accountability, and sustainable development. Technical assistance programs for strengthening fiscal institutions are available from the IMF.<sup>75</sup>

**The level of fragility of a particular country will play into the choice of fiscal approaches to be applied.** For example, at early stages of recovery tax collection may be targeted at low-hanging fruit such as customs tax. That progression is outlined in the chart below.<sup>76</sup>

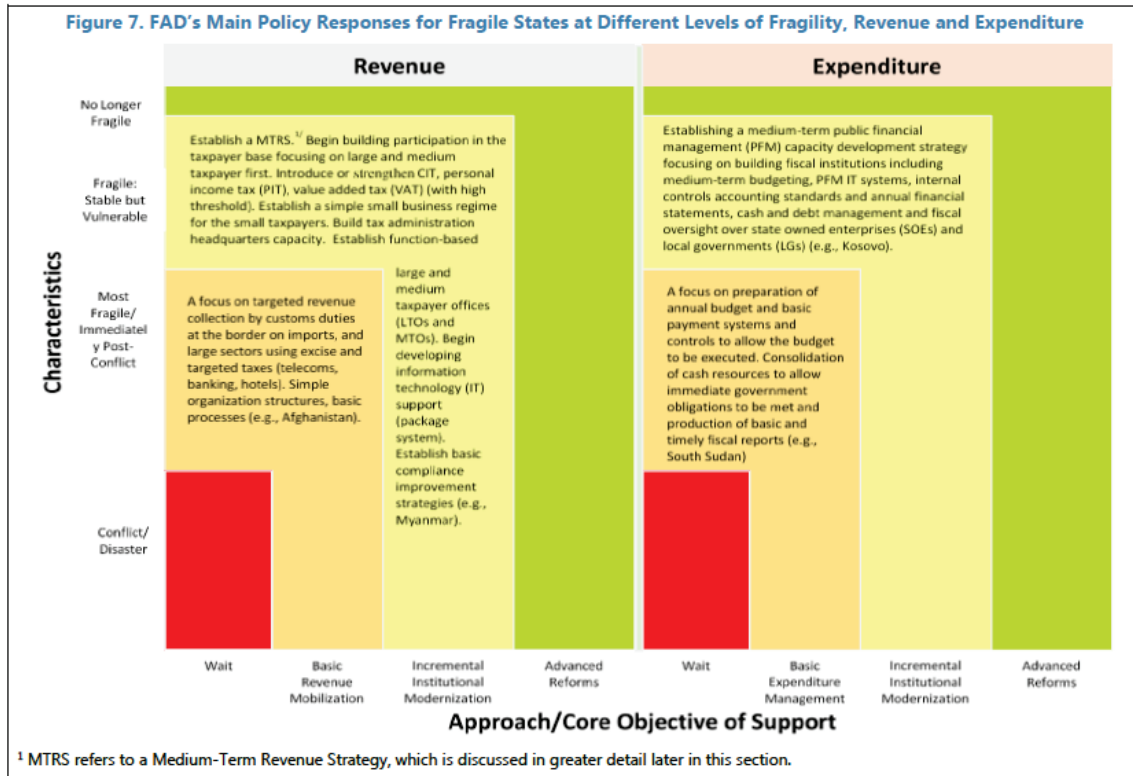
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<sup>74</sup> See Rwanda ICR, supra, note 13, p. 5.

<sup>75</sup> Technical assistance programs of the IMF related to fiscal capacity are described in *Building Fiscal Capacity in Fragile States* (2017) <https://www.imf.org/en/Publications/Policy-Papers/Issues/2017/06/14/pp041817building-fiscal-capacity-in-fragile-state>.

<sup>76</sup> *Ibid.*, p. 20.

Figure III.1



6. Donor support and coordination

**Donor financial support is likely to play a key role in PSP transactions in the FCV context.** PPIAF has played a coordination role in getting donors involved in both the design and implementation stages, thereby helping to solidify long-term donor commitment to PSP programs involving infrastructure services in FCV scenarios. That may present a challenge to the extent that donors are not habituated to providing support over an extended period to infrastructure services.<sup>77</sup>

**While it is certainly the case that activities of development aid donors face greater risks in contexts of fragility, and the success rate of donor funded projects in fragile zones is lower, that in and of itself is not grounds for donors not to be engaged in fragile contexts.** Maintaining donor engagement in the face of fragility reflects a

“...one can conclude that for projects in fragile societies, even when the target group is very broad – thus limiting the services that accrue to each individual – it becomes easier to reach programme goals because the activities are backed by more people’s support. That, in turn, helps to avoid conflict and promotes stability.”

- *Fragile Settings/Lasting Impact* (note 27), p. 39

<sup>77</sup> This has been the case in Afghanistan and in Palestine; see Andrew Jones, *supra*, note 44.

paradigm shift as to the response of donors to fragility that recognizes the essential need to prevent sliding further into fragility and support for stabilizing forces and the centrality of engagement with FCV countries in the development policy agenda.<sup>78</sup>

#### **Box III.5 Donor support: Example from the Mali case study**

After the privatization of Energie du Mali (state-owned water and power company) in December 2000, with the support of the World Bank, France's development agency, and Germany's development bank (KfW), Mali's government requested PPIAF's support to ensure private-sector led development in the water and electricity sectors in Mali. In 2008, the Government of Mali requested PPIAF support to strengthen enabling environment for private sector participation in the rural water sector in Mali, including (1) developing a framework of regulatory procedures, contractual management, and accounting tools, (2) supporting training programs for sector stakeholders, and (3) strengthening the contractual framework for the transfer of maintenance of rural water infrastructure to small-scale private operators.<sup>79</sup>

#### **Donor support: Example from Rwanda case study**

The World Bank's support to Rwanda's water sector consisted of the following components:

- **35 workshops** and 290 persons-months of training including initial learning (supply of initial equipment, basic training in procurement and participatory techniques, visits to other African Countries (Benin, Uganda, and Burkina Faso), and periodic workshops with districts and CDs to build awareness of the project approach and subprojects' implementation manual)
- **Exchange of experiences** among districts, provincial units, and partner organizations in the implementation of subprojects through workshops and specific technical training seminars, and assessment of implementation procedures including the workshops of the MTR
- **Dissemination:** spreading best practices and progressively sector-wide approach through workshops and field visits; impact study/technical audit of Rwandese experience
- **Project Management Component:** finance project management and assistance of CDCs and PCU staff and provincial engineers

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<sup>78</sup> See discussion of such a paradigm shift in *Fragile settings/Lasting Impact*, *supra*, note 27, p. 31; see also *Development for Peace and Security: BMZ Strategy Paper 4* (2013) by the German Federal Ministry for Economic Cooperation and Development.

<sup>79</sup> PPIAF. 2011. "PPIAF Assistance in Mali."

<http://documents.worldbank.org/curated/en/715341468281658868/pdf/757990PPIAF0As00Box374359B00PUBLIC0.pdf>.

## 6. *Selection of beneficiary community*

**An issue of particular sensitivity in the FCV context may be the selection of which communities will be targeted by projects providing infrastructure services.** This is likely to be an issue in any context, but especially in FCV situations. Experience has shown that, as a general rule, it is preferable in FCV contexts to try to pursue inclusivity in designing the scope of projects and deciding on which communities will be the beneficiaries. The risk is that, by focusing, for example, on one community to the exclusion of another (e.g., in a situation of ethnic tension), tensions that fuel conflict may be exacerbated rather than peace being promoted. To some extent, this may involve balancing, on the one hand, efficiency considerations, and, on the other hand, conflict management objectives.<sup>80</sup>

“The perception of winners and losers from private investment can exacerbate pre-existing tensions.”

- *Seven Approaches to Developing Projects in Fragile Governance Environments*, OPIC Office of Accountability (2014) (note 77), p. 6

**Targeting beneficiaries broadly may also involve integrating into projects populations affected by more than one type of crisis.** That sort of integrated approach was demonstrated in Aceh, Indonesia, where, in various projects, including housing construction, healthcare, and various infrastructure services, populations affected by the December 2004 Tsunami, as well as populations affected by the conflict in the region, were targeted. Those projects thus contributed both to reconstruction and peacemaking.<sup>81</sup>

## 7. *Sustainable procurement policies*

**Various countries have adopted “sustainable procurement” policies and practices.** That entails applying economic development and competitiveness, environmental conservation, and social welfare policies in public procurement, and harnessing public procurement expenditure to promote sustainable development policy objectives. Promotion of SMEs may be part of a sustainable procurement policy framework and may be relevant when a procurement system seeks to empower SME participation in public procurement markets.<sup>82</sup> The International Standardization Organization (ISO) has issued

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<sup>80</sup> See *Fragile settings/Lasting Impact*, *supra*, note 27, p. 39, citing examples, from Indonesia, Sri Lanka and Burundi.

<sup>81</sup> *Ibid.*, p. 40.

<sup>82</sup> Information and supportive resources related to sustainable procurement policies and practices are available, for example, from: EU, *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement* (2010), available at <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=978> ICLEI – Local Governments for Sustainability, <http://www.iclei-europe.org/topics/sustainable-procurement>; UNEP,

a first international standard on sustainable procurement (ISO 20400:2017), which provides guidance to organizations on integrating sustainability within procurement.<sup>83</sup>

## B. Legal framework

**Legal instruments of various types and at different administrative and juridical levels may be relevant to enabling and supporting SME participation in PSPs, including in an FCV context.** Key components of a PSP legal framework include those addressed below.

### 1. PPP Law

**A growing number of states have enacted legislation on PPPs.** Such legislation may deal with issues such as<sup>84</sup>:

- (a) Policy and organizational aspects
  - i. Scope of authority to award PPPs
  - ii. Eligible infrastructure sectors
  - iii. Administrative coordination and processes related to identification, development and approval of PPP projects
  - iv. Authority to regulate PPPs and infrastructure services
  - v. Project risks and risk allocation issues
  - vi. Government support

#### **Box III.6 Issues in the Law on Concessions: Example from Cambodia (energy)**

Issues include: the lack of an approved policy framework for implementation and preparation; no mention of institutional and capacity issues for government to implement and manage contracts and risk allocation; and lack of procedures on project preparation, fiscal project obligations, and associated contingent risks.

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<http://www.unep.org/10yfp/programmes/sustainable-public-procurement>; International Institute for Sustainable Development (IISD), <http://www.iisd.org/library/iisd-and-sustainable-procurement>;

<sup>83</sup> <https://www.iso.org/obp/ui/#iso:std:63026:en>

<sup>84</sup> The list of possible elements of a PPP law includes issues listed in the *Model Legislative Provision for Privately Financed Infrastructure* formulated by UNCITRAL (2003)

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/procurement\\_infrastructure/2003Model\\_PFI.html](http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2003Model_PFI.html); additional references for the contents of PPP legislation may be found in the World Bank *PPP Reference Guide*, *supra*, note 28, pp. 66-69.

- (b) Rules and procedures governing award of PPP contracts<sup>85</sup> (including rules and procedures for awarding PPP contracts; provisions that enable participation in procurement processes of joint ventures and consortia, which may provide an avenue for SME participation in PPPs; provisions that enable subcontracting, which may provide an additional way for SMEs to participate in PPPs, while protecting the public interest against sale of procurement contracts or other abusive practices that may involve subcontracting as a way of circumventing procurement processes; procedures for dealing with unsolicited proposals)
- (c) Contents and implementation of PPP contracts, including, for example,
- i. Issues to be addressed in the PPP contract
  - ii. Governing law
  - iii. Acquisition of rights related to the PPP project
  - iv. Easements
  - v. Security interests
  - vi. Operation of infrastructure
  - vii. Compensation for specific changes in legislation
  - viii. Revision of the PPP contract
  - ix. Takeover by the contracting authority
- (d) Duration, extension and termination of PPP contract
- (e) Settlement of disputes

**Box III.7 Encouraging joint ventures:  
Example from Benin case study**

Joint ventures were encouraged to allow smaller-sized bidders to overcome capacity constraints. (see note 3)

**Box III.8 Legal Framework: Example from Mali**

The Convention de Financement provides the legal framework for private participation in infrastructure, specifying the rights and responsibilities of the concession operator and the public partner. In 2016, the Government indicated its intent to draft a PSP law.<sup>86</sup>

*2. Sectorial legislation*

**Particularly impactful on the possibilities and process for engaging SMEs in PSPs providing infrastructure services are sectorial laws and regulations.** Such legal texts typically govern activities and define roles and responsibilities in the concerned sectors (e.g., legislation governing management of water resources that sets fee principles and structures for users, establishes water quality standards, and may establish institutional and organizational arrangements for management of water resources). In some cases,

<sup>85</sup> For a sampling of procedures and practice for procurement of PPP projects, see *PPP Reference Guide* 28, pp. 160-189.

<sup>86</sup> PPP Knowledge Lab. Mali. <https://pppknowledgelab.org/countries/mali>.

such legislation may specifically mandate the operation of small-scale networks by SMEs under the auspices of local government and community bodies.

#### **Box III.9 Legal framework: Example from Cambodia (energy)**

**Law on Concessions (LOC)** was enacted by the National Assembly in 2007, and the draft sub-decree that would allow implementation of LOC is being prepared. LOC applies to power, roads, bridges, rail, airport, seaport, and canal transportation facilities, water, agriculture waste management, health, education, and telecommunications facilities.<sup>87</sup> The Electricity Law of 2001 created an independent regulator for the power sector.

#### **Legal framework: Example from Somaliland (water)**

**Somaliland Water Act** establishes the legal framework to support the National Water Strategy, defining organizations, mandates and responsibilities, as well as procedures, obligations and interdictions in a general way. The act was approved on March 21, 2011 by the Parliament and signed by the President.

#### **Legal framework: Example from Benin (water)**

In addition to the Decentralization Law regulating the breakdown into 77 municipalities, the Water Resources Management Law (2010) sets the fees or tax due to responsible authorities in application of user-payer. It specifies that fees are the financial responsibility of commercial users based on volume of water used/mobilized. However, the law does not specify roles and responsibilities of different actors for water supply and sanitation services. Other laws such as the Basin Committees Law (September 2011) and the Drinking Water Quality Act (February 2001) define the framework for planning and managing water resources, as well as drinking water standards, respectively.

### *3. Decentralization legislation*

**Legislation on decentralization may be a key element in the legal framework enabling SME operation of infrastructure facilities on a PSP basis.** Depending upon the policy and administrative law context, decentralization legislation may be a key element in enabling PSPs operated by SMEs to be established and implemented. Such legislation may delegate infrastructure management functions to and empower local authorities in budgetary matters and in sectors in which SME participation on a PSP basis may be a particularly important issue.

### *4. Procurement procedures*

**While awarding of PSP/PPP contracts is subject to the general principles and procedures of public procurement, procurement of PSP/PPP contracts does raise a number of considerations that require procurement provisions specifically relevant to the PSP**

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<sup>87</sup> Asian Development Bank. 2012. "Assessment of Public Private Partnerships in Cambodia." <http://www.adb.org/sites/default/files/publication/29921/assessment-ppp-cambodia.pdf>.



**context.** Key features of such provisions, which may be included in a procurement law, or in a PPP law, include:

- a. Open, competitive and transparent procedures for solicitation and evaluation of proposals, competitive procurement processes, even in the cases of PSPs being established at the communal level, that allow multiple bidders to compete for the right to operate infrastructure facilities, which can play a key role in ensuring affordable tariffs for end-users and incentivize PO financial contribution (e.g., to rehabilitation and expansion of existing assets)
- b. Competitive procedures for award in the case of solicited proposals, as well as in the case of unsolicited proposals
- c. The possibility of applying pre-qualification or pre-selection (shortlisting) as an initial stage, to limit the number of proposals that the contracting authority has to evaluate and to ensure that the contracting authority only receives proposals from qualified bidders; it should be noted that establishment of qualification criteria at an excessively high level would constitute a barrier to SME participation
- d. A transparent, fair approach to dealing with alternative bids in which the bidding documents make it clear whether alternative bids are solicited or permitted and, if so, the requirements and procedures applicable to alternative bids (e.g., the requirement that all bids must meet specified minimum technical performance standards)
- e. Bid evaluation procedures that accommodate the application of evaluation criteria other than the lowest bid price (which is not necessarily relevant in the PSP context), including evaluation criteria specifically relevant to PSPs
- f. Provisions that accommodate the participation of consortia and joint ventures
- g. Provisions that mandate contractual instruments that are well drafted, provide cost-effective risk allocation, and safeguard the interests of the parties and the public interest

**Procurement in the FCV context may raise particular challenges and require adaptation.**

Procurement plays a key role in recovery and reconstruction, including in the restoration of essential infrastructure and services in the face of challenges such as deteriorated security situation, reduced business activity, disruption of deliveries, and diminished capacity in public institutions. Various steps may be taken to empower an effective procurement in the FCV context, including:

- a) Preparedness for emergency procurement (e.g., possible support for coping strategies that communities may have adopted, at least during the initial response phase; integration of procurement into national disaster preparedness and risk reduction plans; pre-establishment of framework agreements that may be used in emergency

scenarios; establishment of governance structure for FCV procurement and designation of special emergency procurement/supply chain teams; capacity building for public officials in emergency procurement procedures and processes; conducting market survey of available relevant suppliers/contractors/consultants; establishment of list of relevant prequalified suppliers/contractors/consultants)

- b) Application of streamlined procurement methods where use of more complex methods might not be suitable
- c) Application of proportional qualification requirements (in particular, setting qualification requirements to the qualifications of available and competent local and regional contractors and suppliers)
- d) Enhanced flexibility in choice of fit-for-purpose procurement method (see World Bank new Procurement Regulations for Borrowers<sup>88</sup>)
- e) Use of output/performance based contracts
- f) Use of technology such as geo-tagging, satellite imagery, and digital photography to facilitate contract management; use of mobile technology to transfer cash and monitor contract execution
- g) Measure to manage and mitigate various types of risks (security risk, participation risk, payment risk, delivery risk, monitoring risk)
- h) Reversion back to normal procurement procedures when circumstances permit
- i) Community and stakeholder engagement
- j) Use of NGOs and community groups to supervise projects, or, in some cases, directly to implement projects
- k) Hands-on support from donors such as the World Bank (enhanced, pursuant to the World Bank's new Procurement Framework)
- l) Capacity building assistance to local companies, including SMEs
- m) Applicability of Open Government and Open Contracting principles, including documentation of procurement processes
- n) Applicability of professionalism, ethics and accountability standards

