



# History RePPPeated

How Public Private Partnerships are failing

October 2018 • A report coordinated by Eurodad



LIBERIA

INDIA

SPAIN

SWEDEN

LESOTHO

FRANCE

PERU

COLOMBIA

INDONESIA

## Acknowledgements

This report was produced by civil society organisations (CSOs) in countries around the world.

Each case study was written by — and is the responsibility of — its authors. The authors believe that all of the details included in this report are factually accurate as of 25 September 2018.

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# Executive summary

Public-Private Partnerships (PPPs) are increasingly being promoted as the solution to the shortfall in financing needed to achieve the Sustainable Development Goals (SDGs). Economic infrastructure, such as railways, roads, airports and ports, but also key services such as health, education, water and electricity are being delivered through PPPs in both the global north and south.

Although the involvement of the private sector in public service provision is not new, there is currently keen political interest in PPPs as an important way to leverage private finance. Donor governments and financial institutions, such as the World Bank Group (WBG) and other multilateral development banks (MDBs), have set up multiple initiatives to promote changes in national regulatory frameworks to allow for PPPs, as well as to provide advice and finance for PPP projects.

Since 2004 there has been a rapid growth in the amount of money invested in PPPs in the developing world. Although the trend has been volatile since 2012, efforts by MDBs to leverage private finance in both emerging and low-income economies have continued — for example, through the “Cascade” approach developed by the WBG, whereby the use of private finance is prioritised over public or concessional finance. This indicates a more determined push to reduce the risk so private investors come in.

Many projects have been procured as PPPs simply to circumvent budget constraints and to postpone the recording of fiscal costs. Some accounting practices allow governments to keep the cost of the project and its contingent liabilities “off balance sheet”. This ends up exposing public finances to excessive fiscal risks. Current austerity measures and orthodox policy prescriptions that encourage a low fiscal deficit also create a perverse incentive in favour of PPPs.

This report gives an in-depth, evidence-based analysis of the impact of 10 PPP projects that have taken place across four continents, in both developed and developing countries. These case studies build on research conducted by civil society experts in recent years and have been written by the people who often work with and around the communities affected by these projects.

The countries included are: Colombia, France, India, Indonesia, Lesotho, Liberia, Peru, Spain and Sweden. The sectors they cover are: education, energy, healthcare, transport, and water and sanitation.

Although we do not intend to generalise our conclusions in the vast and complex universe of PPPs, these 10 cases illustrate the most common problems encountered by PPPs. Therefore, they challenge the capacity of PPPs to deliver results in the public interest.

We found that:

**All 10 projects came with a high cost for the public purse, an excessive level of risk for the public sector and, therefore, a heavy burden for citizens.** For example, the Queen Mamohato Hospital in Lesotho has had significant adverse and unpredictable financial consequences on public funds. Latest figures suggest that in 2016 the private partner Tsepong’s ‘invoiced’ fees amount to two times the “affordability threshold” set by the Government and the WB at the outset of the PPP. Contributing factors to cost escalation include flawed indexation of the annual fee paid by the government to Tsepong (unitary fee) and poor forecasting. In Sweden, the total construction cost of Nya Karolinska Solna (NKS) hospital has rocketed — from €1.4 billion to €2.4 billion — and has been beset by technical failures. It is now known as the “most expensive hospital in the world”.

**Every single PPP studied was riskier for the state than for the private companies involved, as the public sector was required to step in and assume the costs when things went wrong.** A significant example is the case of Jakarta Water in Indonesia, where two PPP contracts resulted in significant losses for the public water utility, PAM Jaya. In 2011, it reported a financial loss of US\$18 million. Estimates suggest that losses will eventually total US\$2.4 billion if the cooperation agreement continues as planned until its expiry date in 2022.

**Five of the 10 PPPs reviewed impacted negatively on the poor, and contributed to an increase in the divide between rich and poor.** For instance, in the case of the Queen Mamohato Hospital in Lesotho, the increasing and inflexible cost of the PPP hospital compromised necessary investment in primary and secondary healthcare in rural areas where mortality

rates are rising and where three-quarters of the population live. In Jakarta, the provision of water through private operators (Jakarta Water) resulted in a radical increase in monthly bills, which are unaffordable for many poor families. Residents often rely on groundwater from community wedge wells, or have to buy water in jerry cans, which can cost as much as half a person's daily income.

**Three of the PPPs resulted in serious social and environmental impacts.** Poor planning and due diligence accounts for some of these. For example, on the Mundra coast in Gujarat, India, where a thermal power station project has taken place, there were serious social and environmental violations from the outset. Following flawed impact assessments, there has been a deterioration in water quality and fish populations; community health impacts are evident due to air emissions; access to fishing and drying sites has been blocked; forced displacement of fishermen has taken place. This has also impacted on the life of women. Girls in particular have also been pulled out of school to perform physical and domestic labour to survive. In Colombia, the PPP project designed to improve the navigability of the Magdalena River suffered from poor planning. Although the project never went into the construction phase — it collapsed due to the failure of the company to get the financing needed to implement it — the preliminary works carried out have already negatively affected the environment in and around the river.

**Nine out of 10 of the projects lacked transparency and/or failed to consult with affected communities, and undermined democratic accountability.** The failure to publish contract details does not chime well with the risks that the public sector is forced to take on. In the small Indian town of Khadwa, for example, where a PPP was launched to provide municipal water, it took four years to finally inform the population about what was happening. More than 10,000 households filed objections against the project within a period of 30 days. This was in a town where regular domestic water connections totalled 15,000. In Liberia, where the government outsourced its public pre-primary and primary schools, initially to Bridge International Academies Ltd (BIA), the process was not competitive, local communities were not properly consulted, and there was not full transparency.

**All cases showed PPPs were complex to negotiate and implement,** and that they required specific state capacities to negotiate in the public interest, including during the renegotiation process. In Peru, the renegotiation process to build a new airport through a PPP in Chinchero resulted in a change to the entire funding structure of the project. After a strong report from the Comptroller General referring to economic damages for the state, and in the midst of a national scandal over the project, the Peruvian government finally had to cancel the contract on the grounds of national interest. The construction of a courthouse

in Paris proved so complex, costly and controversial that the new French Justice Minister has decided that her Ministry will never engage in a PPP again.

**Three of the PPP contracts had to be cancelled due to an evident failure in the process,** including proper due diligence to identify the possible impacts of the project. For example, the Castor Project — feted as Spain's biggest offshore gas storage plant — was halted after gas injections caused more than 1,000 earthquakes. Despite never being used, the Castor project has so far cost the public €3.28 billion, which is currently set to be paid through increased gas bills.

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This joint CSO report makes the following recommendations to the WBG, the International Monetary Fund (IMF) and other public development banks, together with the governments of wealthy countries that play a leading role in these institutions:

**Halt the aggressive promotion and incentivising of PPPs for social and economic infrastructure financing,** and publicly recognise the financial and other significant risks that PPPs entail.

**Support countries in finding the best financing method for public services in social and economic infrastructure,** which are responsible, transparent, environmentally and fiscally sustainable, and in line with their human rights obligations. Prioritise tax revenues, whilst augmenting them with long-term external, and domestic, concessional and non-concessional finance, where appropriate.

**Ensure good and democratic governance is in place before pursuing large-scale infrastructure or service developments.** This should be done through informed consultation and broad civil society participation and monitoring, including by local communities, trade unions, and other stakeholders. Uphold the right to free, prior and informed consent, and ensure the right to redress for any affected communities. The rights of affected communities should be taken into account.

**Ensure that rigorous transparency standards apply,** particularly with regard to accounting for public funds — the contract value of the PPP and its long-term fiscal implications must be included in national accounts. Contracts and performance reports of social and economic infrastructure projects should be proactively disclosed. The public interest ranks higher than commercial interests.

Finally, we urge all those concerned with justice, equality, sustainability and human rights to resist the encroachment of PPPs and to push instead for high-quality, publicly-funded, democratically-controlled, accountable public services. The wellbeing of our communities and societies depends on it.

# Introduction

Public-Private Partnerships — or PPPs — are increasingly being promoted as a way to finance development projects. They are very high on the agenda of many governments, development institutions and private sector companies. PPPs featured prominently in the Addis Ababa Action Agenda, which came out of the 2015 United Nations (UN) Conference on Financing for Development, and they are specifically promoted as a “means of implementation” of the 2030 Agenda for Sustainable Development. This means that PPPs are seen as a relevant instrument for delivering the Sustainable Development Goals (SDGs). The SDGs refer to areas such as health, education and water supply — affecting the basic human rights of citizens — and resilient infrastructure, which is key to promoting environmental stability and encouraging inclusive growth.

