WORLD BANK GROUP

COLOMBIA

SECTORAL EVOLUTION

Today, Colombia has one of the most advanced PPP programs in the LAC region, but the evolution of the country's PPP program, particularly for the road sector, is marked by adaptability and foresight. Colombia[1] is an upper-middle-income country with a GDP of $344 billion (2022) and a population of about 51 million. The PPP program began as multi-sector in nature, covering energy, transport, water, and telecoms. Since the mid-2000s, the program has shifted significantly to be dominated by the transport sector, particularly roads, under four generations of toll road concession programs. Each of the four generations of the road concession programs has built on lessons learned from the previous one, with each generation packaged with large scale road concessions together with standard terms and conditions. The fourth generation (4G) road concession program, procured under the 2012 PPP Law (Law 1508/2012), benefitted from significant support from the IFC to revise and standardize the risk allocation and key contractual clauses. In addition to IFC's transaction advisory support and the new PPP Law, the mobilization of local and international commercial financing has become a key signature of the 4G road concession program. This has been facilitated by DFIs Finaciera de Desarrollo Nacional (FDN, majority owned by the Government of Colombia) and the Fondo de Capital Privado 4G Credicorp Capital / SURA Asset Management fund. Commercial financing has also now extended to a small number of projects in the energy sector.

REGULATIONS

The evolution of the legal PPP framework is relatively comprehensive, starting with the 2012 PPP Law. The wave of port concessions in 1992-1993 was driven/underpinned by Law 1/1991, a sector-specific law, and several sectors continue to pursue projects under sector-specific legislation. While the Public Procurement Law of 1993 (Law 80/1993) addressed concessions more broadly, the first PPP law in Colombia was enacted in 2012 and, among others, enabled PPPs to be procured by national and sub-national entities if the project received national funding. Several legal amendments, binding guidelines, standardized contracts, and other bidding documents were issued afterward to provide additional clarity and address vacuums in the 2012 Law. That evolution has granted Colombia one of the highest scores in terms of PPP regulatory quality in the BID 2023 assessment.

INSTITUTIONS

The Evolution of the PPP framework was accompanied by institutional changes, including the creation of several agencies with well-defined responsibilities:

- In 1996, the National Planning Department (DNP) established a private participation in infrastructure team that promoted PPPs and provided technical support to the line ministries.
- In 2011, the National Infrastructure Agency (ANI) was established as a decentralized agency of the Ministry of Transport. This agency, which resulted from the transformation of the MoT's concessions unit (Instituto Nacional de Conceesiones, INCO), is responsible for PPPs in the transport sector (roads, airports, ports, and railways) and

1 https://data.worldbank.org/country/colombia.

was crucial to enhancing the technical capacity of the PPP awarding authority. Thanks to its high capacity and credibility, ANI is a significant milestone for Colombia's transport PPP program.

- In 2012, based on the PPP Law, the government reinforced the centralized PPP capacity by establishing a PPP Unit within the MoF's General Directorate of Public Credit and National Treasury. This unit provides a financial analysis of PPPs and approval for the valuation of contingent liabilities. The Council for Fiscal Policy (CONFIS), a unitwithin MoF, provides approval of future payment commitments. The National Council for Economic and Social Policy (CONPES), the central government's cabinet-level advisory body in all aspects related to the country's economic and social development, reviews government support at the concept review stage and approves a maximum government support level for each project. All these three reinforcements play crucial roles in ensuring PPP fiscal affordability.

FINANCING INSTITUTIONS

In 2011, the government established Financiera de Desarrollo National (FDN), a national infrastructure development bank, to financially support PPPs and infrastructure development. Much like ANI was created from INCO, *FDN* was created through the transformation of another financial institution, the Financiera Enérgetica Nacional (FEN), that had promoted the development of energy infrastructure since the 1980s. FDN operations were first funded using the liquid assets on the FEN balance sheet. Later, the government provided the proceeds of the privatization of ISAGEN (the state-owned energy enterprise for power generation) to FDN, comprising a total investment of around US$2 billion.[2] FDN has played a pivotal role in the development of the 4G roads concession program, and in 2016, it initiated a process of sector diversification to support other projects. FDN has catalyzed private investment, particularly institutional investors (local pension funds), via debt, equity, and liquidity lines (effectively a partial risk guarantee). FDN has promoted local currency financing by deliberate development of local banks and pension funds to invest in long-term infrastructure and establishing a track record of procuring authorities with a gradual decrease of DFI support and financing.

FINANCIAL MARKET

Colombia's financial market development saw a major boost in 2011 as it achieved an investment-grade credit rating (BBB-/A-3). This resulted in attracting a new class of investors, including large financial institutions whose policies mandate that bond purchases be investment-grade. Subsequently, Colombia also gained access to global credit markets at lower interest rates, thus spurring investment and further boosting the emerging country's economy.

TAKEAWAYS

Colombia is a successful example of a planned and managed development of a PPP program, particularly noted for its focus on road infrastructure evolving through four generations of road concession programs that have incorporated lessons from each preceding one. Over time, the country enhanced its regulatory framework and created the technical and financial institutions essential to support a PPP program. Developing a sizable PPP project pipeline across various sectors has been crucial to attracting the private sector and sustaining a successful program.