## 5. *Contractual framework*

**The legal framework for PSP arrangements consists of more than just the applicable legislation and regulations.** An essential component of the legal dimension of an enabling environment for SME participation on a PSP basis is the contractual framework that governs the role of the private sector party contracted through a PSP arrangement. Below is a listing of key issues that may be dealt with in contracts between the public sector party and the SME operator, depending in detail upon the subject matter and type

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<sup>88</sup> World Bank. "New Procurement Framework and Regulations for Projects after July 1, 2016." <http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework>.

of the PSP, as well as the level and number of public sector parties involved.<sup>89</sup> It should be noted that the increasing diversity of PSP transactions and parties is resulting in a growing diversity of contractual arrangements.<sup>90</sup>

a. Rights and obligations of private sector operator, including:

- i. Definition of service area
- ii. Any construction, rehabilitation and maintenance obligations, and compliance with applicable legislation, regulations and technical standards
- iii. Any obligations as regards installations on the property or in residences of customers
- iv. Requirements as to service levels and quality (e.g., in electricity, voltage levels of electrical current to be supplied)
- v. Insurance requirements
- vi. The obligation to cooperate with local government even if the SME is recruited by the central government, which in such cases could be stipulated in a separate collaboration agreement between the SME and the local government
- vii. Duty to respect the environment
- viii. Obligation of continuity of service in accordance with stipulated minimum levels (e.g., number of consecutive hours per day)
- ix. Provisions governing interruptions of service (e.g., for maintenance and repair, and related liability issues, notice obligations)
- x. Required maintenance schedule
- xi. Obligation to connect or otherwise service stipulated number of end-users in accordance with stipulated schedule, and procedures to request schedule

**Box III.10 Contract contents: Example from Benin case study (water)**

Contract requirements were set to (a) improve poor populations' access to affordable water services through network extension and rehabilitation, (b) comply with Benin's public procurement rules and institutional arrangements, and (c) achieve financial viability for POs so as to allow them to earn a reasonable return on equity. As a result, the contract was set for 10 years, with clauses on returnable assets and owned assets, clarification on issues of capital maintenance and investments/major rehabilitation, definition of operations and maintenance standards, performance incentives (e.g. penalties for contract non-compliance), financial provisions for works to be carried out within two years of implementation, and allocation of the pre-financing of subsidies and tariffs to POs. (See note 3)

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<sup>89</sup> For a survey of contractual issues and options that may be relevant to SME participation in water projects, see Delmon, Victoria Rigby, *Structuring Private-Sector Participation (PSP) Contracts for Small Scale Water Projects* (2014), a toolkit prepared under the Water and Sanitation Program and the World Bank PPP in Infrastructure Resource Center (PPPIRC); available at <https://ppp.worldbank.org/public-private-partnership/library/toolkit-structuring-private-sector-participation-ppp-contracts-small-scale-water-projects>.

<sup>90</sup> OECD, *Managing Water for All*, *supra*, note 2, p. 17.

modification; sanction for non-compliance with maximum allowable schedule may be loss of exclusivity in the operating zone; obligation with respect to connecting additional customers (subject to non-imperiling of financial sustainability)

- xii. Right of access to public roads, networks
- xiii. Right to access above and below private property for the purposes of providing the service, including right of passage for maintenance purposes
- xiv. Moveable and immovable property to be returned at the end of the operating period
- xv. Reporting and documentation obligations in connection with monitoring by the public sector
- xvi. Obligation of non-discrimination in application of tariffs
- xvii. Rights of the operator vis-à-vis customers of the service (extent to which the operator is free to set tariffs, or is subject to regulatory approval; sanctions for non-payment)
- xviii. Approved tariff setting formulas and indices; dates, intervals and procedure for tariff adjustments; condition for revision of tariff setting formulas

**Box III.11 Limited incentives for POs in contractual framework: Example from Benin (water)**

POs' maintenance costs increase with inflation, whereas there was no mechanism for revising tariffs within their existing contracts. (See note 3)

b. Rights and obligations of the public sector party, including:

- i. Any assistance to be provided to the private sector party in terms of obtaining necessary permits
- ii. Monitoring of implementation and performance of the project
- iii. To inform the private sector party of any changes in applicable legal and regulatory regime
- iv. Grounds for cancellation of operator's license to operate (termination of contract, e.g., for failure to comply with stipulated service levels)
- v. Definition and regime governing works and equipment involved in the project (including those which are to be returned to the public sector party and those which are retained by the private sector party at the conclusion of the operational period)
- vi. Stipulation of which party is responsible for investment
- vii. Any guarantee requirements that might be applicable

**Box III.12 Contract drafting: Example from Mali (energy)**

Rural electrification authorization issued by Minister of Energy. Contracts and tender specifications signed by operators included all requirements during the life of PPP; technical standards are adapted for rural context. With the support of the World Bank, a concession document was adopted that allows a retail service provider to serve a specified community and the information that the concession holder must report to AMADER, as well as how retail tariffs will be set. (See note 8)

- viii. Assistance, if any, that is to be provided to the operator as regards access to tools and other equipment that may be needed for implementation
  - ix. Any office space or other facilities to be accorded to the operator
  - x. Any support to be provided in the form of training and consultancy services for technical aspects
  - xi. Steps to be taken to monitor satisfaction levels of end-users
- c. General provisions, such as:
- i. Identification of contracting parties
  - ii. Contract duration (including the beginning and the expiry points in time, and whether there are any options for extension and the duration of the possible extensions)
  - iii. Procedures for dealing with changed economic circumstances, in particular those potentially affecting tariff levels
  - iv. *Force majeure* (obligations of operator, including prompt notification to public sector party)
  - v. Procedure for modification of contract
  - vi. Dispute resolution procedures, including mechanisms to address emerging problems before they develop into full-blown disputes, and non-judicial mechanisms for settlement of disputes

**Box III.13 Settlement of disputes – various possible approaches<sup>91</sup>**

- **Amicable settlement** by negotiation
- **Mediation** – assistance from a neutral intermediary
- **Dispute Review Expert/Dispute Review Panel** – a variant is the appointment of an **independent engineer** to monitor implementation and decide on technical matters; decisions may be binding or non-binding depending upon how it is set up; for small projects, to keep costs proportional, local experts may be engaged, or expert desk reviews conducted, or consolidated arrangements made for groups of contracts
- **Arbitration** – an adversarial proceeding alternative to judicial settlement of disputes resulting in a binding, enforceable award
- **Judiciary** – default method, if the parties do not stipulate otherwise
- **Hybrid systems** – with third-parties (e.g., representatives of chambers of commerce) sitting on panels together with magistrates<sup>92</sup>
- **Regulatory body** – if existing/applicable, may have a role in settling disputes

**In addition to contracts between the public sector parties sponsoring PSP arrangements and SMEs operating infrastructure facilities, other agreements may form part of the**

<sup>91</sup> See *PPP Reference Guide, supra*, note 28, pp. 167-168; see also Delmon, *supra*, note 89, pp. 40-43, including sample contract clauses on dispute settlement.

<sup>92</sup> Such a hybrid approach is applied in Mali; see <https://www.export.gov/article?id=Mali-Dispute-Settlement>.

**overall contractual framework.** For example, if a central government is promoting small-scale infrastructure and services PSPs utilizing SMEs, it may enter into agreement with targeted communities concerning their acceptance of such an approach, defining their general responsibilities in such arrangements, and outlining the role of central authorities.<sup>93</sup>

## 6. *Other relevant legal instruments*

**Apart from legislation and regulations defining policies and processes regulating development and use of PSPs, and the related procurement processes, and contractual frameworks, various other legal texts may be relevant to SME participation in PSPs.** Those include: legislation, regulations and procedures governing the establishment and operation of businesses; real property; secured interest and banking; dispute settlement.

## C. **Institutional framework**

### 1. *Role of institutional framework*

**Institutional and governance arrangements have various roles to play in the PSP process generally.** For example, regulatory and tariff setting functions may, depending upon the nature of the PSP transaction, be essential functions vis-a-vis implementing the project and for broader governance objectives.

**It is increasingly recognized that there is a significant link between the quality and effectiveness of governance and entrepreneurship.** That in turn underscores the role of governance has as a key factor in achieving economic development.<sup>94</sup> Along the same lines, governance issues have a key role in successful implementation of SME-operated infrastructure PSPs.

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<sup>93</sup> As in the Somalia case study, where the community entered into a framework agreement with the central government.

<sup>94</sup> Nora Stel, *Entrepreneurship and innovation in a hybrid political order: The case of Lebanon*, United Nations University UNU-MERIT Working Paper Series #2012-078, p. 2; available at <https://www.merit.unu.edu/publications/wppdf/2012/wp2012-078.pdf>.

#### Box III.14 Institutional framework: Example from Benin (water)

- **Central Oversight:** The Ministry of Energy, Petrol Research, Water and Renewable Energy Development is responsible for rural and small town services at the central level, while the Ministry of Finance is in charge of regulating public procurement and monitoring central government subsidies to municipalities.
- **Rural/Semi-rural:** Since 2002 decentralization, 77 new municipalities were created and became responsible for providing and allocating budget to water and sanitation services for the rural and semi-urban areas of less than 20,000 people. Responsibilities include planning investments, contracting works and ensuring the operation of the water systems, which may be supported by social intermediaries such as NGOs, as well as setting tariffs and fees/charges to be paid by private operators.
- **Urban/Peri-urban:** *Societe nationale des Eux du Benin (SONEB)* is responsible for providing drinking water in urban and peri-urban areas of more than 20,000 people.

(Benin case study; see note 3)

#### **An adequately developed institutional framework is a key success factor in the effective implementation of PSPs operated by SMEs.**

The institutional framework for supporting SME participation on a PSP basis may consist of a number of elements at various levels of public administration. It may include mechanisms focused on development of the SME sector, as well as mechanisms concerned with facilitating PSP arrangements. Instruments related to institutional arrangements for facilitating PSPs define roles, responsibilities and processes for establishing PSPs, allocate institutional responsibilities for implementing PSPs and reviewing and approving the PSPs, and establish PSP policy and facilitation units.

**Various types of approaches are found in practice to allocating SME promotional tasks.** For example, entities taking a lead role on SME issues include the Ministry of

#### Box III.15 Institutional Framework: Example from Somalia (water)

Institutional capacity is weak at the community level outside of the large towns. In Puntland, PSAWEN is the government agency with overall oversight over water, energy, and minerals and a mandate to report on the water situation, plan locations for service delivery with implementing partners, and implement projects funded by partners through private companies or local NGOs. Autonomy is weak on the local levels. In Somaliland, MoWR is the ministry in charge of the water sector. On the local level, village committees act as negotiators for their beneficiary community. The Inter-ministerial WASH Steering Committee (IMWSC), co-chaired by UNICEF, convenes all actors in the sector, with a mandate to allocate donor interventions to deserving communities and advise on the water sector.

Trade in Bosnia, the Ministry of Commerce and the Chamber of Commerce in Afghanistan, the Social Fund in Yemen, and the Social Fund for Development in Egypt.<sup>95</sup>

**Institutional mechanisms for facilitating PSPs also can play an important role.** Such a function is performed, for example, by the Central PPP Unit in Egypt, the Ministry of Investment in Djibouti, the Ministry of Finance in Morocco, the PPP Unit in Tunisia, the Higher Council for Privatization in Lebanon, and the Commission for Concessions in Bosnia. An institutional framework for establishing and implementing PSP arrangements focused on participation of SMEs may consist of a number of levels and types of mechanisms, as illustrated in the case studies.

## 2. *Institutional strengthening in FCV contexts*

**Inclusion of government institutions in project design and implementation, and institutional strengthening, are important elements in FCV recovery and reconstruction agendas.**

While it is generally advisable and desirable to include government institutions in the project process, in the context of weak governments creative solutions may be necessary to achieve that end and also to design and utilize projects with a view to strengthening and legitimizing government institutions. For example, gradual phasing in of involvement of state institutions may in some cases be a suitable approach in the FCV context.<sup>96</sup>

### **Box III.16 Institutional Framework: Example from Rwanda**

Rwanda Development Board leads on PPP promotion and reports directly to the President. Decentralization occurred in 2001 with the establishment of districts who were given contracting authority and the creation of Community Development Committee (CDCs). In 2005, performance contracts were also decentralized, to be conducted between households and district subdivisions rather than between the districts and the President. (See note 13)

**At the same time, fragility-related considerations weigh on the issue of institutional arrangements and linkages in a number of ways. For example, avoidance of creating parallel systems is an important objective.** Strengthening state structures is typically a priority objective in fragile contexts. Establishment of parallel institutional arrangements in place of state structures may undermine rather than strengthen state structures. Experience has shown that in FCV contexts, in particular where strengthening of state

<sup>95</sup> See Annex B, Survey Summary.

<sup>96</sup> Some examples of adaptive approaches to the role of government institutions in donor funded projects in fragility contexts are found in *Fragile Settings – Lasting Impact*, *supra*, note 28, p. 37. One such example is from a post-conflict reintegration program in Burundi, in which the role of local government institutions was phased in, in conjunction with the re-establishment of local administration bodies and associated elections and technical assistance programs to such bodies in designing municipal development plans.



institutions is an objective, state institutions should be included from the very beginning in planning processes. Experience also shows that reintegration of parallel regulatory mechanisms into state structures can be particularly challenging.<sup>97</sup>

**There may, however, be a role for parallel structures in certain FCV situations.** For example, a social investment fund may be used to attempt to ameliorate living conditions as rapidly as possible in the context of weak state structures.<sup>98</sup>

### 3. *Central mechanisms*

**Various countries have established a PPP Unit at the central level.** A central PPP coordination office under a competent ministry or in some other location in the government structure (e.g., under the cabinet of ministers or president's office); in some countries, such mechanisms might include also a PPP finance unit in the ministry responsible for finance.

### 4. *Sectorial regulatory bodies*

**Sectorial regulatory bodies may have a role to play.** An institutional framework for PSPs involving SMEs in operation of infrastructure in sectors such as water and energy typically features regulatory mechanisms of one sort or another that may be involved in licensing of operators, setting of tariffs to be paid by end users, and other regulatory issues including, where applicable, monitoring and quality control. The institutional allocation of such functions may include more than one entity, with some functions assigned to the cognizant sectorial ministry, and other functions assigned to another entity (e.g., a parastatal entity established for that purpose).

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<sup>97</sup> See *Fragile Settings – Lasting Impact*, *supra*, note 27, pp. 36-37.

<sup>98</sup> *Ibid.*, p. 36, for an example of this from Mali.

The role of sectorial regulatory bodies is not necessarily confined to tariff setting, but may also encompass setting of quality standards and licensing. Considerations that may be relevant in defining regulatory policy in the context of small-scale operators include the desirability of avoiding unnecessarily burdensome and prohibitively costly quality standards (including

**Box III.17 Quality standards for small power producers**

- Quality of product: How useable is the electricity? Are there wide variations in voltage or frequency that damage customer appliances?
- Quality of supply: How available is the electricity? Is it available only at inconvenient times, and how frequent are unplanned blackouts?
- Quality of commercial service: How good is the SPP's customer service? How long does it take the SPP to resolve a complaint?

- *From the bottom Up: How Small Power Producers and Mini-Grids Can Deliver Electrification and Renewable Energy in Africa* (World Bank, 2014), p. 13

for the reason that such an approach may result in high, unaffordable tariffs for end-users, or may render the project too costly for the prospective operators), the ease of monitoring and enforcement, and the possibility of adopting an evolutionary approach in which, initially, regulatory standards are focused on inputs (e.g., equipment, materials) and eventually they migrate to output-based, quality-of-service standards (see box to the right).<sup>99</sup> Furthermore, sectorial regulatory bodies may be involved in licensing and permitting of service providers, and, in some cases, awarding PSP contracts. Accordingly, building the capacity of monitoring and control bodies is a key element in constructing an enabling environment for SMEs to provide essential infrastructure services on a PSP basis.

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<sup>99</sup> See Bernard Tenenbaum, Chris Greacen, Tilak Siyambalapitiya, and James Knuckles, *From the Bottom Up: How Small Power Producers and Mini-Grids Can Deliver Electrification and Renewable Energy in Africa* (World Bank, 2014), p. 13; available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16571/9781464800931.pdf?sequence=1&isAllowed=y>.

## 5. *Variants of sectorial bodies*

**Sectorial bodies may also be established with specific mandates relevant to promoting infrastructure services to underserved populations.**

For example, consideration may be given to a hybrid model in which a body is established specifically to promote the access of underserved population to infrastructure services of a specific sector in particular through the involvement of SMEs, combined with certain regulatory functions such as tariff setting (see example from Mali in Box III.19).

### **Box III.18 Central sectorial body: Example from Mali (energy)**

The Malian Agency for the Development of Domestic Energy and Rural Electrification (AMADER) is an example of a central sectorial agency in charge of (a) promoting electrification in rural and suburban areas, (b) working with all types of operators, including SMEs, including by granting authorization to SMEs to operate distribution networks within specified areas, (c) providing technical assistance and financial support (e.g., distribution of subsidies), (d) overseeing and monitoring project implementation, and (e) acting as a de facto regulator in rural and suburban areas. (See notes 7 and 9)

## 6. *Arrangements at the local and communal levels*

**Institutional arrangements at the local and community levels may be particularly relevant to small-scales PSPs operated by SMEs in the FCV context.** Depending upon their nature and design, PSP projects at the local and communal levels may entail the establishment of management, performance monitoring and perhaps also some regulatory mechanisms at those levels (e.g., the regulatory functions in some cases may include involvement in tariff setting processes). Even when sectorial responsibility remains centralized, the representation of the competent central ministries may be minimal, if there is any at all, at the local levels where service delivery takes place. Thus, mechanisms at the local and communal levels can play a crucial role in representing end-users and ensuring the delivery of quality services.