There is no universally agreed definition of PPPs. For the purpose of this report, we define PPPs as long-term contractual arrangements where the private sector provides infrastructure assets and services that have traditionally been provided by governments, such as hospitals, schools, prisons, roads, airports, railways and water and sanitation plants, where there is some form of risk sharing between the public and private sector.

Reliable data on the total volume of PPPs around the world is hard to find. Different definitions of PPPs result in confusing reporting practices. According to Eurodad’s recent calculations,<sup>1</sup> on the basis of the available data, since 2004 there has been a rapid growth in the amount of money invested in PPPs in the developing world. As Figure 1 shows, the wave of money invested through PPPs started in 2004 and peaked in 2012. Over an eight-year period, annual investments through PPPs increased by a factor of seven: from US\$19 billion in 2004 to US\$144 billion in 2012. Since then, the trend has been volatile. 2017 saw another increase, which represents a 40 per cent additional investment from 2016 levels. The number of PPP projects has also increased over this period, but more noticeable has been the increase in the average size of projects, which climbed from US\$88 billion to US\$315 billion in 2017. This is a sign of the growing trend that promotes large-scale infrastructure projects.

Current efforts by multilateral development banks (MDBs) to leverage private finance in both emerging and low-income economies — for example, by the systematic use of the “Cascade” approach developed by the World Bank Group (WBG), whereby the use of private finance is prioritised over public or concessional finance — indicate a more determined push to reduce the risk for private investors to come in.

**Figure 1**  
Total investment in PPPs in infrastructure, and number of projects. Developing world, 2004-2017 (billion US\$\*)



Source: Eurodad’s own calculations. World Bank’s Private Participation in Infrastructure Database (\*amounts adjusted by US Consumer Price Index as of January 2018)

Interestingly, the development of PPPs in Europe over the past decade has followed a different trend than that in developing countries. Both the number and the total value of PPP contracts has decreased by almost half between 2007 and 2016. In 2016, the aggregate value of PPP transactions totalled €12 billion, a 22 per cent decrease from 2015 (€15.6 billion).<sup>2</sup> The drop in PPP projects can be partly explained by the 2008 global financial crisis, which quickly evolved into a “Euro crisis”. The crisis generally slowed new infrastructure investment in Europe, but also reduced the availability of private capital for PPPs. The crisis also reduced governments’ political appetite for engaging in new PPPs, particularly in some hard-hit countries such as Portugal and Greece.

Civil society organisations (CSOs) have been active in the debate on PPPs. This joint CSO report compiles the findings of research conducted in recent years and follows the PPP Manifesto launched in October 2017,<sup>3</sup> which was widely supported by more than 150 organisations and trade unions around the world. It aims to contribute to the civil society debate about this critical subject and to input into ongoing policy processes at different levels.

This report gives an in-depth, evidence-based analysis of the impact of 10 PPP projects that have taken place across four continents and in both developed and developing countries. We looked at the impact of PPPs on public budgets, and on people’s needs, and more generally on whether PPPs have delivered results in the public interest. We also examined the PPP process, and the impact on democracy, equality and fundamental rights including human social and environmental rights. Although we do not intend to generalise our conclusions, we draw lessons from these case studies, and we deliver key policy recommendations to maximise the use of public money to deliver quality public services in a sustainable, transparent and responsible way.

This report presents 10 cases ordered alphabetically by sector. They appear in the report as follows:

1.	Liberia Education Advancement Programme (Liberia)
2.	Tata Mundra Ultra Mega Power Project (India)
3.	The Offshore Gas Storage Castor Project (Spain)
4.	Nya Karolinska Solna (NKS) Hospital (Sweden)
5.	Queen Mamohato Memorial Hospital (Lesotho)
6.	The New Paris Courthouse (France)
7.	International Airport of Chinchero — Cuzco (Peru)
8.	Navigability of the Magdalena River (Colombia)
9.	Jakarta’s Water Supply (Indonesia)
10.	Khandwa Water Supply Augmentation Project (India)

# Liberia Education Advancement Programme (LEAP)

Country  
**Liberia**

Region  
**Africa**

Sector  
**Education**

Year  
**2016**

Contract period  
**3-year pilot programme**

In January 2016 the Liberian Ministry of Education announced its intention to outsource its public pre-primary and primary schools to BIA for a one-year pilot programme.<sup>4</sup> This plan provoked significant public outcry and criticisms from different stakeholders. As a result, the Government of Liberia reviewed the plan, introducing an additional seven private providers selected through a competitive selection process. However, despite these changes, external assessments of its impact have not been good.

## The Liberia Education Advancement Programme (LEAP)

The outsourcing of the Liberian public pre-primary and primary schools to BIA for a one-year pilot programme through a PPP contract<sup>5</sup> was the first step in what was known as the Partnership Schools for Liberia (PSL), recently renamed Liberia Education Advancement Programme (LEAP).

BIA is a for-profit, American-based company<sup>6</sup> operating a commercial, private chain of nursery and primary schools.<sup>7</sup> It has received funding from several large corporations, investors and development partners including the WBG's International Finance Corporation (IFC), the UK's Commonwealth Development Corporation, with funds from the Department for International Development (DFID), and the Overseas Private Investment Corporation (OPIC).<sup>8</sup>

This plan provoked significant public outcry and criticism from civil society, teachers' unions<sup>9</sup> and even the UN Special Rapporteur on the right to education, Kishore Singh, who termed the move a violation of Liberia's "legal and moral obligations".<sup>10</sup>

Following this pushback, the government reviewed the plan, introducing an additional seven private providers selected through a competitive selection process and a reduction in the number of schools for the pilot. Launched in September 2016, the first phase of the PSL pilot consisted of 93 schools with an estimated 20,000-40,000 children, which were operated by eight private actors. BIA received the largest number of schools (25)<sup>11</sup> without a competitive selection process.<sup>12</sup>

The pilot was to run for three years and it was to be externally evaluated<sup>13</sup> through a randomised controlled trial (RCT)<sup>14</sup> by independent evaluators measuring the performance of schools run by the private partners against control schools under government management. The Coalition for Transparency and Accountability in Education (COTAE) raised questions in relation to the lack of information about how the "independent evaluators" of the programme were selected. This was particularly problematic because the findings of their report were to determine the expansion of the pilot project.

The funding formula for PSL in year one provides a subsidy of US\$50 per child to operators, philanthropically funded, in addition to the state's investment of US\$50 per child. This is the same financial obligation the government has to every other public school, which aligns with the projected increase in state per-child expenditure to US\$101 by 2020.

The cost of the PSL pilot in year one was US\$3.9 million, of which US\$2.5 million required external funding. The balance comes from government funding. This is inclusive of operator subsidies, the evaluation and capacity building, but exclusive of operator research and development costs and costs related to lack of economies of scale.<sup>15</sup>

Initially, a decision to expand the PSL was dependent on the findings of the RCT conducted during year one. However, in February 2017 the Minister of Education announced 100 new PSL schools for year two beginning in September 2017.<sup>16</sup> This has concerned PSL advisers, who



warned against scaling up before the release of evidence from the evaluation in August 2017.<sup>17</sup>

The Minister also proceeded to allocate BIA the highest number of new schools (43) in the second year of the PSL programme, giving it a total of 68 schools, while the next biggest operator (BRAC) has 33 schools in total.<sup>18</sup>

Several project documents are publicly available.<sup>19</sup> However, according to the National Teachers' Association of Liberia (NTAL), in addition to lack of independent evidence supporting the government's actions, the PSL is also plagued with a lack of transparency. To date, for example, none of the eight Memorandums of Understanding between the service providers and the Ministry of Education (MoE) have been made public.<sup>20</sup>

### **Excessive costs and poor value for money**

The project ended up being too expensive for the Government to maintain. Research by the University of Columbia shows that, as teachers in PSL schools receive higher than average salaries, the Government had to spend an estimated US\$20 extra per student, adding another US\$600,000 per year.<sup>21</sup> Running the RCT itself comes to about US\$900,000 over its three-year life, which does not include costs of the analysis. Then there are the expenditures added by the contractors: BIA alone spent over US\$6 million in the first year. The other contractors likely put in another US\$3 million. Thus, in total, the PSL is likely to have cost more than US\$25 million for the three-year period.<sup>22</sup>

The preliminary results from the first-year evaluation highlight that: "the program is yet to demonstrate it can work in average Liberian schools, with sustainable budgets and staffing levels and without negative side-effects on other schools".<sup>23</sup> Further, the evaluators observe that the costs of the PSL were higher than advertised, and are anticipated to rise even higher in year two.<sup>24</sup> That evaluation demonstrated that, on average, PSL schools improved teaching and learning, but in its first year it was not a cost-effective programme for raising learning outcomes.<sup>25</sup>

COTAE's research also highlights funding challenges that corroborate critics' assertions about the dangers of relying on donors to introduce programmes with serious financial implications and questions about sustainability. For instance, salaries for teachers in the BIA schools were delayed, while at the same time resources for charging electronic devices used in these schools were not provided.<sup>26</sup> As a result, school authorities and teachers were sometimes compelled to manage this.<sup>27</sup> Already challenged by lack of pay, these teachers were incurring extra expenses to ensure that BIA's schools remained open and functional.