2 FDN's shareholders now include the government (73% shareholding) and IFC, Sumitomo Mitsui Banking Corporation, and the Development Bank of Latin America (27% combined).

KENYA

SECTORAL EVOLUTION

Kenya's economic growth and successful energy sector reform are exemplary for Africa. Kenya[1] is a lower middle-income country with a GDP of $113 billion (2022) and a population of 54 million. The PPP program began in power generation with the passing of the energy law in 1996, which allowed private sector participation. Subsequently, the 2002 Water Act allowed the private sector to participate in the water sector, and the 2005 Privatization Act allowed the same to happen in other sectors. This set of laws was followed by a major bump in private sector investment from 2006 onwards.

Like several other countries, Kenya embarked on PPPs in the energy generation sector, initiating one-off take power purchase agreements (PPAs) with independent power producers (IPPs). By 1999, there had been projects across the energy, transport, water, and telecoms sectors. However, the energy sector has dominated the PPP market. The energy sector PPP journey has been fully supported by the development financial institutions (DFIs), in particular the World Bank Group, with multiple credit enhancements, guarantees, grant and concessional lending, sustained policy, and backing sectoral reform, including unbundling of the national electric company.

The pace of the non-energy PPP program has increased slightly since the operationalization of the Infrastructure Finance and Public-private Partnership Program (IFPPP).

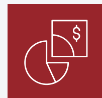
REGULATIONS

The development of the initial PPP projects served as a learning experience, helping to identify challenges and refine PPP processes and procedures. A PPP policy was not passed until 2011; however, the first PPP Act was enacted shortly after in 2013, followed by a PPP regulation in 2014, which served to solidify and provide greater reliability in the legal framework. Kenya remains committed to refining the PPP system with regulatory improvements such as the full update of the PPP Act that took place in 2021.

INSTITUTIONS

The PPP Act established the creation of the PPP Directorate at the National Treasury. This PPP unit has served as a center of PPP expertise and a technical arm. providing technical support to line ministries. These milestones have helped to build PPP capacity and expertise in the country.

1 https://data.worldbank.org/country/kenya.



FINANCIAL MARKET

Kenya remains below investment grade by major international credit ratings agencies, with S&P rating Kenya as “B” as of February 2023. The PPP program has been relatively reliant on multilateral/bilateral concessional finance and guarantees, although, since 2012, there has been a trend towards greater involvement from international and local commercial banks. However, the Kenyan banking sector is small, and local banks are generally unable to meet the long-term tenors associated with PPPs. Currency risk remains an ongoing challenge for PPPs in Kenya. Kenya has recently adopted the new fiscal commitments and contingent liability (FCCL) framework, which allows it to manage payment risk.

TAKEAWAYS

Beginning in the 1990s with the implementation of sector-specific legislation, Kenya fostered an environment conducive to private investment in areas such as energy and water, resulting in a marked uptick in private sector engagement. The experiences gleaned from early PPP projects were instrumental in pinpointing obstacles, which in turn informed the progressive refinement of PPP frameworks. This was achieved through targeted regulatory and institutional reforms aimed at addressing the identified challenges.

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THE PHILIPPINES

SECTORAL EVOLUTION

The Philippines has become a worldwide good practice example of how a programmatic approach to the development of a solid PPP program can be achieved. The Philippines[1] is a lower middle-income country with a GDP of $404 billion (2022) and a population of 115 million. The Philippines has a long history of private-sector participation in public infrastructure. The initial power purchase agreements (PPAs) and water concessions were signed based on the special executive orders issued by the then government in the 1980s. As the need for a high-volume wholesale approach grew in the power sector, the first BOT law was passed in 1990 to allow private sector participation in the power sector on a larger scale. This was followed by amendments in 1994 and the creation of the BOT center in 1995. The first wave of BOT projects involved the execution of PPAs between the National Power Corporation (NPC) and independent power producers (IPPs) to address the energy crisis faced by the country without having to provide for an immediate cash outlay. During the period of 1995-1997, there was a wave of projects in the water, information technology, and transport sectors. In particular, the year 1997 saw the largest privatization of a water concession to avert the Manila water crisis.

The BOT law and BOT center laid a strong foundation in kickstarting private investment in energy and non-energy sectors to address specific challenges in the 1990s, e.g., poly crises in energy and water sectors, which were further exacerbated by the Asian currency crisis. However, with no standardized approach to project identification, clear selection criteria, or the full mandate for all types of PPPs under the BOT, the PPP program stagnated till the next round of reforms was undertaken. The stagnation could be attributed to changing policy and preference for PPPs of different administrations. A negative view of PPPs also came about after the Asian crises, when contingent liabilities turned to actual liabilities and, in a way, exposed the poor project preparation and lack of fiscal management of PPP government obligations. The BOT Center lacked the authority to compel contracting authorities to work with them or even submit reports on project development or contract performance. Transactions could happen without the BOT Center's involvement.