**Allocation of responsibilities to bodies at the local and community level may be implemented in conjunction with and pursuant to decentralization legislation covering applicable to the concerned infrastructure sector.** Such responsibilities may be assigned, for example, to a town or county council. Arrangements might involve the establishment of a special committee to facilitate management, including selecting potential operators and supervising their training in infrastructure management on a PSP basis.

## 7. *Inclusive policy-making and project selection process and community engagement*

**Policy-making and project selection processes that engage stakeholders, involving the private sector, including SMEs and civil society, facilitate the development of responsive**

**public policies and socially accountable programs.** Modalities for enabling SME and civil society inclusion in policymaking and project selection include meetings and consultations with stakeholders and development bodies and funds, awareness workshops, advocacy through chambers of commerce and industry, and participation in open dialogues and fora.<sup>100</sup> Also important is a communications strategy with regard to SME/PSP initiatives to build awareness of the PSP initiatives and the opportunities that may be available to SMEs.

**Box III.19 Lessons learned about stakeholder engagement: Example from Somalia case study**

The Somalia case study demonstrates the relevance of stakeholder engagement in a number of ways:

- agreements that engage all stakeholders (communities, companies, central government, and mayor) “regularize” the relationships between local operators, government, and community
- Tariff-setting that is communal (i.e., documented and managed at the local level) is more likely to be accepted by community. (See note 5)

**Private sector engagement: Example from Cambodia case study**

Private Sector Development Steering Committee (PSDC), chaired by the Ministry of Economy and Finance, was created in 2006 and serves as a sub-steering committee on private participation in infrastructure decisions and policy framework for PPPs. The Electricité du Cambodge (EDC) was the state power company serving the capital and two provincial cities, while other provincial cities were served by local Government or licensed enterprises. (See notes 9 – 12)

**Engagement with affected communities is key to effective project selection and implementation, and building trust.** That is the case in particular when state governance structures are weak. Such engagement can help identify and deal with issues at all stages of the project process. Those stages, at which public participation is particularly relevant include PSP project development, where stakeholder consultations can be of critical importance, as well as in PSP performance monitoring once the project is in place (e.g., in the form of user feedback on the provider’s performance of the concerned services, which may be linked to a web portal for continuous access and to a grievance review mechanism).<sup>101</sup>

**8. Tariff setting and regulatory aspects**

**Possible regulatory issues span a broad range, depending upon the nature of the sector.** For example, in the water sector, regulatory issues concern water quality, environmental

<sup>100</sup> See Annex B, survey summary.

<sup>101</sup> See *PPP Reference Guide, supra*, note 28, pp. 96-100; see also *Seven Approaches to Developing Projects in Fragile Governance Environments*, from the Overseas Private Investment Corporation (OPIC), Office of Accountability (OPIC), pp. 2 and 7-8; available at <https://www.opic.gov/sites/default/files/files/Fragile%20Governance%20Advisory%20Note.pdf>.

impacts, economic regulation in particular in monopolistic markets, consumer protection, sector monitoring and oversight. At its core, regulatory and tariff issues implicate risk allocation among stakeholders, incentivizing the private sector, while ensuring fairness and balance in tariff-setting and curtailing rent-seeking.<sup>102</sup>

**In setting tariffs, various policy objectives and considerations may be applicable.**

Possible pricing policy factors, some of which may to one extent or another be countervailing, include<sup>103</sup>:

- Access to essential services – to the extent that a PSP project is dealing with essential services such as water and energy, policy objectives likely include broadening coverage if not extending coverage maximally (which may be motivated also for the purposes of increasing revenue)
- Affordability of access – an assessment of this aspect is best done with sufficient knowledge of conditions at the local level including spending for services and “willingness to pay” (WTP); it is of particular concern with regard to low-income households; accuracy in the information upon which affordability assessments are made is crucial to avoid over-pricing of services as well as to avoid underestimating willingness and ability to pay for services leading in turn to deficiencies in quality and scope of services
- Financial sustainability of service provider and cost recovery – critical to ensure simultaneously with access/affordability; in many cases, the goal of “full cost recovery” may be more theoretical than practicable, but the overall goal is to avoid chronic cycles of under-financed services
- Level, quality and efficiency of service – the degree to which reliance for covering costs is placed on tariffs, may affect each of those considerations

## 9. *Grievance mechanisms*

**The availability of grievance redress mechanisms (GRMs) is an important safeguard for accountability and effective results.** GRMs provide stakeholders a channel for reporting deficiencies in the implementation of the PSP contract and in the level of services provided, which is important for many types of PSP projects generally. Project-level grievance mechanisms may be particularly important in the FCV context from a number of standpoints, including providing a channel for giving feedback and airing grievances, including for populations that may have been traditionally marginalized, and serving as a conflict-avoidance mechanism. Grievance mechanisms may be required if the project is supported by an international development bank.

**“Users’ associations” may play a role in GRMs.** In the GRM context, “users’ associations” (a) represent the users’ views and interests in consultations with service providers on

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<sup>102</sup> OECD, *Managing Water for All*, *supra*, note 2, p. 115.

<sup>103</sup> *Ibid.*, pp. 16 -17, (concerning this listing of possible objectives and considerations in setting tariffs).

service levels, technical standards, quality assurance and quality control, tariffs setting, improved customer service and any other issues of concern that may arise; (b) mediate in conflicts between users and service providers at the lower level; these could be related to illegal connections (damage and interference to infrastructure); (c) participate in identification of priorities for improvement and expansion of the services; (d) participate in monitoring the service delivery at the local level by reviewing the quality of services delivered and holding providers accountable; and, (e) serve as the primary group responsible for communicating information on local issues.

**“Company-led” GRMs may be suggested as an option sometimes.** Where governance is weak, in particular in FCV contexts, “company-led” GRMs may play a role (possibly reduced time span between lodging of a complaint and redress).<sup>104</sup> However, that may not be an optimal approach as there needs to be some amount of independence in order for users of the infrastructure services and their communities to have confidence in the process and in the user associations that may be involved in the GRM. A hybrid solution that mitigates such concerns may be a company-supported GRM (rather than a company-led GRM). The support could include provision of office space for the user association, with operational costs being covered from revenue or budgetary allocations from the local government/municipality.

## 10. Transparency

**In PSP contracting generally, disclosure of information is an important governance and social accountability mechanism.** Such disclosure may come from sources including regulatory filings of financial and performance information by the provider/project company, and disclosure of information by government. Provisions mandating disclosure of information, and dealing with confidentiality exceptions, can be placed in law, in policy and in guidance to officials, and in standard contract provisions.<sup>105</sup>

**Safeguards to ensure that all necessary information is made available to stakeholders are an important element in countering weakness in governance typical in FCV contexts.** That information encompasses:

- Project rationale for selection on a PSP basis
- Competitive, advertised and documented procedures for award of PSP contracts
- Publicizing of PSP projects, contract awards, texts of contracts, and contract modifications
- Disclosure of risk allocation

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<sup>104</sup> *Seven Approaches, supra*, note 101, p. 8.

<sup>105</sup> *Disclosure of Project and Contract Information in Public-Private Partnerships*, World Bank Institute (2013), p. 26; available at <https://openknowledge.worldbank.org/handle/10986/16534>; see also *PPP Reference Guide*, *supra*, note 28, pp. 100-101.

- Government asset transfer, payment and/or guarantee commitments
- Project summaries
- Tariffs and pricing
- Key performance indicators (KPI)
- Project performance and audit reports<sup>106</sup>

**Recognition and disclosure of a government body's PSP liabilities in government accounts is another aspect of transparency.** In one way or another, disclosure of liabilities under PSP projects (including contingent liabilities such as guarantees) is crucial for transparency and the possibility of oversight and audit.<sup>107</sup>

#### **D. Capacity-building programs and resources**

**A key element in enabling SME participation in the delivery of infrastructure and services on a PSP basis is addressing capacity shortfalls on both the public and the private sector sides of the table.** Where knowledge, skills and experience are lacking, investment in the capacity gap analysis and capacity building among stakeholders is likely to be well-rewarded in terms of facilitating implementation and encouraging the sustainability of investments. Various aspects and issues of that dimension of an enabling environment are outlined below.

##### *1. Capacity building of public sector*

**While capacity challenges faced by SMEs may be significant as regards operation of infrastructure PSPs, the public sector side also faces its own capacity challenges in this arena.** On the public sector side, capacity-building initiatives may address various aspects and issues, including those outlined below.

##### *Training programs*

**Possible topics for training programs for the public sector to equip officials to organize PSP programs and projects involving SMEs in the operation of infrastructure services include:**

- Technical aspects of identifying, developing and implementing PSP projects
- Accessing finance under available programs
- Special issues raised in establishing and implementing PSP projects operated by SMEs for infrastructure service delivery
- Special consideration and techniques relevant to the FCV context
- Mobilization of interested communities

<sup>106</sup> *Ibid*; various types of information the public disclosure of which is germane to transparency in PPP contracting are illustrated in *Disclosure of Project and Contract Information, supra*, note 110.

<sup>107</sup> See *PPP Reference Guide, supra*, note 29, p. 93; concerning contingent liabilities, see pp.133-134.

- Procurement procedures and negotiation
- Formulation of contracts
- Performance measurement and monitoring of PSP implementation
- Issues specifically related to policies and procedures for empowering SME participation in PSPs

### *Sector-specific capacity building*

**Capacity building may be conducted with specific reference to infrastructure sectors targeted for SME participation on a PSP basis.** Such sector-specific capacity building programs for public officials (e.g., in water, energy, telecommunications) could include, for example, courses aimed at imparting on prospective PSP sponsors the knowledge needed to manage and monitor the process of establishing and implementing PSPs to operate infrastructure facilities in the concerned sectors.

### *Capacity building at the sub-central level*

**It is important to note that public sector capacity-building may need to be conducted at more than one level of government.** Capacity building of local and communal authorities, who may be on the frontlines of PSP initiatives that involve SMEs, is often necessary as they are prone to lacking technical and monitoring ability as regards PSPs generally, and specifically as regards promoting and facilitating SME participation. They may also be unfamiliar with the details of operation and management of specific sectors. Thus, a PSP initiative targeting the delivery of infrastructure at the community level harnessing SMEs may include training for the involved communities in contract management and quality control, tariff setting, and accountability.<sup>108</sup>

### *Building of capacity for mobilizing communities*

**Another aspect of public sector capacity for planning and implementing PSPs involving SMEs has to do with mobilization of interested communities to establish such PSPs within a policy framework that aims to promote such initiatives.** That process may involve conducting a baseline survey of communities not adequately served and which potentially might be included in the program. Ultimately, it may be most effective to establish a demand-driven process which identifies and engages communities that are interested in applying and competing for such opportunities rather than expending mobilization efforts on communities that do not demonstrate such interest in participating.<sup>109</sup>

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<sup>108</sup> See Somalia *Final Evaluation Report*, *supra*, note 5, p. 41.

<sup>109</sup> *Ibid.*, p. 31: “The project should be demand-driven i.e. willing communities would apply and compete for an opportunity to participate. This would ensure that effort is not wasted on communities that are either unwilling or unable to participate.”



### *Issuance of guidance material and project templates*

**As an adjunct to training sessions and other capacity building resources, a practitioner’s manual or similar handbook may be issued to guide officials in establishing PSPs utilizing SMEs.** That may be particularly helpful at the local and community levels. Such a publication may include templates for various types of documents that need to be prepared in the course of preparation and implementation, and may be geared to specific sectors.<sup>110</sup>

### *Enhanced planning and preparation techniques*

**Capacity building for the public sector should emphasize good practices in the planning and preparation of PSPs operated by SMEs.** That may include use of strategic planning techniques such as the consolidation of three or four infrastructure systems in small towns and rural areas to make them more attractive to the private sector and to commercial financiers (sometimes referred to as “clustering” or “bundling”). In terms of the mechanics of the PSP process, planning and preparation is enhanced by resources such as model contracts, tariffs and bidding procedures, accreditation and deployment of monitoring systems, establishment of funding mechanisms, mechanisms for de-risking, performance enhancement mechanisms such as OBA payments, and access to finance and education of financing sector.

### *Application of IT*

**Capacity building of the public sector can be coupled with the introduction of software applications that may aid in the planning and implementation of PSP projects.** Use of IT (including mobile technology) may be relevant at various stages of planning and implementing PSP projects operated by SMEs, in particular in the FCV contexts. (See box below for the example from the Benin case study of a mobile-to-web application being utilized for conducting an asset inventory in the water sector to identify potential PSP projects to be operated by SMEs.) Mobile technology and social media can also be utilized for communicating with customers, including for getting feedback (e.g., through a Facebook page, and through text messages).<sup>111</sup>

**Box III.20 Use of social media for civil society engagement: Palestine solid waste management project**

The Joint Service Council, representing 33 municipalities utilizing the new common landfill facility, set up a Facebook page to communicate with customers (e.g., to alert customers to service disruptions or delays) and receive information about customers’ needs via text messages (e.g., when a dumpster is full and needs to be collected).

<sup>110</sup> *Ibid.*, p. 42.

<sup>111</sup> For example, in Palestine, where a World Bank/IFC project helped establish the West Bank’s first professionally managed, regionally operated landfill (*Ending the Vicious Cycle of Open Dumps; Improving*

### Box III. 21 Use of mobile applications: Example from Benin case study

Programs for the public sector sought to allow them to gain a better understanding of existing assets and monitor service levels. This was done through the introduction of a mobile-to-web application, mWater, which was used to conduct an asset inventory – a significant area of weakness -- for a total of 150 PWS throughout the country and training for public sector actors. The program also facilitated the creation of a regulatory unit within DG-Eau, as a future water services regulator in the country. (For more information on mWater, see Benin Report, note 3, p. 19.)

#### *Access to equipment*

**The capacity of the contracting authority to establish PSPs operated by SMEs may need to be bolstered by facilitated access to needed equipment.** For example, to one extent or another, project documents may provide for assistance to the public sector party in obtaining the tools and equipment it may need to fulfill its obligations (e.g., vehicles provided to a regulatory body to facilitate monitoring of implementation of the PSP arrangement).

#### *2. Capacity building of private sector*

**As noted earlier, capacity shortfalls constitute one of the main challenges in engaging SMEs to operate infrastructure facilities on a PSP basis.** Capacity building is the most common form of support provided for SMEs.<sup>112</sup> Outlined below are various initiatives that may be taken in order to boost the capacity of SMEs to participate in infrastructure and services delivered on a PSP basis.

#### *Training and awareness-raising programs*

**Familiarizing potential SME operators with the nature of PSPs, and the techniques involved in obtaining and implementing such contracts, is at the core of a capacity building program.** Such an initiative may cover various aspects including:

- (a) Introduction to basic PSP concepts and forms, and the opportunities PSPs may offer to SMEs
- (b) Features of public procurement procedures applied in establishment of PSP arrangements

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*Waster Pickers' Lives* <http://www.worldbank.org/en/news/feature/2013/11/08/ending-open-waste-dumps-changing-pickers-lives>). Although the project company here was a firm from Greece and not an SME, this project demonstrated a public-private type of involvement empowering economic activity of waste-pickers.

<sup>112</sup> See Annex B, survey results.

- (c) Issues related to bidding for PSP contracts, and implementing PSPs in particular sectors in which there may be opportunities for SME involvement in PSPs (see, for the example, the Benin case study, where training was provided on professionalized approaches to rural water service management, in general terms as well as in the specific context of the introduction of the new PSP model); such training may include, for example, technical aspects of the design and operation of an infrastructure network, key issues to be addressed in rehabilitation of a system, and various management issues such as budget estimation for maintenance, metering and billing, and in the use of tools such as mWater tool for the production of operation management reports<sup>113</sup>

**Participation of women may be a focus of capacity building and other forms of support.** That may be appropriate from gender and economic development policy standpoints, as well as from practical considerations in FCV contexts. In particular, it may well be that during conflicts and in the post conflict period a greater share of entrepreneurial activity is conducted by women.<sup>114</sup>

### *Advisory services*

**Capacity building for SMEs is not necessarily limited to training.** In addition to providing capacity-building in the form of training, some countries make consultancy services available to SMEs to help SMEs respond to solicitations of bids and proposals, including for PSP-based projects for delivery of infrastructure services. An example from the FCV context is BSC Monrovia, Liberia's main incubator for SMEs, which provides training plus a number of other services.<sup>115</sup>

### *Online information*

Making information available to SMEs, including online information resources, is a practice that is increasingly being applied, including to some extent in FCV contexts.<sup>116</sup>

### *Formation of associations*

**Yet another avenue for building the capacity of SMEs to participate in PSPs may be through the establishment of, or working with existing, associations of SMEs, or other umbrella organizations representing the private sector.** In some cases such associations may be sector-specific (see box below for the example from the Benin case study of the establishment of such an association to represent private sector operators in the water

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<sup>113</sup> See Somalia Final Evaluation Report, *supra*, note 5, p. 41.

<sup>114</sup> Wim Naudé, *supra*, note 62, p. 19.

<sup>115</sup> Business Start-up Centre Monrovia, <http://bscmonrovia.com/>.

<sup>116</sup> See Annex B, survey results.

sector. The Rwanda case study offers another example of the formation of associations; private operators there established a national association to provide support to its members in financial and commercial management<sup>117</sup>). Apart from advocacy, such associations can play an important role in capacity building, including by organizing training sessions, facilitating access to mentoring, collaborating with government in establishing and enforcing standards, helping SMEs access financing, lobbying for a favorable duty and tax regime for equipment, facilitating procurement of common-use items, and helping to arrange investments, and other resources.<sup>118</sup>

**Box III.22 Associations of SMEs: Example from Benin case study**

The Association des Fermiers du Benin (AFEB) was created to lobby and organize the enterprises in the country. Under donor program PADEAR, a training program Centre de Promotion et d'Encadrement des Petites et Moyennes Entreprises (CePEPE<sup>119</sup>) was put in place, formed in 1989 with WBG support for SMEs in the management of PWS. It provided training on business management and consultancy services to help private actors respond to requests for tender and guarantees through Fonds National de Garantie et d'Assistance aux Petites et Moyennes Entreprises (FONAGA) covering up to 50% of commercial loans. It trained over 60 POs, including those involved in works construction and water services management. (See note 3)

*Establishment of special purpose companies*

**Another form of capacitation of SMEs may be the involve a local community creating a special purpose (ad hoc) “home-grown company”.** Such a special purpose company may be established specifically for the purpose of operating an infrastructure facility, in particular where companies may not be available or attracted to participating (see the box below, for the example from Somalia of the “home-grown company” creation approach, in which the community solicited investors in the company).