Similar challenges are noted in relation to the crucial school feeding programme. COTAE reported that the meals provided under the feeding



**The PSL has been criticised for failing to include the most vulnerable and disadvantaged communities.**



programme for the extended learning hours proposed by BIA was irregular, as some schools fed students only twice weekly.<sup>28</sup> This extension was implemented without adequate planning, which has had a negative impact on pupil retention.<sup>29</sup>

### **Lack of transparency and accountability**

The monitoring report by COTAE mentions that "all providers under the pilot, including BIA, were not recruited through transparent and competitive procurement processes".<sup>30</sup> Contrary to the Government's assertions, the Liberian Public Procurement and Concession department has no records of any transparent and competitive process carried out by MoE in recruiting BIA and those operating the pilot project.

The COTAE report cites very limited community participation in, and access to, information regarding the programme. In the majority of the counties involved, most citizens — and even some local MoE officials — were uninformed about the pilot and unable to clearly articulate what it hoped to achieve.<sup>31</sup>

The opacity was further demonstrated in the MoE's refusal to allow parallel independent research of the PSL pilot programme. The then Minister of Education, George Werner, initially blocked an independent research team from the University of Wisconsin — commissioned by Education International and ActionAid<sup>32</sup> — citing concerns about a lack of objectivity due to both organisations' work on PPPs. However, the Ministry welcomed assessments released by PSL providers themselves.<sup>33</sup> This triggered a group of over 30 academics to publish an open letter to Minister Werner expressing deep concern.<sup>34</sup>

## LESSONS LEARNED

- The Government of Liberia must ensure that there is a real opportunity for the public to provide input into the PPP processes and that feedback is properly considered. It is crucial that each step is transparent and participatory, following due process.
- Some actors, particularly powerful, large-scale commercial actors, are a threat when it comes to designing PPPs — especially where governments are weak — because of a potential imbalance of power. This case shows large commercial actors are not necessarily more effective than smaller local actors. Large sums were invested in Bridge International Academies Ltd (BIA), which returned only marginal gains, and evaluators determined it was not cost effective.



**Girls in particular have also been pulled out of school to perform physical and domestic labour to survive.**



## Limiting access to education and impact on learning outcomes

The PSL has also been criticised for failing to include the most vulnerable and disadvantaged communities. According to Education International and ActionAid, “PSL schools are generally located in higher-quality buildings and easier to reach communities than their government school counterparts. For example, BIA requested their school buildings meet certain standards, and that they be located near main roads, with good internet and mobile phone access.”<sup>35</sup>

Other key factors also had an impact on access.<sup>36</sup> The independent evaluators found that the contracts authorised BIA to push excess pupils and underperforming teachers onto other government schools. For instance, 74 per cent of teachers at BIA schools were fired, which was a violation of the programme’s objective to train and manage existing government teachers. Similarly, limitations on class size were authorised by contracts, but were generally not enforced in the public schools or by contractors other than BIA. Consequently, the number of students enrolled in BIA schools reduced drastically, while enrolment in neighbouring schools increased sharply, further burdening an already stretched infrastructure. BIA’s operations therefore directly undermined neighbouring schools. In addition, not all students excluded from the BIA schools were able to get placements in other schools as neighbouring schools were already full and those excluded were unable to travel the long distances to access other schools.

Finally, teacher quality has a significant impact on learning outcomes. The RCT evaluation revealed that PSL contractors successfully lobbied the MoE to assign new graduates from teacher training institutes to PSL schools.<sup>37</sup> In addition, working conditions for teachers in BIA schools are poor. The issues include delayed payment of salaries, teacher transfers to far-away places without resettlement packages and inadequate compensation;<sup>38</sup> teachers are often subjected to prolonged hours of teaching without meals.<sup>39</sup> Unfortunately, given the very high unemployment rate in Liberia, teachers have had to accept the meagre packages offered.

# Tata Mundra Ultra Mega Power Project

Country  
**India**

Region  
**Asia**

Sector  
**Energy**

Year  
**2006**

Contract period  
**25 years**

The Tata Mundra Ultra Mega Power Project is part of an initiative that saw the building of several coal-based thermal power stations. Located on the Mundra coast in Gujarat, India, spanning 72 kilometres covering 10 coastal settlements, it is strategically located within the Mundra Port and Special Economic Zone. This coast is also home to fishing communities who have lived there for centuries and who reside on the coast for almost nine months out of every year. Today, the project has been operational for more than five years. Damage to the marine environment has been immense and has resulted in: a decline in fish catch; hot water discharges into the sea from the plant's outfall channel; and the destruction of mangroves, which has impacted the marine environment. The project has displaced people, taken away their livelihoods and failed to carry out any genuine consultation. Making matters worse, the plant is operating at a financial loss following rises in the price of imported coal. Now the private company is looking to sell the plant and, thanks to the PPP set-up, the government will be forced to take most of the liability.

## The development of the PPP

The Government of India launched the "Power for All by 2012" initiative in 2005. To stimulate the required capacity addition, Gol launched an initiative for facilitating the development of coal-based Ultra Mega Power Plants (UMPPs), each of a minimum 4,000 MW capacity. UMPPs were to be implemented through PPPs on a build-own-operate (BOO) basis. In this set-up the public sector partner agrees to 'purchase' the goods and services produced by the project on mutually agreed terms and conditions. The first UMPP of India, Mundra UMPP, was awarded to Tata Power through a competitive tariff-based bidding process.

In 2006, Coastal Gujarat Power Ltd. (CGPL) was incorporated as a special purpose vehicle to implement the Mundra UMPP. Tata Power Company Ltd. was declared as the successful bidder with a levelised tariff of INR 2.26/kWh in December 2006 — i.e. the price was set at the average point that the generating asset must receive in a market to break even over its lifetime.

In April 2007, Tata Power acquired 100 per cent shareholding of CGPL,<sup>40</sup> and CGPL entered into a Power Purchase Agreement (PPA) with the procurers - who were public sector distribution companies in several states — for the supply of 3,800 MW power from Mundra UMPP for a period of 25 years.<sup>41</sup>

The plant was fully operational in 2013 with the first 800 MW generating unit operational in March 2012. The next four units were all operational by 2013.<sup>42</sup>

The total cost of the project was estimated at US\$4.14 billion. A consortium of banks, including multilateral development banks, and Export-Import banks invested. The project is financed through equity of INR (Indian National Rupee) 42.50 billion (US\$600million approx.); external commercial borrowings of up to US\$1.8 billion; and rupee loans of up to INR 55.50 billion (US\$800 million approx.).<sup>43</sup> External borrowing included the World Bank's International Finance Corporation (IFC), and the Asian Development Bank (ADB), both with US\$450 million each; the Export-Import Bank of Korea, Korea Export Insurance Corporation; and BNP Paribas. National financial institutions involved are the State Bank of India; the India Infrastructure Finance Company Ltd.; Housing and Urban Development Corporation Ltd.; Oriental Bank of Commerce; Vijaya Bank; State Bank of Bikaner & Jaipur; State Bank of Hyderabad; State Bank of Travancore; and State Bank of Indore.

Since the project included funding from the ADB and the IFC, a disclosure policy applied for several documents, including social and environmental and marine environment impact assessment reports; resettlement plans; monitoring reports; influx management plan; and final compensation management framework.

## The cost to the public purse

This project would not have been constructed if heavy subsidies had not been provided by the government. From land acquisition to getting environmental clearances to sale of power, the government was responsible for supporting activities even before awarding the project as a PPP.



The Tata Mundra Ultra Mega Power Project has blighted the lives of local fishing communities. Photo: Joe Athialy

The financial viability of the project was being questioned from the outset due to the unstable price of imported coal. The project was set to run on coal from Indonesia. However, in 2010, the Indonesian Government decreed that coal exports could be done only at prices linked to international rates. In spite of this Tata went ahead, with the confidence that they would be able to rework the tariff under the PPA with the public distribution companies. Tata Power Company Limited and Adani Power then approached the Central Electricity Regulatory Commission (CERC),<sup>44</sup> which ruled in 2013 that both companies could claim a higher tariff to compensate for an increase in coal prices.<sup>45</sup> The Appellate Tribunal for Electricity (APTEL) upheld CERC's decision in 2016.