REGULATIONS

After the initial BOT Law in 1990, with major amendments in 1994 and privatization projects, the Philippines PPP market needed a stronger market signal to accelerate PPP, and therefore, starting in 2010, it embarked on a major reform. A revised set of Implementing Rules and Regulations (IRRs 7718) was passed in 2012, which expanded the existing BOT law and provided more legislative clarity. In recent years, the Philippines has strived to enhance its legal system, such as with the enactment of the 2022 Revised IRRs of the BOT Law. The text from 2022 aims to tackle issues raised by stakeholders regarding the financial sustainability of PPP projects and deals with concerns about possible inflexible processes and unclear provisions that could deter investors.

Since the revised 2022 IRRs of the BOT Law, in 2023, the Philippines has passed the new PPP Code, which addresses the fundamental legal barriers that could not be addressed by 2022 IRRs. In April 2024, the IRRs for this new law were also adopted. In addition, there are significant changes introduced to the PPP Code, such as: First, 2024 IRRs overhaul and clarify the steps in approval of a PPP and mandate approval service standards i.e., time to approve. The IRRs introduce a "deemed approved" principle – i.e., if the authority does not act by the service standard duration, legally, the assumption is that the project passes to the next stage. This will significantly reduce the time for approval.

1 https://www.worldbank.org/en/country/philippines.

The new law harmonizes the Joint Venture Guidelines and the PPP Code in terms of approval process, closing the door on loopholes for appropriate reviews and competitive procedures. At the same time, the law clarifies the authority of local government units to take decisions within their mandates without additional bureaucracy unless national support is sought. This strengthens the realization of the decentralization policy under the Local government code. Changes were made to increase the unsolicited proposal (USP) provisions – mainly by increasing the challenge period to be able to attract more realistic challenge.

Another important introduction, which is yet to be designed/implemented, is the Risk Management Fund. The idea is the creation of a “tangible fund” (could be a facility) to backstop liabilities arising from a growing PPP program.

INSTITUTIONS

The centralized PPP center also evolved over time, becoming a more encompassing authority, as it is situated in the National Economic and Development Authority (NEDA). The oversight of PPP center has changed over time from DOF, then NEDA, DTI and NEDA again. Since becoming the PPP Center in 2010, it has played a key role in guiding and advising contracting authorities over the PPP project life cycle. This function was important as the contracting authorities lacked PPP experience. Although in reality, the role of the PPP Center has not significantly changed since the formation of the BOT center. Imeplemtation Agencies have always been at the helm of project development.

FINANCIAL MECHANISMS

Around the same time in 2010, two key initiatives were put into place to address key bidder concerns. A Strategic Support Fund was established to support right-of-way acquisition and related costs. In addition, a contingent liabilities methodology was established to provide the government with liquidity to meet its payment obligations related to any contingent liabilities that materialize. These two funds were important in increasing confidence among investors and lenders regarding the government’s contractual obligations. What the Government had done is to establish a methodology to estimate the contingent liability of the PPP portfolio. Annually, the budget coordinating council of government estimates the Contingent Liabilities and submits this as part of the General Appropriations Act (GAA) as an “unprogrammed fund.” This means no revenues/budgets are allocated to it, but an approval is provided for such contingency. Any liabilities that materialize will need to be budgeted through amendments or the following year’s GAA. The difference from the PPP Code is that resources which are sought should be made available.

One of the strategies of the PPP Center was to ensure that there is a continuous ‘bankable’ project pipeline. Therefore, in 2011, the Project Development and Monitoring Fund (PDMF) was established to support PPP project development. It funds the main project assessments (feasibility studies, PPP options, value-for-money, environmental, social, and gender safeguards, financial analysis, and structuring) as well as the procurement process (bidding documents, draft contracts, tendering, and contract negotiations). Another salient feature of the PDMF was that it provided more efficient access to foreign PPP expertise. The proper selection of credible experienced advisors is critical to a well-prepared project, given the commercial risks aspects and specialized legal formulation that is required in preparing and tendering PPPs.

FINANCIAL MARKET

In 2013, the Philippines attained investment grade credit rating from major international rating agencies, putting the country on track to access long-term commercial financing and attract more foreign capital flows. This also resulted in an expansion of domestic capital and an increase in domestic private-sector consortia. Significantly, during this period, the number of tenders with multiple bidders increased, thereby enhancing competition.

TAKEAWAYS

The Philippines has a sustainable PPP program today, with a significant number of PPPs already active and in the pipeline. The years of PPP experience and the viable pipeline of projects have enhanced the Philippines' ability to elevate its technical capacity and borrow from both domestic and foreign banks. In addition to PPP regulatory and institutional reforms over the years, the establishment of funds dedicated to right-of-way acquisition, contingent liabilities, and project preparation and monitoring has been instrumental in guaranteeing appropriate funding for the critical phases of PPP project development. On key takeaways, it would be clearly observed that PPPs have thrived when the policy to pursue PPP is driven at the highest level of government. This was very apparent during the administrations of Presidents' Ramos, Aquino and now Marcos. There may be a well-laid out legal framework but if there is no leadership pushing for projects to be implemented via PPP, the program would not thrive.