**Spotlight on Tog-Wajaale, Somaliland experience:** A PPP was set up using the following mechanisms:

- **Stakeholder engagement:** workshop held convening business representatives, academics, traditional leaders, community representatives, government officials, and Ministry of Water Resources (MoWR) officials, UNICEF, and EU to inform of the water project, how to participate in it, as well as introduce the PPP model and its rationale.
- **Establishment of an oversight committee:** The Tog-Wajaale water committee, comprised of 30 people led by the Town Mayor, facilitate the management process.
- **Capacity building:** Training workshops conducted for those selected by the Committee and technical skills and sustainable management processes for the water PPP.

<sup>117</sup> *Supra*, note 13.

<sup>118</sup> See discussion of the role of such associations, see Baker, *supra*, note 20, p. 3.

<sup>119</sup> Centre de Promotion et d'Encadrement des Petites et Moyennes Entreprises: <http://www.cepepe.org/>

- **Formation of PPP Company:** Company made up of 40 shareholders was created in December 2014, led by the Ministry of Water Resources (MoWR).
- **Formation of Water Users' Association:** Comprising of 20 members (30% female) including IDPs/urban poor, minority/marginalized groups, civil society organizations and representative of community without access to services.
- **Utility Agreement:** between company and community on
  - Tariff setting negotiation
  - User satisfaction monitoring
  - Clear obligations for the operator
  - Clear obligations for the community

**Box III.23 “Home Grown Company” creation approach: Example from Somalia**

That approach was piloted in the rural areas, as a way to overcome the reluctance of urban water management companies to extend services to the rural areas and the low capacity of government to run water supply for populations in the rural areas. In this approach, the community jointly seeks out interested investors to invest in the company, which would be managed by the team of previous staff that used to manage the system under the community management. This presents the benefits of sustained community investment and involvement, but risks limited incentives for the shareholders who are not involved in the management of the company. Consortia were established in Puntland (e.g., Waa'iye, Juurile and Addinzone under Danwaadag umbrella company) to mutualize efforts, procurements, and technical skills.

Project components included: Design and establishment of PPPs for rural water supply; documentation of the PPP experiences to allow replication or improvement in other rural areas in Somalia; improvement of the water supply infrastructure to make the private sector participation economically reasonable. Stakeholders included: in Somaliland, the Ministry of Mines, Energy and Water Resources (MMEWR, now MoWR); in Puntland, the Puntland State Authority for Water, Energy and Natural Resources (PSAWEN); and international partners including UN-Habitat, UNICEF, UNCDF, UNDP, ILO, European Commission, the EC Water Facility, DFID, Norway, Sweden, Swiss Committee for UNICEF, and the Royal Danish Government.

Local community empowerment may be a positive externality in the company creation approach that requires communities to jointly set up a company to operate a public good (e.g., Kalawle Lughaya community had more confidence to investment in fish cooler facility after this experience).

### *Incubators*

The establishment and operation of incubators for development of SMEs is another practice applied in various countries.<sup>120</sup>

### *Access to tools and equipment*

**Yet another aspect of helping build the implementation capacity of SMEs to provide infrastructure and services on a PSP basis is to facilitate their access to the tools and other equipment that may be needed for implementation.** To one extent or another, SME operators may need assistance in accessing tools and equipment needed to implement the PSP contract. Any such assistance agreed to be provided by the contracting authority should be addressed in the PSP contract.

### *Supporting technical services*

**Capacity challenges facing SME implementation of PSPs, particularly start-ups, may well extend to shortages of the skilled technical staff that may be required to conduct routine maintenance and repair of the infrastructure facilities.** Such shortages are felt most acutely at the community level in remote areas where providing infrastructure services may not be economically rentable. Support, which could be fee-based, may involve various components (e.g., aiding in diagnosis of breakdowns, procurement of spare parts and performance monitoring) and may be delivered through various modalities depending upon the relevant circumstances (including by radio or by mobile phone communications when appropriate).<sup>121</sup>

### *Collaborative arrangements*

**In some cases, in particular at the community level, capacitation of SMEs may be promoted by the formation of collaborative arrangements between operating companies.** Collaborative arrangements maybe established specifically for the purposes of implementing PSP contracts (see the example from the Somalia case study<sup>122</sup>).

#### **Box III.24 Value of collaborative arrangements among SMEs: Example from Somalia case study**

Approaches applied in the Somalia case study demonstrate the potential value of collaborative arrangements among operating companies, which allow small local companies to overcome capacity constraints – for example, Waa'iye, Juurile and Addinzone joined in a Danwaadag umbrella company.

<sup>120</sup> See Annex B, survey results.

<sup>121</sup> See examples of such technical assistance in Mali and Mauritania, cited in the Somalia Final Evaluation Report, *supra*, note 5, p. 36.

<sup>122</sup> *Ibid.*, note 5.

**Other forms of capacity-building under the rubric of collaboration may be applied.**

Those may include, for example:

- Facilitating the participation of SMEs in PSPs by way of entry into consortia or through subcontracting opportunities under PSPs. Such initiatives may entail raising awareness of SMEs about the nature of consortia, and by making opportunities for such modes of participation by means of contracting with PSP operators more visible
- Facilitating partnering of small-scale operators with larger utility companies as and when such developments may become feasible; cooperation between SMEs and utilities enables synergy in the provision of services and avoids market segmentation<sup>123</sup>; an example of encouraging such possible cooperation from the water sector includes incentivizing utilities to supply treated water to SSPs distributing water through networks that the SSPs operate<sup>124</sup>

**At the same time, collaboration, including among SMEs, may also help to rebuild trust in fractured and fragile communities.** That may be the case, for example, when SMEs drawn from different sides in a conflict situation are engaged in a collaborative undertaking, thus supporting the type of intergroup interaction that has been associated with economic progress in FCV contexts. Such a potential role of SMEs in contributing to peacebuilding is in line with the natural interest that SMEs may have in peacebuilding, since SMEs are a primary victim of conflict.

By the same token, FCV response strategies that neglect or marginalize SMEs may have the effect of exacerbating underlying causes of fragility.<sup>125</sup>

**3. *Facilitation of access to finance***

**As noted above, access to finance is often an obstacle to SME participation in PSPs.**

Facilities that some countries establish to enable SMEs to access financing may be applicable to their participation in public procurement markets, including for the purposes of bidding for and implementing PSP projects. Services offered by such facilities may include in particular access to bid and performance securities, loans

**Box III.25 Establishment of lines of credit at commercial banks: Example from Benin case study**

In order to facilitate access to private sector finance, Ecobank was chosen to support POs who needed commercial funds via two distinct lines of credit: one line of credit for pre-financing the subsidized works and one line for the works financed by the POs through commercial loans. That case study has also demonstrated that POs' engagement with commercial banks may push POs to increased commercial rigor in their management practices. However, the viability of such financing mechanisms depends on the volume of investments that would be required of POs. (See Benin report, note 3, p. 22)

<sup>123</sup> *Evaluation of Small-scale Providers of Water Supply and Sanitation Services in Peru*, supra, note 57, p. 7.

<sup>124</sup> *Ibid.*, p. 8.

<sup>125</sup> This paragraph is a summary of the discussion of the possible FCV-specific benefits of inter-group collaboration among SMEs in Hoffman and Lange, *Growing or Coping*, supra, note 17, pp. 12-13.



and/or loan guarantees to facilitate contract implementation, and factoring (or facilitation of factoring) of receivables.

**Another variant is the establishment of sector-specific financial facilities to support the provision of infrastructure services.** Examples from the case studies include the Fund for Rural Electrification in Mali, which provides subsidies for investment and for construction. Such facilities enable projects, which involve SMEs, to be commercially viable. In FCV contexts, donor institutions may be willing to couple assistance for accessing finance with capacity building programs for SMEs.

#### 4. *Subsidization of SME involvement in PSPs*

**Subsidization may be considered in certain cases.** Another way in which the SME access to finance issue may be tackled is through subsidization of the construction or rehabilitation of infrastructure facilities that are then to be operated by SMEs (e.g., in the case of operation of PWS on the basis of a subsidized concession, in which construction or rehabilitation of the facility is to one extent or another subsidized by the public sector). Such subsidization may help to ensure affordable tariff levels for rural customers and acceptable financial rate of return for private operators.<sup>126</sup> Funds that might be accessed for such purposes include, for example, special funds for the development of local communities (municipal development funds), or sector-specific funds established to support investment in the construction and rehabilitation of infrastructure facilities in the respective sector. In order to leverage subsidies to incentivize achievement of expected access levels, it may be provided that some subsidies would be disbursed only after required activities such as connection of users and internal wiring are completed and verified (i.e., a type of OBA approach).<sup>127</sup>

#### **Box. III.26 Subsidizing SME participation: Example from Mali case study**

Subsidies were based on (a) number of customers connected during first two years, (b) average tariff, (c) subsidy by customer connected (total investment/number of customers). Results-based investment subsidies (limited to 70-80%) were reliant on the number of customers to be connected during the first two years, average tariffs, and the cost of investment by connected off-grid customer.

**A possible positive from financial assistance to SMEs may be a “demonstration effect.”** To the extent that SMEs are seen as successful operators of infrastructure facilities, that will help to identify both challenges and success factors.<sup>128</sup>

<sup>126</sup> See Output-Based Aid in Mali Rural Electrification Hybrid System Project, in OBA Approaches, June 2015, Note No. 45; available at

<https://www.gpoba.org/sites/gpoba/files/OBA45%20Mali%20Electrification.pdf>.

<sup>127</sup> *Ibid.*

<sup>128</sup> For a discussion of the “demonstration effect,” see Energy SMEs in sub-Saharan Africa, *supra*, note 51.



**Subsidization in the utilities sectors is not necessarily limited to the SME (small-scale provider) context.** When considering the pluses and minuses of subsidization for small-scale providers, it may be noted that the issue of subsidization may well arise even when established utilities are the concerned service providers, to the extent that the utilities are financially weak and not in a position to make needed capital investments without financing help.<sup>129</sup>

**Box III.27 Subsidized concession approach: Example from Benin**

The project resulted in the number of piped water systems (PWS) managed through *affermage* contracts to rise from 1 to 269 (57% of total number of PWS) from 2007 to 2014, delivering water services to an estimated 1.7 million people (28% of the total population) in 2014. In the water sector in particular, while 85.2% of the urban population has access to improved water sources, only 72.1% of the rural population has this access.

A switch in some cases to the subsidized concession approach allocated greater risk to the private operator, as well as greater control over schedule and technical characteristics of investments. The model introduced several advantages including (a) reducing transaction costs for the public partner, such as for tendering the contracts as well as overseeing their implementation; (b) incorporating the less profitable PWS to be delegated to the private sector; (c) harmonizing operations, tariffs and performance monitoring; (d) making the transactions appealing to the POs through greater water sale volumes; and (e) attracting commercial banks by proposing larger transactions and thereby reducing transaction costs for financing arrangements.

5. *Easing of technical requirements*

**Easing of technical requirements may be considered in some circumstances, especially in the FCV context, to address certain capacity constraints.** In some cases it may be deemed appropriate and feasible for certain technical requirements to be eased in order to facilitate the implementation of infrastructure projects by SMEs in underserved areas.<sup>130</sup>

6. *Documentation of project*

**Record-keeping and documentation are key to ensuring efficiency, transparency and accountability in the implementation of PSPs.** In particular when a PSP project is piloting SME participation, documentation of the project can provide important information about lessons learnt, and also facilitate replication and improvements in similar projects.

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<sup>129</sup> See *Evaluation of Small-scale Providers of Water Supply and Sanitation Services* in *supra*, note 57, p. 7.

<sup>130</sup> See the example of the Mali Rural Electrification initiative, which included adaptation of some technical requirements for the rural context in order to facilitate access costs (*supra*, note 7).

## 7. *Monitoring implementation and measurement of impact*

**Data gathering both for monitoring implementation and ensuring outcomes is a crucial element for promoting effectiveness.** Data collection provides information that can contribute to further refinements in implementation of existing projects and improved understanding of absorptive capacity for investment and evidence-based improvements for identification and design of future phases and projects. To one extent or another this may be hampered in the FCV context. Challenges to be overcome may include field access to the service areas, and lack of prior usage data.

## IV. MAIN TYPES OF PSP ARRANGEMENTS

### A. Two broad PSP categories

**The bulk of PSP transactions contemplated in this Toolkit may be broken down into two broad categories.** Those categories include:

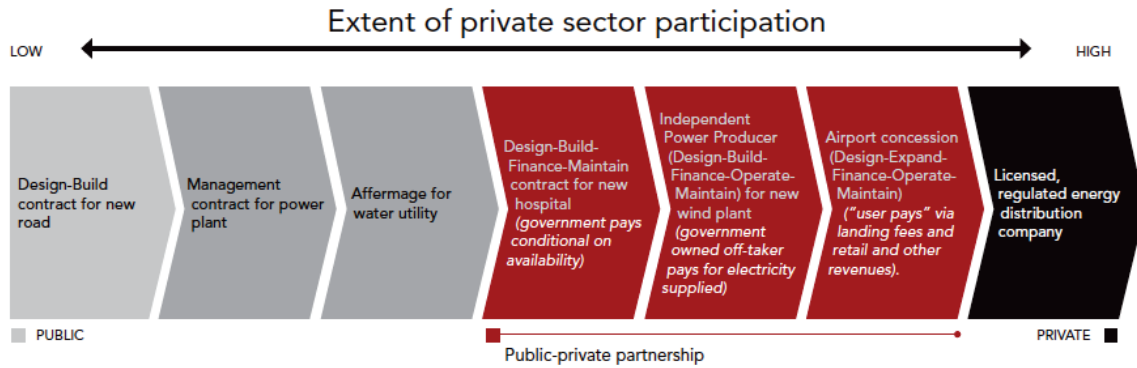
- (a) Operation of public assets or services that already exist – such arrangements are sometimes referred to broadly as “delegated management” contracts
- (b) Development (i.e., designing and constructing) and operation of new assets

**PSPs operated by SMEs in the FCV context are likely to involve existing public assets.** Because the investment outlay expected from the project company in the first category (operation of existing services and facilities) category is likely to be less substantial, even if it involves some rehabilitation, than in second category (development and operation of new assets), SME participation in PSPs in particular in the FCV context is more likely to be in one of the PSP forms falling under the first category. As illustrated in the case studies, however, there may be variants in which some extension of existing distribution networks is involved.

### B. Main types of PSP transactions

**Bearing in mind the caveat mentioned at the outset about variations in use and understanding of terminology across country systems that is characteristic of the PSP/PPP field, outlined below in Table IV.1 are the main types of PSP arrangements in the two main PSP/PPP categories referred to in the linear graphic.** It is important to note that the PSP models involve varying degrees of participation of the private sector, falling short to one extent or another of full privatization, as outlined below.

**Figure IV.1**



Source: *PPP Reference Guide, supra*, note 29, p. 9

The case studies cited in the Toolkit fall in different places in the above spectrum of PSP/PPP types, some of which have particular relevance to involvement of SMEs in FCV contexts. Table IV.1, below, provides an indication of where the various case study scenarios fit in the spectrum of different PSP/PPP types and models. It should be noted, however, that, such classification of PSP/PPP models are not ironclad. To one extent or another, in practical application, especially in the SME/FCV context, there may be in individual cases some mix of elements from different types and models of private sector participation.