Several state-owned power distribution companies then challenged the decision at the Supreme Court of India. The argument was that power producers cannot be allowed to charge higher compensatory tariffs for changes on import prices of coal, a risk inherent to the business. The two-judge bench set aside the initial rulings. The Supreme Court ruled that power companies could not raise tariffs if fuel becomes costlier due to changes in laws overseas.<sup>46</sup>

With the Supreme Court effectively rejecting the compensatory tariff, Tata Power now had losses staring it in the face. Coastal Gujarat Power Ltd. was looking at a loss of INR 47,500 crore (US\$6.98 billion) over the 25-year power purchase agreement period of the project as of now.<sup>47</sup> The project's accumulated losses as of 31 March 2017 were INR 6,457 crore

(US\$948 million) against a paid-up equity of INR 6,083 crore (US\$894 million). Its outstanding long-term loan is INR 10,159 crore (US\$1.49 billion).

Tata Power has proposed that the State Electricity Boards take over (buy out) 51 per cent of the equity of CGPL for one rupee, and grant relief to the project by purchasing power at a rate to address the under-recovery of fuel costs.

If this comes off then this will be a "win-win" situation for Tata Power with all liabilities being passed to the government, which will use public finances to run this project. The power generators (companies like Tata Power) that are suffering from huge financial losses have shown their inability to honour the power purchase agreement obligations with full capacity. All five states that are the procurers of the electricity are facing shortages of power available at levelised tariffs, and are required to purchase the power at a higher cost. As a result, consumers in these states are having to pay much higher rates for electricity, according to a Gujarat government order.<sup>48</sup> For the government, on the other hand, the take-over would be a way of rescuing the project, which is politically convenient. Since the project is in the Prime Minister's home state, a failed project is not something they want in the home constituency.

Recently, the Gujarat state government has formed a high-powered committee<sup>49</sup> that will offer solutions for imported coal-fired power plants that are underutilised due to viability issues.

## LESSONS LEARNED

- The financial viability of a project needs to be factored in before it is sanctioned. This should include not only the building and operational costs of the project, but also displacement and loss of livelihood and environmental damage. Government subsidies also need to be factored in. This was not properly done in this case.
- This model of PPP — where the role of the Government is reduced to taking on all liability in case of failure of the project — must be re-evaluated. In this case, the private sector company is ready to sell the loss-making project to the Government to bail the company out.



**There has been a deterioration in water quality and fish populations; access to fishing and drying sites has been blocked; forced displacement of fishermen has taken place; community health impacts are evident due to air emissions.**

**Serious environmental impacts**

The project has been marred by serious social and environmental violations from the outset. One major concern was a flawed social impact assessment, which claimed that the project area had no habitation and no settlement. As a result, it did not recognise the affected fishing communities as project-affected people. Meaningful public consultations never happened. The marine impact assessment was also flawed and did not look at potential harm to marine life, impacting the fish catch in the area.

As a result, there has been a deterioration in water quality and fish populations; access to fishing and drying sites has been blocked; forced displacement of fishermen has taken place; community health impacts are evident due to air emissions; and the destruction of natural habitats, particularly mangroves, has been devastating. As of 2018, some of the most valuable varieties of catch like prawns have been reduced considerably, due to dredging activities.

Also, living costs have increased for the community paying for drinking water (drinking water sources have been destroyed during construction of the plant). They are also paying extra for travel to reach fishing grounds, as only longer routes are now accessible. This has also had an impact on the life of women, who worked sorting, drying and often taking the products to market. Girls in particular have also been pulled out of school to perform physical and domestic labour to survive.

These environmental and social impacts were recognised by audit reports of the Compliance Advisor Ombudsman (CAO)<sup>50</sup> — the independent recourse mechanism for the WB's IFC — and the ADB's Compliance Review Panel<sup>51</sup> (CRP), following complaints from the communities. Both reports noted the failure to conduct adequate and comprehensive consultations with fishing communities during the project design phase. CAO noted this: "...resulted in missed opportunities to assess, avoid and reduce potential adverse impacts of the project in accordance with the objectives of Performance Standard 1 of the IFC."<sup>52</sup>

Furthermore, the CRP's monitoring report said: "CRP finds that since the first monitoring report, limited progress has been made in disclosing information and conducting consultations".<sup>53</sup> This shows that, even after years of operation, basic prerequisites like fair public consultations were still not met.

CRP also found non-compliance with the ADB's operational policies and procedures for thermal and chemical pollution of wastewater discharged through its outfall channel, which has led to harmful impacts on people fishing on foot.

The financial unviability of the project has also curtailed the company's efforts to remediate the social and environmental harms of the project.<sup>54</sup>

# The Offshore Gas Storage Castor Project

Country  
**Spain**

Region  
**Europe**

Sector  
**Energy**

Year  
**2008**

Contract period  
**30 years**

The so-called Castor Project was to be Spain's biggest offshore gas storage plant. However, the plant caused more than 1,000 earthquakes in an area that did not suffer from seismic activity in the past. Despite never being used, the Castor Project has so far cost the public €3.28 billion, which is currently set to be paid through increased gas bills. This includes €1.35 billion that was paid in unjust compensation to the private companies involved when the facility was taken into public ownership.

## The development of the Castor Project

The Castor Project is a geological gas storage facility in a former oilfield 22 km offshore in the provinces of Castelló and Tarragona in Spain. It consists of three elements:

- 1) a maritime platform comprising 13 wells
- 2) a ground operation plant with compression equipment
- 3) a pipeline 30.3 km long and 30 inches in diameter, with a submarine trajectory of 21.6 km and a land route of 8.7 km to transport the natural gas between the process platform (at sea) and the operations plant (on land) and vice versa. The project would store up to 1,900 million cubic metres of natural gas, sufficient to supply the equivalent of 50 days' consumption in Spain.<sup>55</sup>

The research phase of the project began in the 1990s at the request of Spain Canada Resources Inc. branch in Spain, with the corresponding permit obtained in 1996. This permit was later ceded to the company ESCAL UGS SL (ESCAL) in 2004. By December 2007, ESCAL was majority owned by the civil engineering company ACS Group. The Royal Decree 855/2008, on 16 May 2008, gave the concessional PPP contract to ESCAL for 30 years.

The need for extra gas storage was justified by energy security concerns and a forecast made by the General Secretariat of Energy Planning of increasing gas consumption for the years 2005-2011.<sup>56</sup> These forecasts have been wildly excessive, as acknowledged by the 2012 Spanish National Energy Commission report, which criticises the gas planning of previous years.<sup>57</sup>

## Transparency and democratic participation

There is no specific PPP regulation in Spain. Unlike in many other countries, there is currently no specific authority in charge of PPP projects. In October 2015, the national government created the National Evaluation Office to improve the quality of the investments, but this was still not operative as of September 2018.<sup>58</sup>

The contract for the Castor Project is publicly available, but several other relevant documents are missing such as the documents that include references to insurance companies and guarantors. There was a consultation process in place. However, the Aarhus Convention on public participation in public concession processes was violated: only 30 days were available for citizens to participate, and these coincided with the months of August and September, when most citizens in the region are on vacation. The document also consisted of 600 pages of technical language and was in English instead of Spanish, limiting the possibility for citizens to review the document.

## Financing of the project

Private banks financed the initial project and the European Investment Bank (EIB) refinanced it in 2011, and again in 2013, playing a very important role in its implementation. It was included as a pilot project of the Europe 2020 Project Bond Initiative launched in 2012 by the European Commission and the EIB.<sup>59</sup> Project bonds are one of the financial instruments that have been used to mobilise private capital for infrastructure investment.



**The plant caused more than 1000 earthquakes in an area that did not suffer from seismic activity in the past.**



In April 2011, the EIB — which had Spain's former Minister of Development belonging to the Socialist Party, Magdalena Álvarez, as Vice President from 2010-2014 — approved a €100 million loan to ESCAL. Later, in 2013 the EIB provided €500 million for the project, which was used to support the €1.4 billion bond issue for the project.<sup>60</sup>

The participation of the EIB was crucial because it generated payment security for investors and made the bonds attractive to the market due to their good rating and the fact that the EIB bought part of them. The ACS Group also requested the support of the EIB because the repayment terms (25 years) were more appealing than those offered by the consortium of 17 banks that financed this project in the first place (over seven years).

