

Harnessing Investment for Sustainable Development Through Public–Private Partnerships (PPPs) in Infrastructure and Public Services

Joint IISD–UNCTAD workshops

InterContinental Nairobi – Nairobi, Kenya – February 6, 2018

SUMMARY REPORT

BACKGROUND

The International Institute for Sustainable Development (IISD) and the United Nations Conference on Trade and Development (UNCTAD) co-organized two half-day workshops on “Harnessing Investment for Sustainable Development Through Public–Private Partnerships (PPPs) in Infrastructure and Public Services” in Nairobi, Kenya on February 6, 2018.

The two workshops were attended by 43 participants, including investment negotiators and policy makers, investment promotion officials and other government officials representing 21 developing countries in Africa, Asia and Latin America. Flights were sponsored for 22 delegates, of which 36 per cent were female, to enable them to participate.

The morning workshop, subtitled “the economics and finance dimensions,” had a special focus on agriculture and rural infrastructure. The afternoon workshop, in turn, focused on two types of instruments that form “the legal dimension” of PPPs and infrastructure investment: (1) international contracts between a state and a foreign PPP investor and (2) international investment agreements (IIAs). All sessions in both workshops were jointly moderated by participating IISD and UNCTAD experts.

MORNING WORKSHOP: THE ECONOMICS AND FINANCE DIMENSIONS

UNCTAD experts presented a data overview and data-related challenges in the measurement of foreign direct investment (FDI) in infrastructure and public services. The presentation delved into what currently available data on PPPs can show regarding significant infrastructure gaps and slow growth trends in infrastructure investment, as well as the relationship between infrastructure PPPs and the SDGs.

In the second session, IISD experts showcased its Sustainable Asset Valuation (SAVi) Tool, designed to demonstrate to governments, investors and citizens why sustainable infrastructure assets can deliver better value for money and more attractive internal rates of return. SAVi thus demonstrates that sustainable infrastructure outperforms traditional infrastructure assets not only in the social and environmental dimensions of sustainability, but also in its economic dimension. Participants expressed interest in deeper training on the SAVi Tool, with practical examples, and in its dissemination among developing countries.

Finally, IISD experts presented the main findings of IISD's draft research paper "Financing Rural Infrastructure to End Hunger." The paper analyzes the pathways to food security and the financing challenges of four types of rural infrastructure assets: (1) storage/cold storage, (2) feeder roads, (3) decentralized renewable energy and (4) irrigation infrastructure. The presentation was followed by a consultation session, moderated by IISD experts, to gather participants' inputs on the draft paper. Given the high contribution of agriculture to many of the economies represented in the room, participants provided invaluable comments and feedback on the paper during the session.

AFTERNOON WORKSHOP: THE LEGAL DIMENSION

In the session on the contractual dimension of PPPs, IISD experts analyzed sample contract language contained in the World Bank Group's *Guidance on PPP Contractual Provisions*. IISD experts also presented ways to integrate sustainable development into PPP contracts, ensuring the economic, social and environmental co-benefits of infrastructure investment.

In an exercise in break-out groups facilitated by IISD experts, participants were asked to assume that each table was a negotiating team of government officials and that the investor

submitted a draft contract including two of the World Bank Group’s draft clauses. First, they were asked to take position vis-à-vis the investor and explain what was acceptable to the government and what was not. Second, they were asked to outline counterproposals. Participants engaged actively in the exercise and highlighted the potential risks posed by the draft clauses to developing countries’ right to regulate.

In the international investment law dimension of the workshop, UNCTAD experts presented statistics on PPP-related investor–state arbitration cases and analyzed key provisions contained in IIAs—such as the definition of investment, anti-corruption, fair and equitable treatment (FET) and investor–state arbitration—in light of their relevance for and impacts on infrastructure PPP projects and sustainable development. IISD experts joined this analysis by discussing several cases in which these provisions were interpreted by international investment tribunals.

DRAFT CHECKLIST OF ISSUES SUPPORTING THE IMPLEMENTATION OF BEST PRACTICES IN PPPs FOR INFRASTRUCTURE AND PUBLIC SERVICES

Building upon the preparatory work for the two joint workshops and on the outcomes of the discussions with participants during the sessions, IISD and UNCTAD have developed the attached Draft Checklist of issues for the implementation of best practices in PPPs for infrastructure and public services.

Focusing on the legal dimension that was the centre of the afternoon workshop in Nairobi, the Draft Checklist offers preliminary guidance to developing countries for the drafting and negotiation of investor–state contracts and IIAs designed to harness investment for sustainable development through PPP in infrastructure and public services. While not intended to be exhaustive, but subject to elaboration based on further study, the Draft Checklist draws attention to challenges faced by developed countries in ensuring the development of sustainable infrastructure, particularly in light of risks resulting from investor–state contracts and IIAs.