**Table IV.1 – PSP/PPP models in SME/FCV case studies**

PSP models	Role of operator	SME/FCV relevance
Provision of service	PO provides services traditionally provided by government; contracts of this type in which the private party has greater control, such as bringing in its own staff, are sometimes referred to as “operation and management contracts” and may have duration somewhat longer than the typical duration of a management contract, which is 1 to 5 years	Rwanda (water) <ul style="list-style-type: none"> <li>Grants provided to communities to finance construction of water and sanitation facilities</li> <li>Involved private sector, NGOs as providers of goods, works, services; public sector as facilitators of sub-sector development and management process</li> </ul>
Management contract	Private operator operates and maintains facility and is paid a management fee; some repair and rehabilitation obligations may be included	<ul style="list-style-type: none"> <li>Required technical assistance/capacity building</li> </ul>
Leasing/ <i>affermage</i> (civil law) contract	Facility is leased to private operator, who pays a fee and operates and maintains, and obtains revenues from users; repair and replacement obligations may be greater in the lease (rather than <i>affermage</i> )	Benin (water) <ul style="list-style-type: none"> <li>Did not cater sufficiently to investment needs for rehabilitation works as well as for extending PWS networks</li> </ul>

PSP models	Role of operator	SME/FCV relevance
	context; in some systems <i>affermage</i> model may entail investment by the operator	
Concession	Private operator granted an exclusive right to operate and must maintain facility for an extended period of time in accordance with stipulated performance levels; private party may be required to pay a fee; private party compensated by revenues drawn from users	<p><b>Somalia (water)</b></p> <ul style="list-style-type: none"> <li>• Ad hoc/home-grown company creation approach to overcome reluctance of urban water management companies to extend services to rural areas and low capacity of government to run water supply for rural populations</li> <li>• Need for back-up technical services for start-up companies</li> </ul> <p><b>Benin (water)</b></p> <ul style="list-style-type: none"> <li>• Subsidized concession approach</li> <li>• Introduces investment obligations for POs, thus transferring portion of risks to POs</li> <li>• Clustering of PWS introduced to increase economic attractiveness for POs and for commercial lenders</li> <li>• Public funds mobilized for network rehabilitation, extensions and densification</li> </ul>
Design-Build (DB)	Private party designs and builds facility; following completion, government operates and maintains	
Design-Build-Operate (DBO)	Private party designs, builds and operates facility; government retains ownership; operator may be responsible for replacement of expired assets; public party responsible for paying operator for costs of construction and operation	<p><b>Mali (energy)</b></p> <ul style="list-style-type: none"> <li>• Investment subsidy provided for construction of small scale mini-grids in rural areas and to ensure affordable tariffs and acceptable financial rate of return for POs</li> </ul>

PSP models	Role of operator	SME/FCV relevance
Build-Operate-Transfer (BOT)	Private party builds, operates, maintains facility; at end of operational period, facility transferred to government; may include design work (in which case the term “Design-Build-Operate-Maintain” (DBOM) may also be used	
Build-Lease-Transfer (BLT)	Private party builds facility and then leases/rents it, before ultimately transferring it back to government; may include design component (Design-Build-Lease)	Cambodia (energy) <ul style="list-style-type: none"> <li>• IPP approach</li> <li>• Largely self-financed, though private operators in rural areas have been supported by donors through targeted subsidy incentives and Design-Build-Lease contracts intended to reduce investment risk</li> </ul>
Design-Build-Finance-Operate/Maintain (DBFO or DBFM)	Private sector party designs, builds, finances and operates or maintains the facility for an extended duration, after which the facility is transferred to the government	
Build-Own-Operate (BOO)	Private sector party finances, designs, builds, operates and maintains facility and has ownership in it, with no required transfer back to government	
Build-Own-Operate-Transfer	Like BOO, but private sector party to transfer facility back to government after stipulated operational period	
Buy-Build-Operate (BBO)	Public asset sold to private sector party, which rehabilitates or expand the asset, and operates it	
Licenses	Private companies responsible for providing designated services, without any public sector investment in the projects; the licenses may be used to set output standards for private sector	

**The range of PSP models that may be applicable will be subject to the constraints under which SMEs operate.** For SMEs, one must also consider their capital and resources and therefore the likely types of PSPs they are able to be involved in and what public sector support is needed to enable SME participation. Thus, one can easily see SMEs involved in

user-pay O&M (where government is an unreliable counterparty) but they may not be able to provide expansion or rehabilitation of systems, etc.

**It should be noted that the above listing of PSP/PPP models is intended to be indicative and is subject to the above-mentioned caveat that the exact types of terms utilized and their meanings may differ from country to country, and from transaction to transaction.** Moreover, apart from terminological differences, there may be instances in which compound PSP forms are crafted that combine features of two or more PSP models.

### C. Variable features of PSP transactions

**As outlined in this section, the various PSP/PPP models listed in Table IV.1 represent different approaches to key design issues of PSP transactions.**<sup>131</sup> At the same time, subject to any mandatory definitions and requirements in applicable policies and legislation, the types of PSP models and the different features attributable to each particular model are not necessarily cast in stone or understood in a uniform manner in all systems and transactions. The approach applied in a given PSP transaction, and some of its features with respect to certain key issues, may incorporate characteristics from more than one of the available models and customize the features to fit the function to be performed by the operator and other relevant circumstances of the parties and the transactions.<sup>132</sup>

**Fitness for purpose is a key principle in selecting an appropriate PSP model.** Together, the range of possible PSP/PPP models and the possibilities of adapting PSP contracts in a fit-for-purpose manner enable the selection of the PSP model and tailoring the contract to be responsive to the circumstances underlying the particular PSP transaction.

#### 1. Core function of private sector party

**Different PSP models reflect to one extent or another differences in the functions to be performed by the private sector party.** Depending upon how the PSP transaction is designed, the responsibilities of the private sector party range from, on one end of the spectrum, merely managing or operating a facility (e.g., management contract, operation and management contract), to, on the other end of the spectrum, design, building and operating the facility (e.g., Design-Build-Operate model; licensing arrangements).

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<sup>131</sup> For a more elaborated treatment of some of the issues outlined in this section, in particular, the characteristics of different types of PPP models, see PPP Reference Guide, *supra*, note 28, Module 1.

<sup>132</sup> For an analysis along these lines, see Delmon, *supra*, note 89, p. 11.

## 2. *Repair and rehabilitation*

**In particular in PSP arrangements dealing with existing infrastructure facilities, the allocation of repair and rehabilitation responsibility may be a key issue in assigning tasks and allocating risks.** PSP models differ as to the extent of any obligation of the private sector operator to repair and rehabilitate the infrastructure facilities (e.g., in management contracts such obligations tend to be minimal); there may also be differences displayed in certain forms of lease-type of PSP arrangements, with repair and rehabilitation obligations of the operator tending to be minimal in *affermage* contracts (lease-type of arrangements in civil law system) and lease contracts in other systems, where such obligations may be greater).

## 3. *Existing or new assets*

**Some PSP models are applicable to operation by the private sector party of an existing facility.** That is the case in particular with regard to leasing/*affermage* contracts, and concession). Other models are appropriate for PSP/PPP involving construction and operation of new facilities (e.g., DBO, BOT, DBFO).

## 4. *Investment by private sector party*

**In some PSP transactions, there is no requirement that the private sector party make any investment in the facility.** That is the case, for example, in management contracts, *affermage*, and leases (unless otherwise stipulated). In some other types of transactions there is an investment component (e.g., DBFO).

## 5. *Payment of fee to operator*

**A key question in designing a PSP project concerns how that operator will obtain remuneration.** PSP models differ as to whether a fee is to be paid by the private sector party. In some PSP models the private sector party is paid a fee (e.g., management contract).

## 6. *Payment of fee by operator*

**In some other PSP models, it is the private sector party that pays a fee for the right to exploit the infrastructure facility.** For example, in a lease or in a concession contract payment of a fee by the operator may be required. In such a case the payment risk of the operator includes not only obtaining the revenues needed to cover the fee, but also to recoup other costs and profit.

## *7. Payment to operator*

**PSP arrangements differ as to the manner in which the private sector operator is remunerated for the services performed.** In some types of arrangements, the private sector party is remunerated by the payment of a fee (e.g., in a management contract). In some other types of transactions, the operator recoups its costs and earns its profit from the revenues collected from the operation of the facility. Depending upon the nature of the infrastructure facility, the public sector sponsor of the PSP may derive the money for the fee from revenue generated by the facility. In the FCV context, depending upon the degree of reliability of payment from users, the private sector operator may in fact prefer, so as not to bear demand risk, that payment be made by a governmental body (backstopped by a sovereign guarantee, IFI guarantee, minimum revenue guarantees). However, in FCV circumstances that may not necessarily be a viable option. When private sector operators have to bear that risk, there may be a tendency on the part of private sector operators to cherry-pick localities where there may be a greater assurance of users' willingness and ability to make payment.

## *8. Financing of construction and rehabilitation*

**Depending upon the nature of the PSP transaction, the issues of financing may arise and need to be addressed in the contract.** That is the case in particular when significant construction, rehabilitation or expansion is involved in the PSP. Just because an operator is responsible for construction, does not necessarily mean that the operator is also responsible for financing the construction (such an allocation of responsibilities may be found, for example, in the DBO variant). To the extent that the public sector sponsor is providing such financing, which may be a particularly relevant option in the context of SME operators, the role of the public sector party in approving the operator's plans and designs would tend to be greater. In such arrangements, while the financial risk may be primarily shouldered by the public sector entity, the risk of design problems in the facility is primarily borne by the private sector party, who will not only design the facility but then also have to operate it.

## *9. Control over operations and staff*

**In some forms of PSP, the operator typically has limited control over staffing and operations (management contracts).** In other forms, the operator may be accorded greater control (e.g., in the genre referred to as "Operation and Maintenance") more control over staffing may be in the hands of the operator. There tends to be a correlation between the degree of staffing and operations control given to the operator and the duration of the contract.



## 10. Procurement selection criteria

**One of the characteristics of PSP contracting is that the bid evaluation criteria typically applied in public procurement proceedings (e.g., lowest-bid price or economically most advantageous bid) are not necessarily relevant in a classical sense.** The exact formulation of the main comparative evaluation criteria will depend on the type of PSP arrangement. For example,

- In a management or operation contract, proposals may be ranked on the basis of the management or operator's fee
- In PSP arrangements where the operator pays a fee to the public sector sponsor, the procurement competition may be centered on the level of the fee offered by bidders (e.g., in a lease contract)
- In PSPs in which there is a possibility of subsidization, a key criterion may be the level of the subsidy, with preferential scoring being awarded with respect to that criterion to proposals requiring lower subsidies
- In projects in which end users would pay a tariff, competitive factors could include the level of the tariff to be charged to the end-users

## 11. Allocation of risk

**The distribution of risk between the public sector and the private sector parties differs, depending upon the PSP model, and how risk allocation is specifically stipulated in the agreement.** Common categories of PSP risk include<sup>133</sup>:

- **Site risks** – e.g., project site availability or conditions
- **Design, construction and commissioning** – e.g., quality shortfalls or delays
- **Operation** – e.g., interruption of service
- **Demand, and other commercial risk** – e.g., level of usage lower than expected; changes in legal/regulatory framework

**Provisions on government payments may have risk allocation implications.** For example, in some PSP models, the risk that the facility will generate requisite levels of revenues is borne by the public sector party (e.g., management contract). In some other models the private sector operator bears that risk (e.g., in a lease or concession contract, or in the DBO). Other risks that may be allocated in a different manner depending upon the type of PSP model being applied include in particular that the facility will at some point or points during the period of operation by the private sector party require repair and replacement or rehabilitation to one extent or another. In an *affermage* contract no such responsibility is typically undertaken by the operator, whereas in a lease, or even in a management contract, such an obligation might perhaps be allocated to the operator.

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<sup>133</sup> For a more detailed discussion of risk identification, allocation and related issues, see *PPP Reference Guide, supra*, note 28, pp. 140-147.

## 12. *Ownership of facility*

**In some forms of PSP/PPP, the public sector retains ownership of the facility. That is the case, for example, in the management contract, *affermage*, lease, and BLT models.** In some other forms, ownership may vest in the private sector party for a period of time or, in some cases, permanently (e.g., BOOT, BOO, BBO).

## 13. *Duration*

**There is a potentially wide range of durations for PSP transactions, depending in particular on the PSP model being applied.** Models in which the private sector party has a limited financial obligation, if any at all, are likely to have a shorter duration (e.g., management, *affermage* and lease contracts). In other PSP models, in particular those in which there is a financing role for the private sector party, the duration is likely to be longer including to allow the operator to recoup the investment (e.g., concessions, contract). The duration of PSP arrangements involving SMEs as operators tends to reflect the extent to which the arrangement also involves financing responsibility and the shouldering of significant risk by the operator.

**Apart from the type of PSP model being applied, other factors may be relevant to determining the duration of a PSP arrangement.** Such other factors may include, for example, the extent of experience of operators, and the ability of operators.<sup>134</sup>

# V. PLANNING, PROCUREMENT AND IMPLEMENTATION

## A. *Key steps in PSP project cycle*

**Summarized below are the main stages and steps in the process of identifying, developing, procuring and implementing a PSP project.**<sup>135</sup>

### 1. *Identification of PSP project*

**In a “top-down” scenario, this stage involves identification by the public sector entity of possible projects and development of the PSP concept.** This stage may include conducting an inventory of existing infrastructure assets that might be possible candidates for PSP projects involving SMEs.

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<sup>134</sup> For a discussion of factors relevant to duration, see Delmon, *supra*, note 89, p. 21.

<sup>135</sup> *PPP Reference Guide, supra*, note 28, pp. 69 to 72; Delmon, *supra*, note 89, concerning drafting of PPP agreements for small-scale water projects.

### Box V.1 Top-down approach: Example from Mali case study

AMADER solicits bids for electrification of designated priority zones through direct competition among bidders. Projects are selected on the basis of lowest tariff. REF (Rural Electrification Fund) finances feasibility studies and puts projects out for bidding in poor rural areas, where the lowest tariff wins.<sup>136</sup>

**As part of the identification and assessment of potential PSP projects, the public sector sponsor may wish to explore the possibility of combining more than one infrastructure facility.** Such clustering or aggregation (also sometimes referred to as “bundling”) may take various forms and be applied for various purposes. For example, aggregation may be applied for the purposes of making a proposed PSP project more attractive to and economically rentable for prospective private sector parties, including for the purposes of attracting potential financing, and thus actually combining operations under one contract. Alternatively, clustering may be done merely for the purposes of conducting combined procurement proceedings for projects that will be implemented separately. It should be noted that that raises a number of issues related to procurement and implementation, concerning, for example, the pooling and disposition of revenues from the clustered facilities, capacity requirements for SMEs in the context of aggregation, and setting of tariffs.<sup>137</sup>

### Box V.2 Palestine: Regionally-operated solid waste landfill project

- The first order of business was to establish a Joint Service Council, made up of representatives from 33 municipalities, to manage the waste program on a regional level.
- Next came large-scale infrastructure improvements, investing in a sanitary landfill so waste can go to one professionally managed site rather than dozens of small, unregulated, open dumps. Investments for recycling and composting, were also included.
- With IFC support, a private company was brought in to operate the West Bank’s first professionally-run landfill.

- *Ending the Vicious Cycle of Open Dumps; Improving Waste Pickers’ Lives* (WB Feature Story, 8 Nov. 2013)

**However, clustering or aggregation may not necessarily be a viable or advisable approach in a conflict-sensitive environment.** In communities with rival clans or groups, or in a situation where there is a dominant group that is well-to-do, there may be a tendency for the dominant clan or group to control the situation. Clustering or aggregation may thus end up deepening the wounds of the socially-excluded or minority

<sup>136</sup> ESMAP.

[https://www.esmap.org/sites/esmap.org/files/2b.MALI\\_Rural%20Electrification%20and%20Opportunities%20for%20Gender%20Integration.pdf](https://www.esmap.org/sites/esmap.org/files/2b.MALI_Rural%20Electrification%20and%20Opportunities%20for%20Gender%20Integration.pdf).

<sup>137</sup> An elaboration of such clustering-related issues is found in Delmon, *supra*, note 89, p. 12.

groups. This situation will therefore call for the strengthening of capacities within the minority/marginalized group following a capacity gap analysis.

## 2. *Pre-feasibility examination*

**This stage involves a preliminary examination of the basic feasibility of a possible PSP project from certain fundamental technical, financial and legal perspectives.**<sup>138</sup>

- Technical issues to be checked at this stage include, for example:
  - whether essential resources are available (e.g., this could involve checking on availability of needed natural resources such as, for a water project, whether water sources are available and of the requisite quality)
  - whether competing sources exist for the service
  - the nature of any existing assets and what investments might be required
  - availability of power sources
  - potential adverse environmental impacts
  - potential adverse social welfare impacts
- Financial aspects to be considered at this stage include, for example:
  - whether the foreseeable revenue could be expected to be sufficient to cover costs
  - affordability issues (the extent to which beneficiaries of the facility can be expected to be able to pay for the service)
  - prospective ability of operators to provide financing
  - whether subsidies would be necessary and whether financing might be available in local markets
  - application of a public-sector comparator to determine to see whether a PSP approach or a traditional public procurement approach would provide better value for money
  - applicable tax regime
- Legal issues to be screened preliminarily at this stage include, for example:
  - key relevant features of the legal landscape, e.g.,
    - Is there a PPP law?
    - Is the legal framework for public procurement applicable?
    - Would donor procurement rules apply? (see Annex D for a table of selection methods under the new World Bank Procurement Regulations for Borrowers, including those relevant to awarding PPP contracts)

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<sup>138</sup> For a more detailed discussion of feasibility assessment of PSP/PPP projects, see the *PPP Reference Guide, supra*, note 28, pp. 120 to 139.

- Are there environmental laws that may affect the project and the liability of the operator, including possible requirement of environmental impact assessment and any possible indemnification mechanisms that might apply?

**Box V.3 World Bank policy on PPPs**

The Bank may finance the cost of a PPP project or a contract if:

- Selection of project company is consistent with the Bank’s Core Procurement Principles, in particular use of competitive procedures for selection of the private sector partner
- The project reflects the application of the Bank’s Anti-Corruption Guidelines, and,
- The project is consistent, as appropriate, with the requirements set out in the Procurement Regulations for Borrowers
- It is demonstrated that there is adequate institutional capacity to prepare, structure, procure and manage the PPP project
- Suitable economic and financial analysis is conducted
- Service-level output requirements are included
- A risk matrix is presented to the Bank
- The principle of performance-based payments is applied

- Sec. 6.43 and Annex XIV, Procurement Regulations for Borrowers

- What are the characteristics of the ancillary legal environment that support the implementation of projects such as the one being considered (e.g., law on contract dispute settlement)?

- Are there legal or regulatory

restrictions to any particular form of clustering that may be considered to structure the PSP (e.g., on cross-use of revenues from projects across community boundaries)?

- Various issues related to the identity and nature of potential parties to the PSP, for example:
  - legal responsibility of the PSP proponent as regards delivery of the service and its authority to delegate the right to exploit the infrastructure facilities and provide the service
  - identity of the owner of the assets and related land, and what restrictions if any exist on transfer of assets and land
  - who would need to be party to the contract
  - in clustering or aggregation arrangements, in which more than one community is involved, how would those communities be represented among the parties to the contract? (i.e., whether each

community would be a party to the contract, or whether a community would be designated to represent the other communities involved in the clustering arrangement)

- Regulatory aspects, for example:
  - applicable permitting requirements
  - whether affected residents are obligated to connect to the infrastructure facility
  - whether a regulatory authority has power to cut-off service for non-payment and to act against illegal connections
  - whether such powers may be delegated to the operator; in clustering arrangements
- Applicable contract law including extent of parties' freedom of contract, whether any mandatory model contract forms are applicable, and requirements for formation of contract
- Legal regime governing security interests that potential lenders may wish to take
- Applicable rules governing relationship between consumers and utilities
- Applicable procurement rules governing award of PSP contracts
- Status and fate of contracts with any existing service providers
- Any applicable tariff policy
- Locus of responsibility under any applicable environmental and health and safety legislation, and any procedures to be followed under such legislation

The types of information derived in the preliminary feasibility examination will help the public sector party in identifying the PSP/PPP contract model to use.