Moreover, for the issuance of the bonds, the directors of ESCAL and ACS created a company called Watercraft Capital SA<sup>61</sup> with its registered office in Luxembourg, which could be questionable from a fiscal point of view.

#### **The operation of the project**

In 2013, cushion gas injections were initiated, which should have enabled the validation and commissioning of the installation. These injections caused more than 1,000 earthquakes on the coast of the Valencian Community and Catalunya — seismic events that caused great alarm. This led to suspension of the gas injections.

On 18 July 2014, ESCAL submitted a letter to the Ministry of Industry, Energy and Tourism (MIET) communicating its decision to renounce the contract and request compensation.<sup>62</sup> As a

result of the application of the Royal Decree - Law 13/2014, the State declared the "hibernation" of the project, i.e. there was no possible gas injection or extraction from the storage. It also declared the transfer of the administration of the project to ENAGÁS TRANSPORTE, S.A.U, a private company with 5 per cent of public ownership, and payment of financial compensation to ESCAL.

Indicative of the will to "shield" the payment to ACS through ESCAL was the approval of a Ministerial Order (Order IET/2805/2012) by the former Popular Party Minister of Industry, Energy and Tourism José Manuel Soria, who allowed an extension of the period during which the private partner could request the dissolution of the concession contract from 5 to 25 years.<sup>63</sup> ESCAL resigned from the project in July 2014 — an action that could not have occurred before the Ministerial order because it would have been submitted outside the allowed period.

Minister Soria also signed a Royal Decree Law, which included compensation for the investment of ESCAL to the value of €1.46 billion. Discounting earlier payments, this means that the state should pay ESCAL €1.35 billion. However, payment to the company is still being contested. In December 2017, the Constitutional Court declared the proceeding that resulted in the order to pay compensation null and unconstitutional, but it does not ask the company to return money paid so far.<sup>64</sup> The Spanish CSO Debt Observatory in Globalisation (ODG) presented a criminal complaint in 2018 against several ministers and the heads of the companies behind the project.<sup>65</sup> The complaint was rejected by the Supreme Court and ODG will now take the complaint to the Constitutional Court.

#### **The high fiscal costs of the project**

The cost of the project increased threefold between January 2007 and March 2010: from €400 million to close to €1.27 billion. According to a 2014 report prepared by the MIET,<sup>66</sup> construction of the gas storage was riddled with inexplicable irregularities that were not detected during the execution phase. This resulted in increased costs and the allocation of most of the work to ACS or to companies linked to its group.

Furthermore, the concessional contract placed an excessive level of risk on the state, and therefore on Spanish citizens. A controversial 'article 14' established the possibility of compensation in case of expiration or extinction of the project — which is a usual practice. What was unusual in this article was that it said compensation would be given even in case of wilful misconduct or negligence on the part of the company (albeit compensation at a lower level). Article 14 states: "In case of expiration or extinction of the concession, the facilities will revert to the state (...) the concessionaire will be compensated for the net book value of the facilities affected to the underground storage, provided that these continue operating. The foregoing shall not

**LESSONS LEARNED**

- Complex projects should be supervised by the state and wider civil society. One of the stated reasons behind contracting PPPs is the efficiency and experience of private companies, especially in large construction projects. This has not been the case in Castor, with poor forecasting and costs increasing threefold. Moreover, there has been a lack of capacity on the part of the private sector partner in building and operating complex energy infrastructures, including a failure to conduct crucial environmental and social impact studies.
- Lack of transparency has been the main challenge emerging from this PPP contract. During the tendering process, contracting and construction phase, information reached citizens very late in the process and participation processes were riddled with irregularities.



**The cost of the project increased threefold between January 2007 and March 2010: from €400 million to close to €1.27 billion.**



apply in case of intent or negligence attributable to the concessionary company, in which case the compensation shall be limited to the residual value of the facilities...".<sup>67</sup>

Since the project stopped functioning, its liquidation process has been very controversial. The citizens are facing the possibility of having to take on the payment of €3.28 billion through gas bills, as has been the case until the time of this study. This quantity amounts to the cost of building the Castor Project, compensation and maintenance costs, as well as interest.

ENAGAS, which is in charge of managing the infrastructure while it is not operational, could not take on the compensation payment of €1.35 billion and instead asked for a loan from three banks that would be repaid over 30 years with an interest of 4.3 per cent (amounting to more than €1 billion). These payments have also been transferred to consumers in their gas bills. After the decision of the Constitutional Court about the inadequate method of compensation, banks have no right to be repaid. As of August 2018, they are at a crossroads with the Spanish Government. Litigation is one route being explored.

**The social impact of the project**

The earthquakes heavily jeopardised the public health and wellbeing of citizens in Spain. These can be attributed to ESCAL since they occurred during the infrastructure start-up operations. Poor planning and lack of due diligence accounted for the failure to identify these risks. No environmental impact assessment with adequate attention to seismic risks was carried out by the Ministry of Environment.

In addition, there are previous studies, such as the one carried out by the Observatori de l'Ebre, which concluded that the exploitation of this infrastructure could reverberate in earthquakes, due to the characteristics of geological storage.<sup>68</sup> Numerous lines of evidence indicate the existence of pre-existing faults. The company ESCAL had reports from the Geological and Mining Institute of Spain that detected the presence of faults but assumed that they could not be reactivated.<sup>69</sup>

A 2015 report from the Massachusetts Institute of Technology, commissioned by the MIET, also concluded that "the fault lines were put under stress as a result of gas injections". However, the report also points out that "it would not have been possible to reach these conclusions with the information available and through studies carried out with standard methodology prior to injecting gas".<sup>70</sup>

On the other hand, in response to the citizens' complaints, the EIB acknowledged that "the Bank could have taken additional steps in its due diligence to examine risks associated to the seismicity and geology".<sup>71</sup>



# Nya Karolinska Solna (NKS) Hospital

Country  
**Sweden**

Region  
**Europe**

Sector  
**Health**

Year  
**2010**

Contract period  
**30 years**

In 2010, Swedish authorities gave single bidder the Swedish Hospital Partners (SHP) a PPP contract to build and manage the Nya Karolinska Solna (NKS) Hospital. It was intended to be “one of the world’s most advanced hospitals”, but is now known as the “most expensive hospital in the world”. NKS is still not fully operational due to technical failures. Furthermore, the cost of the project has rocketed — a fact that was only fully exposed in 2015 by journalists at the Svenska Dagbladet newspaper. Meanwhile the private consortium has made a significant profit.

## **NKS: a flagship project in Swedish healthcare?**

In 2001, the Stockholm County Council appointed a commission to investigate whether the Karolinska Hospital should be renovated or replaced entirely. The commission found that the costs of renovating the existing hospital would be comparable to the cost of substituting it.

In June 2008, the Stockholm County Assembly took the formal decision to build a new university hospital through a PPP to replace the existing hospital and research facilities. This is a highly specialised 700-bed hospital, located in the Municipality of Solna, Stockholm, next to the medical university Karolinska Institute. The objective was to modernise and fundamentally transform the existing university hospital service, thereby contributing to the reconfiguration of healthcare services across the Stockholm area.

The assembly agreed that investment expenditure should not exceed €1.45 billion for the new hospital and research buildings, and that the new facility should open in December 2015. This would be the largest PPP project in the world to date. The project development phase was launched in October 2008 with the County Council inviting interested parties to submit tenders for a contract to design, build, finance and operate NKS.

According to an evaluation commissioned by the European Commission (EC), the decision to go for a PPP was guided by the belief that this procurement model would bring “three potential benefits”: “certainty of costs, certainty to deliver, and better value”. This decision followed recommendations from professional services firms PwC (2007) and Ernest & Young (2008).

Although the County Council based their strategy on experiences with Private Finance Initiatives (PFIs) for hospitals in the UK, the project sought to improve this model by stimulating good design. This was done mainly through a preliminary design competition aimed at generating new and imaginative ideas.

Despite high initial interest, the tender was awarded without any competition. Forty-seven requests for prequalification documents were received, but the process resulted in only one company submitting a bid: Swedish Hospital Partners (SHP).

The main reason for the low level of participation was the risk transfer implicit in the PFI model.<sup>73</sup> No Swedish companies were sufficiently confident of managing the financial risk involved and other international companies withdrew interest given the extremely large scale of the project, and the consequent substantial financial risk. Despite initial hopes, the bidding process made clear that NKS would not result in a new PFI model. Instead it adopted the “standard” UK National Health Service PFI model,<sup>74</sup> including the St Barts and Royal London Hospital, which is also managed by SHP.<sup>75</sup>

Another critical point included in the evaluation commissioned by the EC is that “no contract details are available or published; the reason given is that this remains commercially sensitive”.<sup>76</sup> In addition, the notes of the Council meeting at which the contract decision was agreed have not been published nor are they available on request.