### *3. Structure and appraise PSP*

**This stage involves designing the PSP structure, including risk allocation, and conducting detailed feasibility appraisal.** That will include detailed technical and financial feasibility studies, though the extent and complexity of those will depend on various factors, including the nature of the PSP transaction, the experience of the contracting authority or other similarly situated bodies in establishing similar projects, the capacity and experience of prospective operators.

### *4. Design PSP contract*

**If the PSP concept has been approved following the feasibility assessment, the next stage is to formulate the contract.** The contents of the contract include the essential provisions on:

- performance obligations of the private sector party,
- payment procedures,
- mechanisms for adjustment of tariffs,
- dispute settlement, and
- termination provisions.

**Box V.4 Key factors affecting the content of contracts include:**

- exact functions to be performed by the private sector party
- manner in which the infrastructure and its operation will be financed, and how the operator will be paid
- allocation of risk between the parties
- extent to which mandatory rules of law affect the manner in which PPP projects can be structured

**The specific content of the contract is predicated on a variety of factors.**

Those relate to the nature of the transaction, the commercial bargain agreed by the parties including risk allocation, the financing structure of the transaction, and the applicable legal framework.<sup>139</sup>

### 5. *Solicitation and contract award procedure*

**At this stage, the procurement strategy is defined and implemented.** That includes the choice of the procurement method to be applied, the preparation of the request for proposals/bidding documents, and the solicitation, receipt and evaluation of proposals/bids, leading to the finalization and conclusion of the PSP contract.

**Key issues in determining a fit-for-purpose procurement (selection) method include the following:**

#### *Solicitation of participation*

**This concerns in particular whether the procurement process should begin with a pre-selection (shortlisting) or pre-qualification phase.** It is not unusual for procurement rules governing the award of PSP arrangements to require that PSP arrangements should commence with a filtering of potential participants. It should be noted that there is an essential difference between pre-selection (shortlisting) and pre-qualification. In pre-selection (shortlisting) the contracting authority engages in a comparative assessment of the qualifications of bidders that have expressed interest in being shortlisted and selects a limited number of applicants that it considers the best qualified for inclusion in the shortlist. By contrast, when a procurement proceeding commences with pre-qualification, the conformity of applicants for pre-qualification with the pre-disclosed qualification criteria is assessed on a pass/fail basis (rather than on a comparative basis) and, in classical pre-qualification, all applicants that meet that pass/fail test must be admitted to the procurement proceeding.

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<sup>139</sup> For a detailed discussion of the design of a PPP agreement, see *PPP Reference Guide, supra*, note 28, pp. 148-159.

**In some procurement systems, a minimum requirement is imposed as to the number of participants or responsive bids that have to be submitted in a procurement proceeding in order for the proceeding to be deemed valid.** It is important that any such rule, which does not necessarily contribute to improved efficiency in public procurement systems and is not reflected in the World Bank Procurement regulations for Borrowers, does not present an insurmountable obstacle in scenarios where – especially in an FCV or geographically remote context – only one provider may be available to supply the infrastructure services (and the contracting authority ensures that the price and other terms are reasonable and responsive to the solicitation documents).

### *Single-stage or two-stage bidding process*

**Depending upon the nature of the PSP transaction, and on the procedures called for in the rules applicable to the procurement of PSP projects, the contracting authority may (or may not) be given a choice between applying a single-stage bidding procedures, or applying a two-stage bidding procedure.** In a single-stage bidding procedure, bidders simultaneously submit their technical and financial offers (perhaps in separate sealed envelopes, depending upon the procedural requirements under the applicable rules), and the contracting authority evaluates those offers and makes an award decision based on the offers applying the evaluation criteria disclosed in the solicitation documents. In such a single-stage approach the award decision may involve identifying the bidder, from among bidders that have submitted technical proposals that meet the requirements in the RFP, whose financial proposal is the most advantageous one in accordance with the evaluation criteria and methodology disclosed in the solicitation documents.

**A single stage approach of that type may be deemed suitable in PSP transactions that are of a simple, straightforward and lower value nature.** That is because in such cases the contracting authority is not soliciting for its consideration various possible technical and financial variants for implementing the project.

**By contrast, in more complex PSP transactions, where the contracting authority is uncertain as to the technical solution to its needs and seeks the assistance of the private sector in finalizing its requirements, a two-stage bidding process would be appropriate.** A typical feature of such a two-stage procedure is the issuance of a preliminary request for proposals to solicit initial proposals presenting various possible technical solutions. Following that initial stage, the RFP is finalized, and on the basis of the finalized RFP bidders present their final proposals.

**In a variant of the two-stage process, in cases where the contracting authority wishes to pit various possible technical solutions in a competition against each other, only one version of the request for proposals (RFP) is issued and only one round of technical proposals are submitted.** The RFP solicits technical proposals, which are then evaluated and ranked on the basis of criteria disclosed in the RFP. The bidder that submitted the highest ranked technical proposal is invited to submit a financial proposal.



### *Procedure for unsolicited proposals*

**A classic PSP/PPP issue is how a contracting authority should deal with proposals for projects that it has received without having solicited them.** Issues that arise in designing a procedure for dealing with unsolicited proposals include how competition may be injected into the award process, even in the case of unsolicited proposals, and, where an unsolicited proposal is received and then subject to competition, whether the original proponent of the unsolicited project proposal is given any advantage in the competition (e.g., bonus points in the evaluation and ranking of proposals).

**A variant of that type of case is the situation in which the contracting authority prepares itself for the possibility that it may receive proposals for particular types of PSP projects without specifically soliciting proposals in discrete procurement proceedings.** This scenario is sometimes considered to be a “bottom-up” approach as contrasted with “top-down” scenario, in which proposals are solicited and submitted within the confines of a specific procurement proceeding (see below, sec. V.B).

### *6. PSP project delivery*

**This is the PSP contract implementation stage.** In this phase, the PSP contract is implemented, including performance of the functions assigned to the operator of the infrastructure facility in which the private sector party implements the PSP contract and the public sector part monitors contract performance. This stage, also referred to as the contract management stage, lasts for the duration of the PSP project agreement. Key contract management activities include<sup>140</sup>:

**Table V.1**

<b>Contract management</b>	<b>Sample issues</b>
Institutional and organizational arrangements	Roles of PSP contract manager, sector regulator, finance ministry, central PPP Unit
Performance and risk monitoring	Private party’s obligation to report performance data; engagement of independent experts for inspections, role of service users in providing feedback; risk management plan to manage government’s responsibilities and risks
Contract adjustments	Adjustment mechanisms may be built into PSP agreement <sup>141</sup>
Management of asset and operational transitions at contract expiry	Procedures for appraising the condition and value of assets upon transfer

<sup>140</sup> For a summary of key aspects and practices of contract management in PPP transactions, see *PPP Reference Guide, supra*, note 28, pp. 178-189.

<sup>141</sup> See *PPP Reference Guide, supra*, note 28, pp. 153- 154.

## B. Bottom-up approach

As an alternative to “top-down” approaches to procuring PSP projects, in which the public sector party solicits proposals on the basis of project solicitation of proposals launched by that party, there is the possible practice of applying a “bottom-up” approach. The bottom-up procedure is established for dealing with proposals for projects initiated by local community authorities or by the private sector. In order to ensure transparency and competition in such cases, a procedure can be established for dealing with such unsolicited procedures. Such a procedure may include the publication of a solicitation of proposals based on a project originally proposed in an unsolicited proposal, with a time period established within which any interested providers would have to respond.

### Box V.5 Example of bottom-up approach: PCASER Program in Mali<sup>142</sup>

1. Project promoter identifies the proposed project
2. The mayor of the locality gives a preliminary notification to the promoter
3. A Preliminary Authorization is issued by AMADER to the promoter following an examination of the proposal and the payment of a guarantee
4. A call for competition is initiated by AMADER, which triggers a two-month period during which providers may submit proposals
5. The promoter prepares an electrification plan and a business proposal using financial simulation tools developed by AMADER for the free use of promoters
6. An AMADER project selection committee examines each proposal that is submitted, according to criteria including:
  - the services offered
  - conformity with technical and environmental standards
  - feasibility of implementation plan for the installation works
  - costs of equipment, installation works and utilization
  - utilization plan, including maintenance plan, billing and cost recovery approach
  - plan for recruitment and training of personnel
7. Projects selected based on ability of suppliers to develop and operate viable project with fixed investment subsidy (80%, \$500,000), and 25% average matching co-financing to local private operators
8. Negotiation of contracts with the proponents of proposals that are accepted
9. Signature of contract documents (financing agreement, Authorization Contract, contract conditions (by AMADER and the promoter)
10. Implementation of the project by the promoter under the monitoring of AMADER
11. Issuance by the Minister in charge of Energy of an Authorization for a period of 12 to 15 years

<sup>142</sup> This description of the PCASERS program in Mali is drawn from a presentation by Alassane Agalassou of AMADER (Agence Malienne pour le Développement de l'Énergie Domestique et de l'Électrification rurale) in Maputo, Mozambique (9-12 June 2009) at a Workshop on the Electrification Initiative in Africa [http://siteresources.worldbank.org/EXTAFRREGTOPENERGY/Resources/717305-1264695610003/6743444-1268073490440/4.3.REF\\_REA\\_Mali\\_diesel\\_minigrids.pdf](http://siteresources.worldbank.org/EXTAFRREGTOPENERGY/Resources/717305-1264695610003/6743444-1268073490440/4.3.REF_REA_Mali_diesel_minigrids.pdf)

## VI. TAKING STOCK OF RESULTS

### A. Case study results

**To one extent or another, the projects in the case-studies achieved meaningful, tangible results.** Those results are summarized in the box below.

#### Box VI.1 Results from case-study projects

##### Benin (water)

- The number of piped water systems (PWS) managed through *affermage* contract rose from 1 to 269 (57% of total number of PWS) from 2007 to 2014, delivering water services to an estimated 1.7 million people (28% of the total population) in 2014.
- Four 8-year subsidized concession contracts for 10 PWS in three municipalities with three different private operators, estimated to generate 1 million USD in total investment, of which 277,000 USD for domestic private sources for 10 sites and create 1071 new connections within two years of implementation, providing improved access to water services to 48,500 people.

##### Somalia (water)

- 7 PPP companies established in Puntland and 1 PPP smaller local private company in Somaliland in October 2010, covering a population of 45,000 (64% of 70,000 target beneficiaries)
- Female empowerment: 3 women are part of shareholders of Luganhaye in Puntland.

##### Mali (energy)

- 63 private operators active
- 74,000 electricity customer beneficiaries
- In 6 years, rate of access to electricity in rural areas increased from 1% to 16.88% in decentralized system
- 21 small piped water systems under private management, reaching population of 300,000

##### Cambodia (energy)

- Four (4) private renewable energy companies were developed.
- Daily service hours of Rural Energy Enterprises increased from 4 hours (2003) to 12 hours by project's closing (higher than the 8-hour target).
- 411 representatives Rural Energy Enterprises and financial institutions trained on understanding of renewable energy technologies, business development, promotion, as well as capacity building for financial institutions.

### Rwanda (water)

- Local contractors executed USD \$10.6 million worth of contracts (94% of all construction activities for subprojects), and local operators took over delivery of water and sanitation services even beyond the project era—25%+ of 850 water systems across the country managed under PPPs.
- By December 31, 2007, average per capita consumption of water was 10 liters/cap/day (lpcd) for 16 communes
- By February 28, 2009, 100% of water systems were fully covering their operation and maintenance costs
- By December 31, 2007, 408,000 additional people had access to improve water services (excluding Mayaga system), and 120,000 people with access to water services from the Mayaga system.

## B. Indicators and frameworks for measuring results

**Frameworks for measuring the results achieved by establishment and implementation of infrastructure PSP projects operated by SMEs flow from the development objectives of such projects.** Relevant development objective would typically involve increasing infrastructure service coverage in the targeted areas. Additional development objectives might include, depending upon the nature of the project, establishment of institutional and regulatory frameworks relevant to the infrastructure services being provided.

**Examples of the types of indicators for performance measurement and results frameworks for the projects of the type referred to in the Toolkit include<sup>143</sup>:**

- (a) Per capita consumption of the product/service of the infrastructure facility (e.g., water)
- (b) Extent to which the infrastructure facility covers its own costs
- (c) Percentage of key facilities being properly maintained
- (d) Number of communities becoming involved in small-scale PSP projects under an overall program promoting such activities
- (e) Number of communities with the capacity to manage contracts with service operators
- (f) Extent of new-build infrastructure (e.g., kilometers of new water supply network laid and operational)
- (g) Extent of increase of access to an infrastructure service (e.g., number of households served by infrastructure facility – in a water project this might be formulated in terms of the number of piped household water connections)
- (h) Number of private operators delivering services

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<sup>143</sup> See, for example, Rwanda ICR, *supra*, note 13, pp. 2-3.

- (i) Preparatory steps such as completion of asset identification surveys, financial and technical feasibility studies

**When measuring results in FCV contexts, bearing in mind the “dual objectives” of such projects may be relevant.** Those objectives include not only providing infrastructure, but also promoting conflict management and resolution, stabilization, promotion of peace, including through steps such as reintegration and medical treatment of ex-combatants, reconstruction of housing, creation of communal infrastructure and job creation. The applicable FCV circumstances should be taken into account in setting goals and indicators.<sup>144</sup>

## C. Lessons learnt

**The experience in the case studies examined in the Toolkit provide a number of lessons that can be useful in identifying possible priority steps in establishing an enabling environment for SME-based PPPs in FCV contexts.** Those lessons are highlighted below.

### *Legal framework*

#### *Legislation and regulations*

Importance of strong legal framework, coordinated with institutional arrangements, that addresses procedural and capacity issues and ensures clear PSP standards. (Cambodia – energy)

#### *Contract drafting*

- a) Need for a consumer-responsive and clearly- detailed responsibilities of each party in contract for a sustainable PSP (Rwanda – water)
- b) Need for a flexible approach to PSPs: e.g. local private operators can be found anywhere and use of tailored contracts (rather than standard ones) in uncertain operating and demand conditions

### *Institutional and regulatory aspects*

#### *Policy*

- a) Need for strong political will with financial support (Mali – energy)

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<sup>144</sup> *Fragile Settings, Lasting, supra*, note 27, p. 27.

### *Institutional and oversight framework*

- b) Adoption of clear institutional framework defining key roles (e.g. of regulator) (Mali – energy)
- c) Essential to ensure sufficient monitoring and regulation (Benin – water)

### *Capacity building*

- d) Use of innovative technology (mWater) to facilitate capacity building, planning (e.g. asset inventory) and monitoring of performance (Benin – water)
- e) Capacity building essential for success in water sanitation services in rural areas, with proper monitoring of results by central government and accountability among local authorities (Rwanda – water)

### *Empowerment of private sector participation*

#### *Consortia*

- a) Value of consortia to allow local companies to overcome capacity constraints – for example, Waa'iye, Juurile and Addinzone joined in a Danwaadag umbrella company (Somalia - water)

#### *Access to finance*

- b) Need to address access to finance issues for POs (Benin – water)
- c) Critical need for financing options for local providers: the project in the was unable to reach its target of five private renewable energy companies (instead developing four) because of insufficient interest of local commercial banks to finance renewable energy and rural electrification businesses (Cambodia – energy)
- d) Pricing policy providing for financial capability of operators (Mali – energy)

#### *Technical support*

- e) Need for back-up technical services for start-up companies given shortage of technical staff. This has been done in other countries such as Mali and Mauritania through “breakdown diagnosis, spare parts procurement and operation data monitoring from distinct communications (e.g., by radio in Mali), mutualization of efforts (e.g., common procurements, joint transportations), and payment of a fee by private operators.” (Somalia – water)<sup>145</sup>

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<sup>145</sup> UNICEF. 2012. “Final evaluation of UNICEF’s programme ‘making PPP work for rural water supply in Somalia.’” [http://www.unicef.org/evaluation/files/Somalia\\_2012\\_011\\_Rural\\_PPP\\_evaluation\\_final\\_evaluation\\_report.pdf](http://www.unicef.org/evaluation/files/Somalia_2012_011_Rural_PPP_evaluation_final_evaluation_report.pdf), 36.

- f) Strengthen private sector (e.g., support during contract preparation and entire transaction process) (Somalia – water)
- g) Need for technical assistance of local operators, which may be privatized and maintained through fees in water price—support includes advice, monitoring, tariff setting, procurement facilitation, etc. as does CCAEP<sup>146</sup> (Mali – energy)

### *Subsidies*

- h) Importance of sustainable subsidy policy in partnership with key stakeholders (Mali – energy)
- i) Subsidized concession contract credible alternative to *affermage* contract (Benin – water)
- j) Need to ensure and incentivize the provision of services to rural areas (Cambodia – energy)
- k) Disburse public subsidy based on results (Benin – water)

### *Multiplier effects*

- l) Further benefit of PSPs include job growth for local technicians and creation of district water account from fees paid by managers (Rwanda – water)

### *Community and stakeholder engagement*

- a) Importance of a participatory approach involving beneficiaries through project cycle (Rwanda – water)
- b) Utility of agreements that engage all stakeholders (communities, companies, central government and mayor) (Somalia – water)
- c) Importance of accounting for risks of low community unity, in particular to gain acceptance of the project (Somalia – water)
- d) Need for decentralization so that all major stakeholders may have a role in deciding actions in water sector (Rwanda – water)
- e) Viability of community-led company creation representing key factions in the community when there is a lack of local private sector entities to operate water services (in rural areas); also enables community empowerment (Somalia – water)
- f) Need for village councils to deal with arbitration in absence of the Ministry at these levels to ensure quality contract implementation (Somalia – water)
- g) Tariff setting that is communal (i.e. documented and managed at the local level) is more likely to be accepted by community. (Somalia – water)

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<sup>146</sup> *Ibid.*, p. 43.

### *Award process*

- a) Need for competition: e.g., by allowing multiple groups/individuals to bid for services in the community (Somalia – water)
- b) A formal tender process may be an effective way to ensure the legitimacy of the company in the eyes of public perception (Somalia- water)
- c) Difficulty of ensuring competition in local water service, given Ministry's interventions in these decisions and constraints for multiple groups or individuals within community to bid for the services (Somalia – water)
- d) Need for cost reduction policy with sufficient technical standards (Mali – energy)



## ANNEX A: CASE STUDIES OF SME PARTICIPATION IN PPPS

## **Background of case studies**

The first part of this annex provides an overview of the case studies of SME/local enterprise participation in energy and water sector PPPs, referenced in the toolkit, including Benin, Somalia, Mali, Cambodia, and Rwanda. Detailed information gleaned from those case studies is integrated into the main body of the Toolkit. The case studies were chosen based on criteria including, but not limited to, (a) extent of fragility in country context, (b) presence of program to enhance SME/local enterprise participation in infrastructure sector, and (c) availability of information. A data comparison snapshot of these countries is provided below. The second part of this Annex presents information about an initiative in Chad aimed at inclusion of SMEs in the PPP value chain.

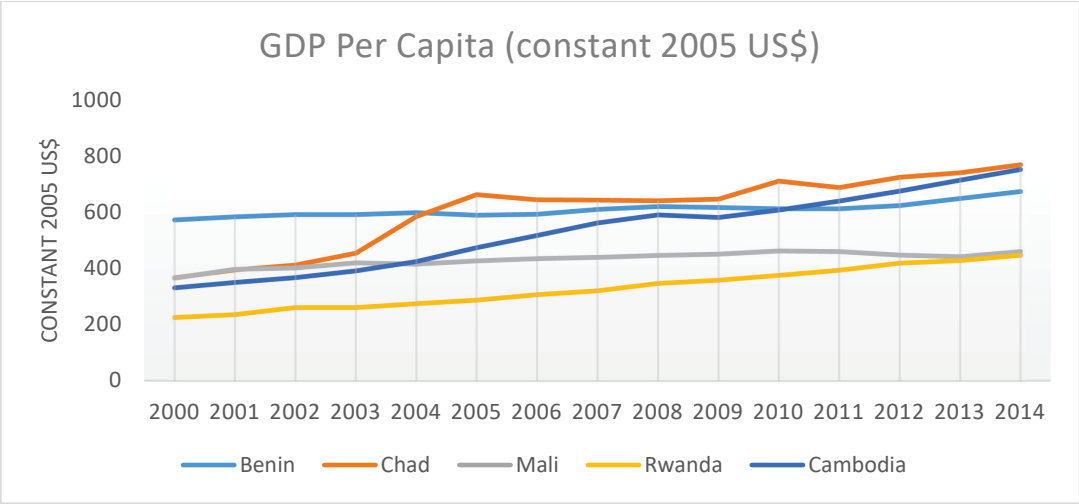
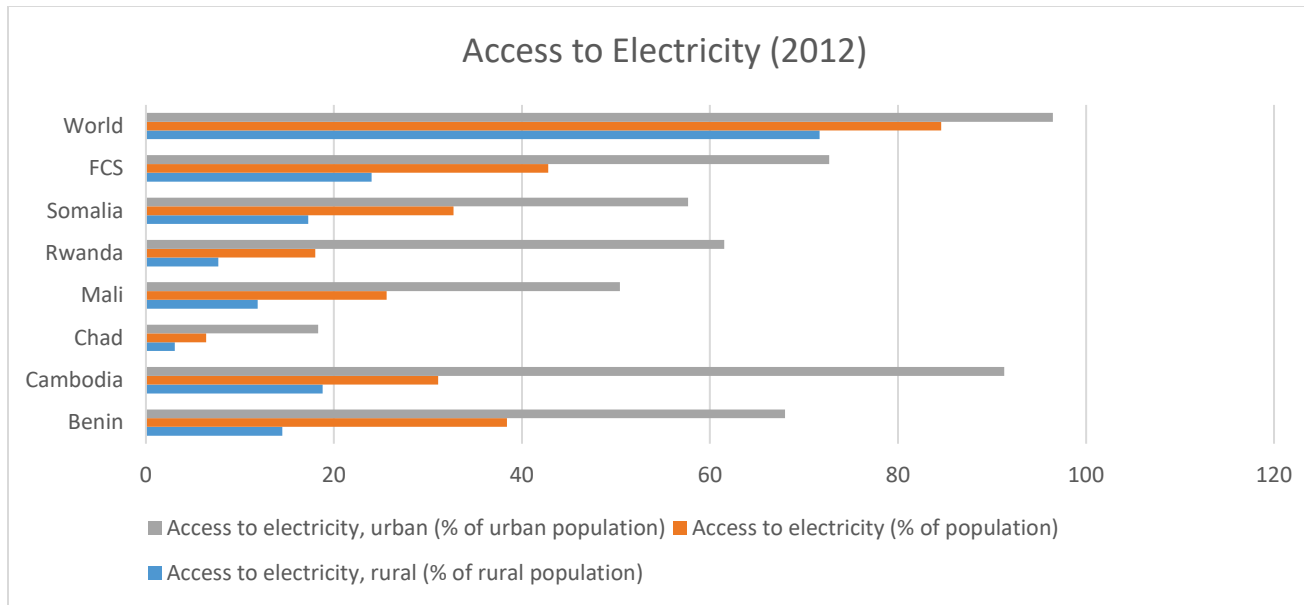
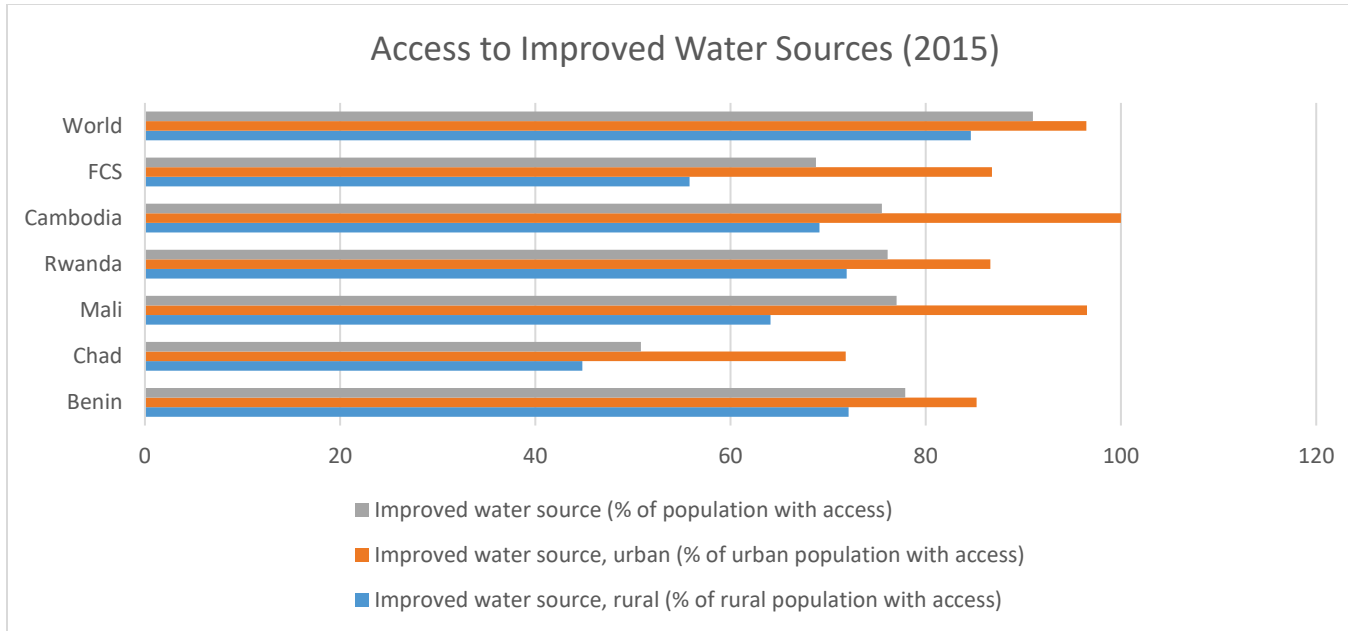


Figure I GDP Per Capita, Source: World Bank Group, World Development Indicators



**Figure II Access to Electricity (%)**, Source: World Bank Group, World Development Indicators  
 Note: most recent data available used



**Figure III Access to Improved Water Sources (%), Source: World Bank Group, World Development Indicators**  
**Note: most recent data available used. Data for Somalia not available for 2015.**

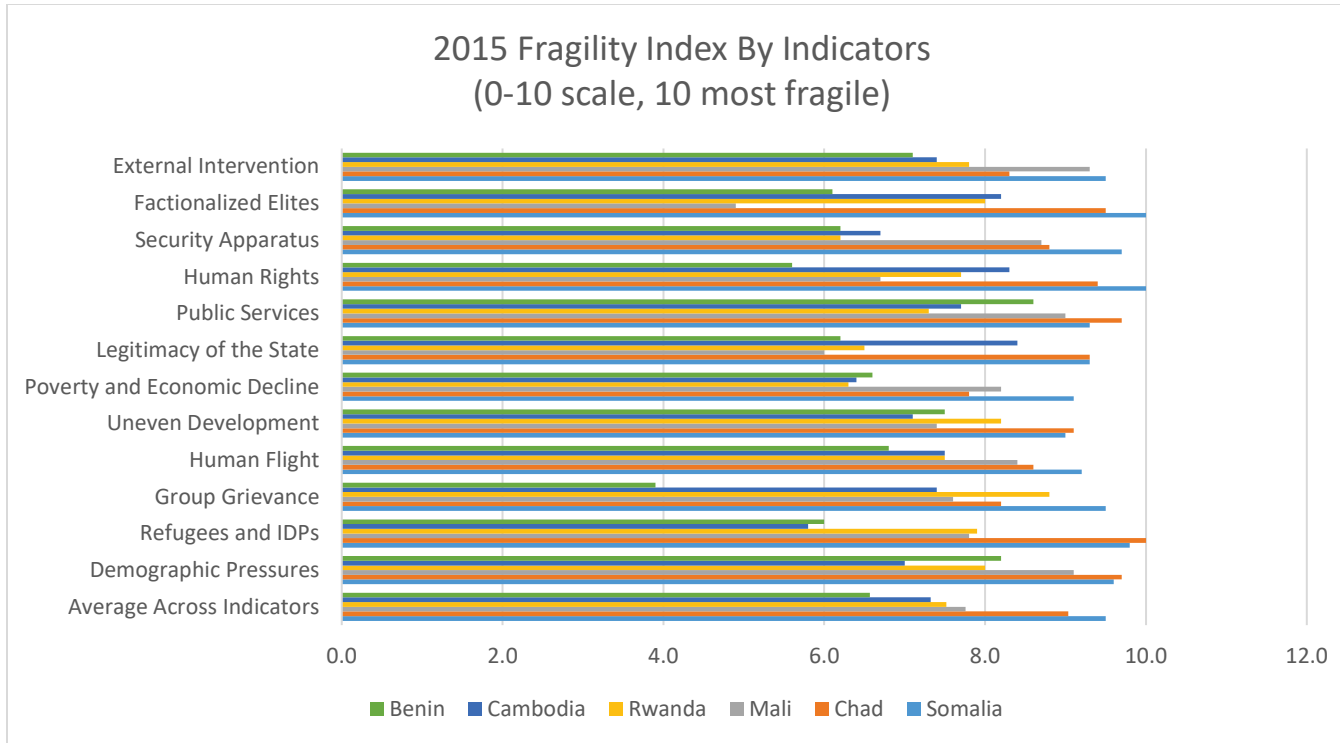


Figure IV 2015 Fragile States Index by Indicators, 0-10 scale, 10 most fragile. Source: Fund for Peace.

## Chad – Business Linkages Approach

### 1. Project overview<sup>147</sup>

The Chad SME Linkages Program was developed in 2002 by IFC and is a key component of the Chad-Cameroon Oil Development and Pipeline Project,<sup>148</sup> with the objective to ensure that SMEs' may provide quality and reliable goods and services for pipeline-line consortium and that Chad's people gain greater economic opportunities. The program includes components on entrepreneurship and capacity building and access to finance. The project resulted in the training of 300 SMEs, the awarding of 13 contracts (\$22.5 million) to SMEs, and 107 new jobs created.<sup>149</sup>

### 2. Country context/ enabling environment

**Background and Fragility Situation:** Chad is included in the harmonized list of fragile situations for FY15, exhibiting waves of instability and conflict from ethnic and religious factions, as well as interventions from groups of neighboring countries (e.g. Boko Haram from Nigeria). It is on "high alert" status according to the 2015 Fragile States Index, ranked 6<sup>th</sup> most fragile among 178 countries. It became an oil producer in 2003 and since then has economically depended on this resource. In a population of about 13.6 million, 6.4% of the population having access to electricity, 50.8% have access to improved water sources, and 12.1% of the population has access to improved sanitation facilities.

**PPP Context:** Chad has employed PPPs for public social services (e.g. water, education, and electricity to rural populations), such as a foreign donor supported PPP strategy for a water PPP in 2011, in addition to limited private investment in the telecommunications and energy sectors. The Government is reviewing the legal, regulatory, and institutional framework and developing potential projects to ensure an environment enabling PPP

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<sup>147</sup> IFC. 2008. "Developing a Transparent System for Local Contracting."

[https://www.commddev.org/userfiles/files/2331\\_file\\_Developing\\_a\\_Transparent\\_System\\_for\\_Local\\_Contracting.pdf](https://www.commddev.org/userfiles/files/2331_file_Developing_a_Transparent_System_for_Local_Contracting.pdf)

<sup>148</sup> The Chad-Cameroon Oil Development and Pipeline Project involved the construction of a 1070 km pipeline to transport crude oil from southwestern Chad to Cameroon coast. The sponsors included Exxon Mobil (operator with 40 percent of private equity), Petronas (35%), and Chevron (25%) who obtained a 20-year concession from the Government of Chad. See also "The International Finance Corporation (IFC) Played a Leading Role in Facilitating the Oil Pipeline between Chad and Cameroon", available at <http://www.ifc.org/wps/wcm/connect/6f271e00487e8e09844ced51e3a7223f/ChadCamProjectOverview.pdf?MOD=AJPERES>

<sup>149</sup> "Business Linkages: Lessons, Opportunities, and Challenges," 43.

projects, inviting to potential investors, and providing guidance and direction to implementing agencies.<sup>150</sup>

### 3. *Major challenges*

- Low capacity of suppliers for the consortium, particularly in regards to safety, quality, and controls
- Ensuring stakeholder buy-in of National Content Strategy shared by stakeholders (government, NGOs, major suppliers, consortium stakeholders, etc)

### 4. *Approach to SME participation value chain*

In coordination with IFC, ExxonMobil, and the Chamber of Commerce of Chad, the following components were chosen to ensure that Chad's SMEs are included in the oil pipeline construction value chain:

- **SME mapping:** survey of local SMEs conducted to locate and provide outreach for tender announcements
- **SME rating system:** SMEs rated 0 to 3 stars and tender announcements indicate the prerequisite rating
- **E-platform (e-procurement)** to facilitate business linkages: Chadian companies can participate in electronic bidding process
- **Information awareness:** public workshops held to provide SMEs with information on bidding opportunities over medium and long terms (6 months to 2 years) and inform of standards required by ExxonMobil from suppliers
- **Capacity building:** Chad Enterprise Center (EC) – where IFC delivers local MSME development efforts trained SMEs on Exxon Mobil's e-Procurement system, how to submit documentation and tender bids and how to deliver contracts effectively
- **Access to infrastructure:** Chad Enterprise Center provides internet to local SMEs
- **Access to finance:** Working with financial institutions to provide SMEs with necessary finance

### 5. *Results*<sup>151</sup>

- As of June 2009, 102 local firms participated in electronic bidding—30 contracts (3-5 years) totaling over \$56 million awarded
- Chad Enterprise Center has provided training for 1300 local companies in its database

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<sup>150</sup> PPP Knowledge Lab. Chad. <https://pppknowledgelab.org/countries/chad>.

<sup>151</sup> IFC. 2009. "Linkages Highlights: The Chad SME Linkages Program."  
<https://commdev.org/userfiles/Chad%20Linkages%20Highlights%20dec2009.pdf>.



- ExxonMobil's public workshops resulted in five-fold increase in bid applications (5 to 25 SMEs)

## 6. *Lessons Learned*

- **Business linkage programs should happen before implementation** of investment project
- **Partnerships with development partners** is particularly critical in fragile situations
- **Local resources** are essential for fragile country context
- **Begin with smaller scale projects**
- **Large companies benefit** from enhanced ability to spread benefits of investment to greater share of society and strengthened social license to work in the remote region
- **E-Procurement** is a valuable system to connect local SMEs and large companies because it reduces risk of corruption between SMEs and company staff and streamlines the bidding process
- **Need to active "lead company" support and active local Chamber of Commerce** that can provide a voice for local businesses, office space, credibility to the gram for government, etc.
- Critical enabling factors:
  - Incentives aligned for internal stakeholders in lead company
  - Enterprise center staff highly motivated
  - SMEs motivation to learn and reform business practices
  - Bid transparency

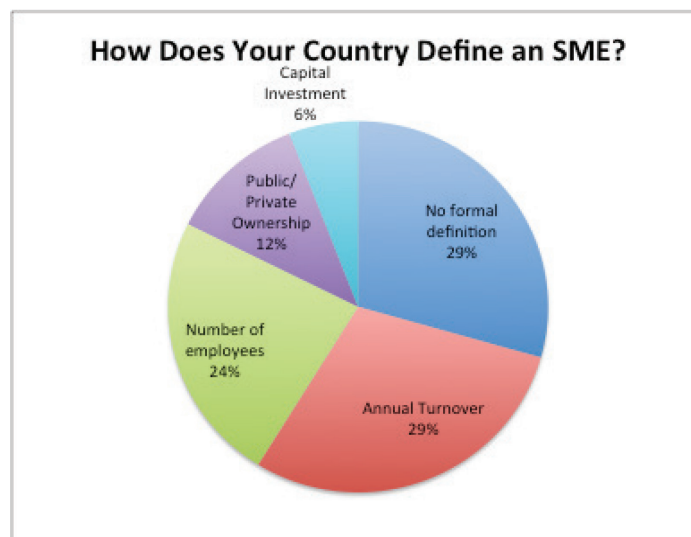
## ANNEX B: SURVEY ON SME PARTICIPATION IN PUBLIC-PRIVATE PARTNERSHIPS

Outlined below are the findings of the survey with respect to the following categories of issues: SME enabling environment, regulatory environment, procedural environment, challenges and solutions, and next steps.