Interestingly, news articles reported that the national government tried to stop the County Council from moving forward with this PPP, on the basis of the high cost of private financing of PPPs.<sup>77</sup>



Work on Nya Karolinska Solna was delayed. Photo: Tomas Oneborg, Svenska Dagbladet

### Who is SHP?

In May 2010, SHP was commissioned to finance, construct and operate the new hospital under a PPP contract for 30 years. SHP received financing from the European Investment Bank (EIB) (€698 million),<sup>78</sup> the Nordic Investment Bank (€147 million)<sup>79</sup> and commercial banks.

The company is owned by the British investment fund Innisfree and Skanska Infrastructure Development. Skanska Healthcare (SHC) is the building contractor constructing the project and is a joint venture owned by Skanska Sweden (70 per cent) and Skanska UK (30 per cent). Coor Service Management is responsible for the development, coordination and delivery of facilities and workplace services during the contract period. Finally, Karolinska University Hospital is responsible for formulating the requirements regarding medical equipment and information and communications technology.<sup>80</sup>

John Dingle, from Skanska Financial Services, explained in 2010 why the PPP model was used: "The most important reason is to transfer risk from the authority and taxpayers to the private sector. A PPP is the best way to ensure that the project is completed on time and on budget, and it ensures that the operations and lifecycle maintenance of the asset are delivered with predictable costs."<sup>81</sup>

### The high cost of the project

The total cost of construction was projected to be Kr14.5 billion (€1.4 billion)<sup>82</sup> and the total life cycle cost approximately Kr52.5 billion (€5 billion). It was agreed that the County Council would make advance payments during construction, thereby reducing the use of debt. As Sweden's health budget is largely state-funded, the investment of the private company would be repaid by the Stockholm County with taxpayers' money.

Research conducted by the journalists Fredrik Mellgren and Henrik Ennart at the *Svenska Dagbladet*, who subsequently wrote the book entitled *Sick house: About New Karolinska — The scams, scandals and medical crisis in Stockholm*,<sup>83</sup> have uncovered the real costs of the hospital.<sup>84</sup> Their research showed that the actual bill for the hospital is over Kr25 billion (€2.4 billion), and that the total expenses of NKS until 2040 will be Kr61.4 billion (€5.89 billion).<sup>85</sup> The main reason for the increase in the construction costs is that it did not include all the outsourced costs for vital services such as IT cables, lab and medical-technical equipment.<sup>86</sup> In addition to the construction costs, the sum of the total expenses include the cost of interest rates, property maintenance and SHP's expected profits, which are more than Kr5 billion (€481 million) from the NKS agreement.<sup>87</sup>

The government could have borrowed the money at a cheaper rate, but was willing to pay a premium for expected benefits in terms of “delivery at cost and in time” and improvements in long-term efficiency through incentives for the PPP to invest in quality.<sup>88</sup>

However, delays have also been frequent, and expensive for the County Council, as it has to arrange care in another way. When the decision to build the hospital was taken in 2008, the goal was that the whole hospital would be ready by 2015. When the tender competition began, it was thought that the whole hospital would be operational by 2016; in the agreement signed with SHP that date was postponed until October 2017. During the building, further delays have occurred. The hospital was expected to be completed in March 2018 but it will not be in full operation before the beginning of 2019.

In addition, there have been allegations that the executive board of the hospital has too close ties to the US management consultancy firm Boston Consulting Group.<sup>89</sup> The newspaper *Dagens Nyheter* has also echoed the findings published by *Svenska Dagbladet*,<sup>90</sup> by reporting on how Boston Consulting Group has billed the hospital Kr257 million (€24.7 million) over six years — more than Kr700,000 (€67,000) a month for each of nine consultants.<sup>91</sup> In April 2018 this controversy resulted in the resignation of the board members of the hospital.<sup>92</sup>

On 24 September 2018 the hospital’s Director Melvin Samsom also handed in his resignation. This followed extensive criticism and newspaper exposés of how NKS paid extortionate consultancy fees to Nordic Interim AB at a total value of Kr133 million (€12.86 million) between 2015 and 2018, a procurement deal that is now the subject of an enquiry by the Swedish Competition Authority. However, Samsom stated that his resignation was not connected to these exposés but that “it was a good time to leave”.<sup>93</sup>

#### LESSONS LEARNED

- It should not be assumed that PPPs deliver on time, on budget and that services are of a high quality. Today, the “world’s most expensive hospital” is still not fully operational, and this has had a negative impact on the whole health system, and on citizens in Sweden.
- It is vital that there is transparency and democratic accountability around the PPP process. This was not the case for the Nya Karolinska Solna (NKS) hospital, which was heavily driven by the advice of consultancy firms. The failure to publish contract details does not chime well with the risks that the public sector has been forced to take on.

#### LuxLeaks also revealed a dark side

A few months after SHP was awarded the PPP contract, PwC was commissioned by Innisfree to create a new tax structure in Luxembourg. The confidential arrangement between the company and the Luxembourg Government was revealed by the International Consortium of Investigative Journalists (ICIJ), in the 2014 LuxLeaks database.<sup>94</sup>

The analysis of these documents — published by national broadcaster SVT on the programme *Uppdrag granskning* (English translation *Mission: Investigation*) — is that SHP is due to pay interest to letterbox companies in Luxembourg until 2040, i.e. Innisfree lent money to SHP with a 9 per cent interest rate on the loan. When the money is moved to Luxembourg, this reduces the taxable profits in Sweden. The documents also revealed an advanced tax structure where the tax result in Luxembourg is near zero. As a result, a total of around Kr1.3 billion (€125.73 million) will be channelled to Luxembourg essentially tax free.<sup>95</sup>

#### The public fallout

Following numerous technical failures in the new hospital, other hospitals have also been bearing the brunt in terms of patient numbers as NKS struggles to get off the ground.<sup>96</sup> The hospital management has had weak support among the staff. The Chairman of the Stockholm Medical Association, Johan Styrod, warned that the new hospital will worsen the crisis of Stockholm healthcare.<sup>97</sup>

The political debate about the cost overruns and operational problems intensified in 2018. In February the government initiated a “state enquiry” to look into the decision and implementation processes in relation to procurement, investments and organisational changes after the NKS scandal.<sup>98</sup> The enquiry will investigate several points including: the risks that public funds, including targeted government funds, are not used in an efficient and effective way.<sup>99</sup> Preliminary findings are due to be presented in November 2018.

In March 2018, ahead of Sweden’s national elections, Sweden’s Finance Minister Magdalena Andersson called for a government investigation into the costs and operational problems at NKS. “We’ve got the world’s most expensive hospital and it in no way seems to be the world’s best hospital,” Andersson complained.<sup>100</sup> Commenting on the value of PPPs, she also added: “Scary Swedish experience shows that one has to be careful not to deal with them so badly.”<sup>101</sup>

# Queen Mamohato Memorial Hospital

Country  
**Lesotho**

Region  
**Africa**

Sector  
**Health**

Year  
**2008**

Contract period  
**18 years**

In 2006, the government of Lesotho launched a PPP to build a national hospital to replace the aging and outdated main public hospital, Queen Elizabeth II, and to upgrade the network of urban filter clinics. All of the facilities were designed, built, financed, and operated under this PPP and included delivery of all clinical services. The WB's IFC, as advisor to the project, promised the PPP hospital would bring vast improvements for the same annual cost as the old failing hospital. This PPP was the first for a hospital in Africa and was promoted as a flagship model to be replicated across the continent. The WB reports some significant improvements in service delivery and clinical performance, and these must be welcomed. Of great concern however, is the current and future financial impact of the PPP on the Government of Lesotho and the wider impacts for the health sector.

## The structure of the PPP project, and its financiers

This PPP contract was signed in 2008 and the new hospital opened in October 2011 in the capital, Maseru. Under the agreement, a private sector consortium called Tsepong was responsible for designing, building and operating the 425-bed hospital and a network of refurbished urban clinics for 18 years. Tsepong is owned by five companies,<sup>102</sup> with Netcare (the largest private hospital network in South Africa and the United Kingdom at the time) owning by far the largest portion (40 per cent).<sup>103</sup>

The IFC acted as transaction advisor for the PPP on behalf of the government for which it earned a fee. The World Bank provided a grant of US\$6.25 million via the Global Partnership on Output-Based Aid during the initial stages of the project.<sup>104</sup>

The PPP is an availability-based model, using performance-based contracts. Tsepong provides an agreed service to the required performance standards in return for an annual service payment or unitary fee. A distinctive feature of this contract, however, is that the fee can change if Tsepong provides services above the agreed maximum threshold of patients.

The total capital expenditure of the PPP at financial close of the contract was estimated at M1,164,541 (US\$134.98 million in 2017 figures).<sup>105</sup> This was financed through a mixture of public (34.3 per cent) and private (65.7 per cent) funds.<sup>106</sup> The government spent an additional US\$10 million (in 2017 figures) on infrastructure improvements to service the new hospital site. Private capital was made up of 14 per cent equity and 86 per cent debt, with a loan provided by the public Development Bank

of South Africa (DBSA). This high debt-to-equity ratio is normal for a health PPP in a high-income country but high for a PPP that incorporates clinical provision in a country with limited PPP experience or capacity.<sup>107</sup> The ratio may have been chosen to bring down the overall cost of capital for the project,<sup>108</sup> and the unitary fee. However, a high proportion of debt brings significant risk that the private operator will be unable to make debt repayments if cash flow falls below expected levels. Furthermore, whilst the debt is registered as a private sector contribution, the debt to DBSA is underwritten by the government. Late government payments are a feature of this PPP and have caused Tsepong to default on the loan at least once. The government has incurred even greater costs in the form of penalty payments.<sup>109</sup> Not only does this threaten the continuing viability of the PPP, but it could negatively impact on the government's international credit rating and ability to raise affordable capital in the future.

## The PPP hospital: cost escalation and risk

A report launched in 2014 by Oxfam and the Lesotho Consumer Protection Association (LCPA)<sup>110</sup> estimated the real cost of the PPP hospital to the Government of Lesotho. Oxfam and the LCPA estimated that in 2013/14 the annual cost of the new hospital was as much as 51 per cent of the total health budget and approximately 3 to 4.6 times what the old public hospital would have cost that year. The IFC's own commissioned study had reported the year before that the PPP was costing the government 41 per cent of its health budget and 2 to 3 times the cost of the old hospital.<sup>111</sup>



Waiting room at the Queen Mamohato Memorial Hospital, Maseru 2014. Photo: Sophie Freeman/Oxfam

Due to the complexity of the contract and a high number of disputed fees which are still part of an arbitration process, the actual cost of the PPP to the government remains contested and uncertain. Most recently, a 2017 Lesotho public health expenditure review by UNICEF and the WB reinforces concerns about the financial sustainability of the PPP.<sup>112</sup> The review data shows that actual expenditure on the PPP — what government paid rather than what they were invoiced — amounted to 35 per cent of recurrent health expenditure over the four years leading up to 2017, or 30.6 per cent net of Value Added Tax (VAT).<sup>113</sup> It is important to note that total health expenditure has increased dramatically since the PPP baseline year, indicating a concerning rise in the actual cost of the PPP to the government.<sup>114</sup> The review's figures suggest that in 2016 Tsepong's 'invoiced' fees amount to two times the "affordability threshold" set by the Government and the WB at the outset of the PPP.<sup>115</sup> The review claims the PPP expenditure is in line with expectations but goes on to acknowledge that significant additional fees could impact the sustainability of the contract. The figures also reveal a concerning trend of government paying a lower proportion of the invoiced fee each year since 2012/13.<sup>116</sup>

A recent news article suggests the Government of Lesotho puts the unpaid bill it owes to Tsepong for excess patients at M400 million (US\$28 million). The Deputy Prime Minister Monyane Moleleki recently said that "the Queen Mamohato Memorial Hospital is bleeding government coffers through huge costs for the treatment of patients".<sup>117</sup>

#### Factors contributing to cost escalation include:

- The output specification, financial structure and price of the contract changed dramatically during the preferred bidder stage but without any competitive tender. The main outcomes of the changes were to: (i) more than double the total capital cost of the project; (ii) increase the proportion of private finance in the project from one fifth to approximately two thirds of capital expenditure; and (in consequence) (iii) increase the initial unitary fee by 42 per cent over the stated affordability threshold. Changes of this scale would have been unlawful in most mature PPP markets, such as the United Kingdom, and serve to undermine World Bank claims of an open and competitive bidding process.
- Flawed indexation of the annual fee paid by the Government to Tsepong (unitary fee): The entire unitary fee is subject to inflation-related adjustments despite 30 per cent of Tsepong's costs being fixed. The result of this 'over-indexation' is to make the unitary charge lower in the early years of the contract, but increases the total payment to be made over the course of the contract, with higher annual fees as the contract matures. This continuing increase must be borne in mind when making affordability judgements about the PPP in relation to one year's budget alone, and raises significant concerns for the remaining years of the contract.
- Payment of VAT: The unitary fee recorded in the financial model is net of VAT. But, as is the case for many other items of expenditure, the Ministry of Health (MoH) must pay a rate for the contract that includes VAT. There is no logic to net of VAT as the MoH has no process to recoup the tax.
- Poor forecasting: The unitary fee covers the care and treatment for a maximum of 20,000 inpatients and 310,000 outpatients. Any patients serviced in excess of these numbers leads to higher payments.<sup>118</sup> The volume of patients has significantly exceeded these parameters in every year of the contract's operation. Charges for excess patients now make up a huge 19 per cent of Tsepong's fees charged.<sup>119</sup>
- Costly patient referrals to South Africa increased by 61 per cent between 2007 and 2012 despite the expectation that the PPP would reduce these numbers. In 2013, Netcare claimed that referral numbers were stabilising and had reduced by 12 per cent.<sup>120</sup>

Key informants confirmed that the government is struggling to meet the charges for referral costs and is behind on its payments.<sup>121</sup> The lack of transparent and accurate information on referral numbers or practices is problematic and should be fully investigated.<sup>122</sup>

As transaction advisor to the Government, the IFC must take responsibility for many of the serious flaws in the structure of the PPP contract. For the sake of learning, an evaluation of the IFC’s advisory role should be conducted to understand: (1) why the hospital PPP was not re-opened to competition following such significant changes to the scope, scale and cost of the contract in the preferred bidder stage, and (2) why the Government decided to proceed with the PPP despite a revised financial model that guaranteed from the outset that cost would dramatically exceed the agreed “affordability threshold”.

**Performance outcomes and government oversight of the PPP**

The construction of the hospital was finished ahead of time and on budget. This element of the PPP can be considered a success. There was evidence early in the hospital’s operations that it was delivering services of higher quality with improved health outcomes than the previous hospital.<sup>123</sup> According to an IFC-commissioned study, the new hospital has reported a 41 per cent overall reduction in the hospital death rate, a 65 per cent reduction in deaths from paediatric pneumonia, and a 22 per cent decline in the rate of stillbirths compared with the old public hospital.<sup>124</sup> These improvements are

significant and very welcome, although reliable comparisons are notably difficult to achieve and further independent data on the system-wide impact of the PPP hospital are long overdue.

What is highly questionable is whether such improvements can be attributed to the performance management of Tsepong, and its related payment incentive at the heart of the PPP model. All accounts suggest the capacity of the government to oversee the PPP is thin at best. One key informant from Tsepong said, “the Ministry of Health is not managing the contract at all and Netcare could be doing anything and they would not know”.<sup>125</sup> Today the MoH have just two members of staff managing all outsourced services together accounting for 52 per cent of the total health budget.<sup>126</sup> It seems more likely that improved performance can be attributed to other factors, including the condition that the PPP hospital obtain and maintain accreditation with the Council for Health Service Accreditation of Southern Africa (COHSASA);<sup>127</sup> the ambition of Netcare to replicate the Lesotho model across Africa;<sup>128</sup> and perhaps also the principles and professionalism of the hospital management team. Clearly such context-specific factors weaken the replicability argument in other low-capacity contexts.

**Wider impact and costs of the PPP hospital**

Lesotho has some of the world’s highest recorded disease burdens, as well as high maternal and infant mortality rates, and serious inequity remains in the distribution and reach of services across the country. Spending per capita in the capital city Maseru is double the amount of the second-place district.<sup>129</sup> Whilst the PPP cannot be blamed for some of the long-term structural constraints to progress, including poor management and budgeting, and the unequal distribution of human resources, the cost and the inflexibility of the hospital PPP significantly curtails the ability of the Government to invest where need is greatest.

There is little dispute that a priority for the MoH should have been, and still should be, to significantly scale up comprehensive quality primary health-care outside of the capital. In this context, it seems wise to respond to the recommendation of the recent Public Health Expenditure Review to revisit the key rationale of the PPP contract and the role that the PPP hospital should play within the broader health system. Looking forward, it is essential for the government and the WBG to reflect on the decision to pursue a PPP with an initial fee that was already well above the agreed “affordability threshold”, and an inflexible contract that would lock the government into an increasingly unaffordable fee for 18 years.