### SME enabling environment

**Participants acknowledged a number of ways in which SMEs could help address fragile situations.** SMEs' participation may enhance service delivery when projects are geographically spread, able to address local issues more efficiently (even as subcontractors). SMEs may also replace big scale firms in what otherwise would be unattractive regions. SMEs may also provide local solutions such as in the provision of key services and infrastructure. If empowered to make unsolicited proposals, SMEs may also help mitigate fragility by ensuring that there are projects that will enhance services in the fragile context. Investment guarantees from the state and multilateral donors and consortiums with experienced big companies are crucial ways to enable SMEs to do so.

**Lack of definition and weak monitoring of SMEs:** Nearly a third of respondents showed that their countries did not have a formal definition. Nearly another third of responses indicated that SMEs were defined by annual turnover, while about 24 percent of responses indicated that SMEs were defined based on the number of employees. 12 percent of responses indicated that they were defined by public or private ownership and 6 percent by capital investment. Some countries, such as Afghanistan, are in the process of implementing a definition. The majority of respondents (62 percent) also attested to their country lacking a data collection mechanism for counting and monitoring SMEs in public procurement or PPPs.



**Low availability of SMEs in infrastructure sectors relative to needs:** The most common sector for SME activity was manufacturing: 62 percent of respondents mentioned that most SMEs in their country are in manufacturing, followed by textiles (54 percent). A small share of respondents attested to SMEs’ prevalence in energy, water, and waste sectors (15 percent for each) where PPPs in infrastructure may be particularly useful, reflecting the challenge of building SME capacity in these areas. Meanwhile, survey respondents revealed that the greatest need for SME participation is in the waste (67 percent), water (75 percent), and energy (58 percent) sectors.

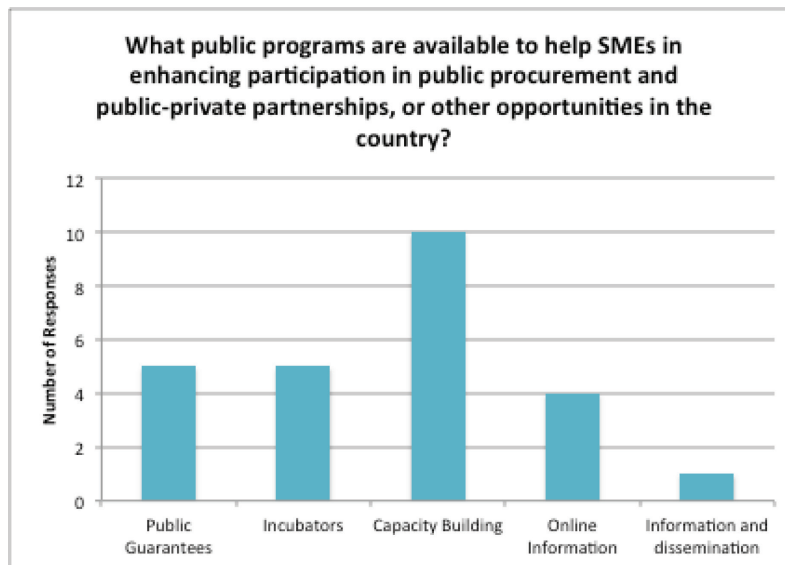


**SMEs are more likely to be subcontractors rather than direct contractors in PPP projects:** Nearly three-fourths of respondents mentioned that either none or under 10 SMEs were involved as direct contractors in PPPs. Nearly half of respondents (45 percent) also indicated that no SMEs had won contracts in their department in the last year. Yet one third of respondents indicated that over 10 SMEs were involved in PPPs as subcontractors.

**Engagement with private sector is conducted more prevalently through direct contacts rather than online bidding:** Most survey respondents (64 percent) answered that their public procurement system engages private sector through direct contacts, rather than online bidding (36 percent), local engineering/professional associations (36 percent), or contacts from past projects (27 percent). Consistent with the low response rate for online bidding, over half of survey respondents (58 percent) indicated that their country does not use e-procurement.

**Capacity building was the most common form of support provided for SMEs:** Over three-fourths (77 percent) of respondents answered that capacity building is currently provided

for SMEs to be involved in public procurement and PPPs. A sizeable portion also indicated the presence of public guarantee programs and financing support (38 percent), incubators (38 percent), and online information resources (31 percent).



**The definition of small-scale PPPs varies across countries.** Survey responses indicated criteria such as contract threshold/investment amounts and rural vs. urban classification. Several responses also indicated that there was no distinction between large and small-scale PPPs.

### Regulatory environment

**SMEs are involved in policy processes in a variety of ways.** Most respondents (77 percent) indicated that SMEs in their country are involved in PPP and public procurement policy processes, such as through joint meetings and discussion with Social Fund for Development, awareness workshops, chamber of commerce, SME membership in regulatory policy committee, consultation and participation in dialogue or forum, and open tenders.

**PPP policy frameworks are more prevalent than SME policy frameworks.** While over half of respondents (58 percent) indicated that their country has a policy governing PPP arrangements (such as a Committee led by the Prime Minister in Djibouti) or is implied in sector policies such as in Somalia’s Water Act, only 42 percent indicated that their country has a policy promoting SMEs.

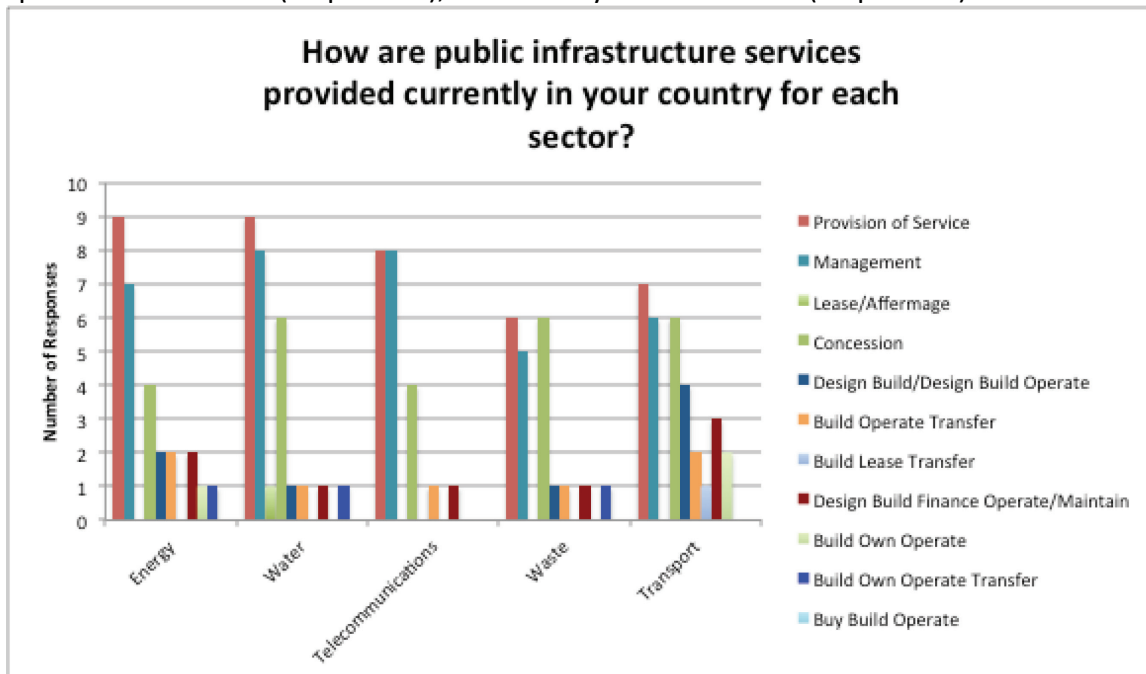
**Almost all countries represented were shown to have an agency to deal with both SME and PPP issues and some participated in inter-regional organizations in this area.** Agencies dealing with SME issues included the Ministry of Trade in Bosnia, the Ministry of Commerce/Chamber of Commerce in Afghanistan, the Social Fund in Yemen, and the

Social Fund for Development in Egypt. Agencies that addressed PPP issues included the PPP central unit in Egypt, the Ministry of Investment in Djibouti, the Ministry of Finance in Morocco, the PPP Unit in Tunisia, the Higher Council for Privatization in Lebanon, and the Commission for Concessions in Bosnia. Inter-regional organizations included the International North Africa PPP hub in Egypt (in progress), IGAD Business Forum, COMESA in Djibouti, and MENA Network in Djibouti, Morocco, and Tunisia.

**Resistance to change and administrative burdens were the most common constraints to implementing PPP laws:** About half of respondents indicated that resistance to change and administrative burdens posed the biggest constraint to implementing PPP laws, though some also mentioned the risk of privatization, lack of awareness, and conflict of interest as constraints. Less than half of respondents (42 percent) indicated that their country has a PPP law.

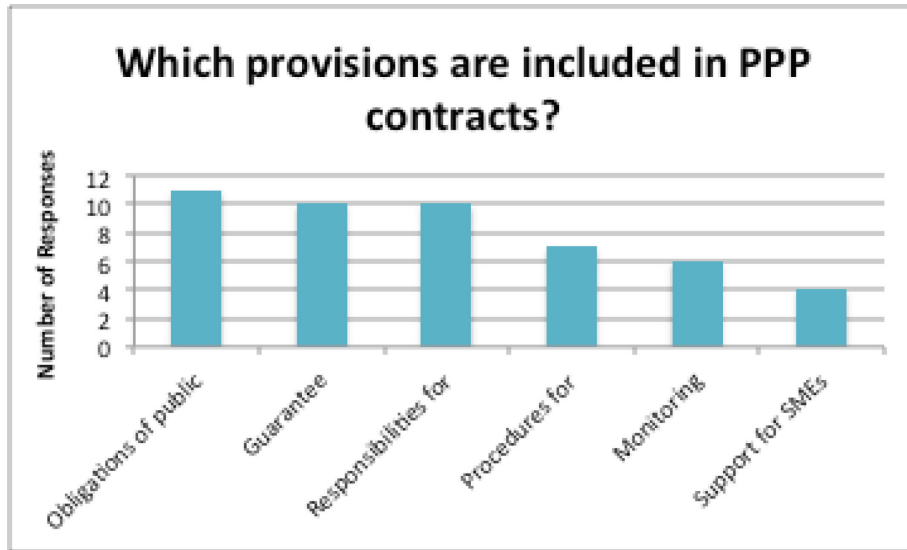
### Procedural environment

**Provision of service were the most common contracts across sectors and local form/donor-sponsored were the most common contract forms for construction projects.** Management contracts were most attributed to water and telecommunications sectors. Lease/*affermage* contracts were most attributed to the waste and transport sectors. Most responses (69 percent) indicated the use of local form contracts and donor sponsored contracts (62 percent), followed by FDIC contracts (54 percent).



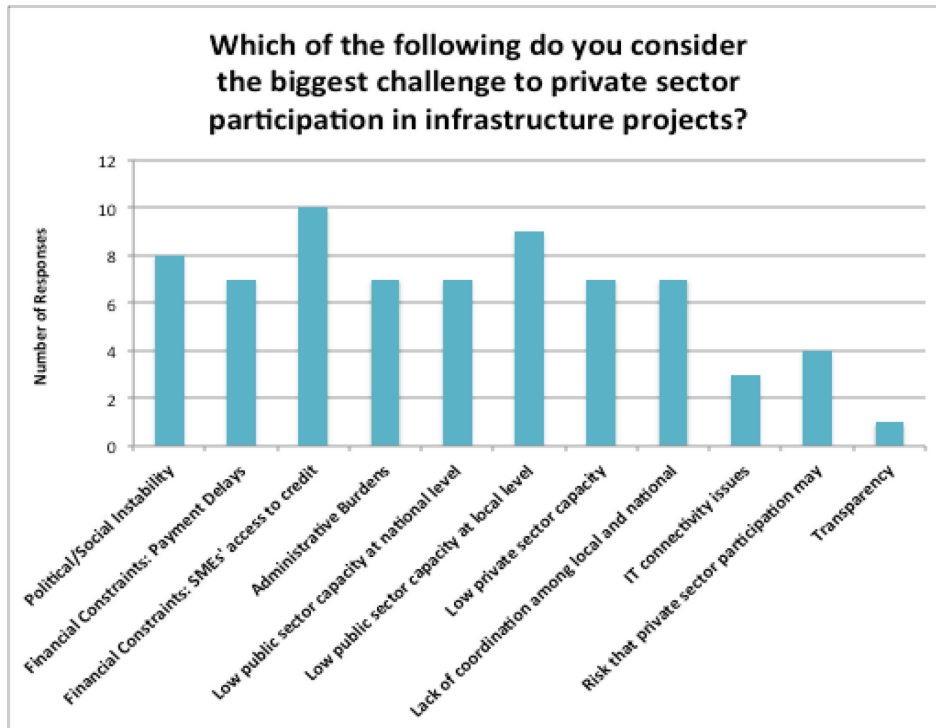
**Concessions were the common contract type and obligations of public and private sector were the most common provisions.** 69 percent of responses indicated that concessions are used in their country, and a slightly lower but significant 62 percent

indicated the use of provision of service. The least common contract among survey respondents was the “build lease transfer” (8 percent). All survey responses indicated that contracts included obligations of public and private sector, while 91 percent indicated that they included guarantee requirements and responsibilities for investment. 36 percent indicated that PPP contracts provided support for SMEs.



### Challenges and solutions

**Financial constraints, low public sector capacity, and political/social instability are the biggest obstacles for SME participation in infrastructure projects.** 77 percent of responses indicated that financial issues (SMEs’ access to credit) were the biggest constraints for SME participation in infrastructure. 69 percent indicated that low public sector capacity at the local level and 62 percent indicated that political/social instability were the biggest constraints. Only 23 percent of respondents indicated that IT connectivity issues were constraints.



**Participants highlighted a number of capacity, financial, and political risks associated with SMEs' participation in PPPs that essential to address when designing a program.** These included the technical, human resource, technical (engineering), and financial capacity of SMEs, lack of contract management techniques, payment delays, corruption (e.g. if big private companies disguise as SMEs), monopoly risk, and operational risk if projects are not delivered.

### Next steps

**Participants recommended a variety of ways that donors could improve assistance in SME development in PPPs.** These include capacity building, ensuring financial guarantees, allowing SMEs to apply for small contracts financed by donors, advocating and raising awareness, strengthening management models, facilitating twinning arrangements, and providing key resources such as a SME database.

**Participants came away with several lessons from the conference, emphasizing partnerships and adapting solutions to the local context.** Participants acknowledged the importance of SME-based PPPs in alleviating some of the root causes fueling conflict and fragility in a given country and the importance of learning from experiences of other countries. They highlighted learning about the significance of classifying SMEs and PPPs, properly structuring a PPP project, ensuring a clear legislative framework, and facilitating

consortiums between SMEs. Participants also noted gaining awareness of IHEP (International Humanitarian Engineering Partnership).

**Key actions may be taken in the short term to enhance SMEs' situation in PPPs in the short-term (6-12 months).** These include capacity building of SMEs and the government, facilitating access to finance, increasing awareness for SMEs of the importance of PPPs, publishing and disseminating the toolkit (in respective countries), classifying businesses, preparing for PPP projects (such as through a pre-feasibility examination), and introducing PPPs at the municipal level.

**Participants recommended diversifying and adding to the case studies.** They suggested that further case studies could address other sectors, include case studies presented in the conference (e.g. Afghanistan, Kiribati, Borama PPP) as well as highlight those that used FIDIC contracts and showed good governance.



## ANNEX C: SELECTION METHODS IN WORLD BANK PROCUREMENT REGULATIONS

Goods, Works, and Non-consulting Services	Market approach options											
	Open	Limited	Direct	Inter-national	National	PQ	IS	Single-stage	Multi-stage	BAFO	Negotiation	Rated criteria
Selection methods												
Request for Proposals	✓	✓	x	✓	✓	x	normally	✓	✓	✓	✓*	normally
Request for Bids	✓	✓	x	✓	✓	optional	x	✓	x	✓	✓*	not normally
Request for Quotations	✓	✓	x	✓	✓	x	x	✓	x	x	x	x
Direct Selection	x	x	✓	x	x	x	x	✓	x	x	✓	x
Selection arrangements												
Competitive Dialogue	✓	✓	x	✓	✓	x	required	x	✓	x	x	✓
Public-Private Partnerships	✓	✓	✓	✓	✓	✓	x	✓	✓	✓	✓	✓
Commercial Practices	As per acceptable commercial procurement practices											
UN Agencies	As per Paragraphs 6.47 and 6.48											
E-Auctions	✓	✓	x	✓	✓	✓	x	✓	x	x	x	x
Imports	✓	✓	x	✓	x	x	x	✓	x	✓	x	x
Commodities	✓	✓	x	✓	✓	✓	x	✓	x	x	x	x
Community-driven Development	✓	✓	✓	x	✓	x	x	✓	x	x	x	x
Force Accounts	x	x	✓	x	✓	x	x	x	x	x	x	x

- ✓ This market approach option is available
- x This market approach option is not available
- PQ = Prequalification
- IS = Initial Selection