**LESSONS LEARNED**

- Lesotho’s experience supports international evidence that health-related PPPs can be extremely risky and costly, and strongly suggests that they should be avoided. This is particularly the case in low-income, low-capacity contexts where they can constitute a threat to the entire health system.
- There are multiple and wide-ranging reasons for the high and escalating cost of the Lesotho PPP hospital. Many reasons seem inherent to health PPPs and raise serious questions about why the model was proposed in the context of Lesotho. Other cost increases appear to be the result of poor quality advice and ill-informed or irresponsible decision making about the contract and its financial model.
- The scale of changes (including significant cost escalation) made to this PPP in the absence of competition during the preferred bidder stage of the contract would be considered unlawful in many other markets and certainly fail the WB’s own recommended best practice.<sup>130</sup> Transparency at all stages of the PPP process would enable greater public scrutiny to hold all stakeholders to account and ensure they act lawfully, in accordance with best practice and in the public interest at all times.

# The New Paris Courthouse

Country  
**France**

Region  
**Europe**

Sector  
**Justice  
(real state)**

Year  
**2011**

Contract period  
**33 years**

In 2009, the French Ministry of Justice forged plans for a new courthouse in Paris, as the former building was old, small and did not meet security standards. In 2012, they agreed a partnership with a special purpose vehicle called Arélia. The resulting PPP contract has proved highly controversial and has been criticised by both the French Senate and the Court of Auditors for being too expensive, too complex and lacking transparency. The courthouse, which is tied into the PPP until 2044, is earmarked to cost a massive €2.3 billion. However, experts fear the cost will rise over time. Despite being one of the most legally experienced government departments in the world, this PPP proved tremendously complex, costly and damaging to the reputation of the French Ministry of Justice. As a result of the scandal, the Ministry has decided to stop using PPPs in future.<sup>131</sup>

## The construction of the Paris courthouse through a PPP

The French Ministry of Justice had used PPPs several times between 2006 and 2014 for the construction of prisons and a new courthouse in Caen. PPPs seemed attractive as they were exempt from the common law of public procurement and meant that the investment and funding costs could be spread over the length of the contract.

In 2010, the administration council of the Paris courthouse decided to construct a new building via a PPP. The project consisted of the construction, financing, management, maintenance and transfer back to the state of a 90,000 sqm new building, as well as the provision of public services: waste management, cleaning and management of the building. In 2012, the Ministry of Justice commissioned the special purpose vehicle Arélia to carry out the project. Arélia is made up of two companies of the group Bouygues Construction (Bouygues Bâtiment Ile-de-France<sup>132</sup> and EXPRIMM),<sup>133</sup> and two private investors (Lloyds and DIF — a fund management company that invests in infrastructure assets in the telecom, rail and energy sectors in Europe, North America and Australia).<sup>134</sup> The agreement was to Build Operate and Transfer (BOT) the new Paris courthouse.

The Ministry could not support its decision to go for a PPP, instead of traditional public procurement, on the basis of an “economic efficiency” criteria.<sup>135</sup> The decision was, therefore, justified by the “exceptional complexity” of the project. In other words, the Ministry argued that the project was too complex to go through public procurement.

## The PPP option proved expensive and risky

In the 2014 report of the French Senate *PPPs, a ticking bomb*,<sup>136</sup> the Paris courthouse case was used as an example to underline shortcomings of the PPP model. The main criticism concerned the total cost, which amounted to €2.3 billion until 2044 for an investment of €725.5 million; the rest corresponded to €642.8 million of borrowing, and €960 million of operating costs.

The PPP option was more costly for the public purse than a traditional public procurement model because borrowing and maintenance costs were higher. In the case of the borrowing costs, the interest rates to which the Ministry is subject in this context are much higher than if it had used a public contract. For example, the fixed rate of the PPP cost of the Paris courthouse was 6.4 per cent, while in 2012 (the date of the signing of the contract with Arélia), the weighted average rate of government financing in the medium-long term was 1.86 per cent (up to 3 per cent at 30 years-term).<sup>137</sup> Moreover maintenance costs were also higher under PPPs than public sector works, with outsourced maintenance.<sup>138</sup>

The construction costs of the PPP were also deemed to be “higher than those for public sector design-build contracts, partly because of additional costs incurred by delays due to the complexity of the contracts and the renegotiation process.”<sup>139</sup> Other costs were incurred following the competition stage.<sup>140</sup> For instance, those companies that participated in the tender process but lost their bid had a compensation fee. Project proposal fees awarded to the bid losers went up from €1.2 million (without taxes) to €2 million (without taxes) at the closure of the bidding process.



Construction of the Paris courthouse was delayed. Photo: Jean-Luc Gondard

The complexity and inflexibility of the PPP contract also caused great concern. The Paris terrorism attacks in November 2015 led to new security requirements and reforms to the justice system during the construction phase. Combined with new environmental standards, the building required a lot of adaptation, estimated at a total cost of €66.8 million to the public purse. As a result, additional construction was postponed until 2018 onwards.

In the end, not only did the PPP option cost more than the public procurement option, but the costs proved to be higher than expected in 2010. Some costs were underestimated in the first place, such as security costs (€3.6 million/year), the moving of 20 tribunals and restructuring the current justice palace (€30 million). Contract renegotiating incurred additional costs (including €23.5 million for cancelled penalties and €5 million additional costs).

### Criticism of the project

The transparency of information surrounding the project was contested,<sup>144</sup> as well as the decision to go for the PPP model in the first place.<sup>145</sup> The 2017 report *The real estate policy of the Ministry of Justice: put an end to the flight forward*<sup>146</sup> was a damning condemnation of the courthouse PPP by the Court of Auditors. It looked both at prisons and the courthouse project and concluded that “the use of a PPP, prompted by short-term budgetary considerations, has led to average annual rental charges of €86 million that will weigh heavy on the Ministry of Justice’s budget” until 2044. As a result, the new Justice Minister Nicole Belloubet decided that the Ministry of Justice would not engage in PPPs in the future.<sup>147</sup>

Furthermore, the PPP contract placed an excessive level of risk on the public sector, paving the way for possible additional costs. All of the costs linked to project-related risks beyond the threshold of €2 million would be borne by the public partner,<sup>141</sup> from general strikes and national disasters to legal procedures of appeal against the PPP contract.<sup>142</sup> One of these risks materialised in July 2013 when construction of the PPP was interrupted for eight months, as a result of the fact that the PPP was challenged in the Court by the association “La Justice dans la Cité”. This interrupted the construction until the court gave its judgement, and led to a renegotiation of the costs associated with the construction interruption.

Until the judgement was given and the construction restarted, variable interest rates could not be turned into fixed rates. The reason for the renegotiation was also that bank loans were blocked during this phase and so the Ministry had to agree not only to cancel a €23.5 million penalty, but also to finance €5 million additional costs, while the shareholders of the PPP supported a slight decrease of their rates of return (11.25 per cent to 9.36 per cent).<sup>143</sup>

### LESSONS LEARNED

- This case shows that PPPs can be expensive and risky for the public purse, and taxpayers. This comes as a result of additional costs and uncertainty about the future. The French Finance Ministry has used this case to question the “complexity” of the project as relevant criteria to select the PPP model over the public option.<sup>148</sup>
- The use of PPPs by the Ministry of Justice has proved very controversial. Successive governments, senators from different political parties and the Independent Audit Court have stressed “the unsuitability of PPPs”. The Court in its 2017 report states that it “believes that PPPs should not be used for prison and court real estate in future”.<sup>149</sup>



# International Airport of Chinchero – Cuzco

Country

**Peru**

Region

**Latin America**

Sector

**Transport**

Year

**2014**

Contract period

**40 years**

Plans to build a huge new airport mainly to service tourists visiting Machu Picchu in Peru led to a high potential financial cost for the state, and a social cost for the city of Cuzco. Mistakes included a failure to properly assess the risks of such a large-scale project in a protected region and a poor city; a failure to properly consult with communities; and to publish adequate documentation to support the decision to go for a PPP. A (probably illegal) addendum was added to the project plan when the private provider failed to get adequate funds, which put all of the risk on the state. As a result of the public debate, and strong audit reports, the state cancelled the contract. Chinchero is a potential “white elephant” with a high risk of functioning at half of its capacity. The potential insolvency of the private consortium due to the failure in the planning process would force the state to maintain an infrastructure that is underused.

## Devising the PPP

The International Airport of Chinchero — Cuzco is a project promoted by the Peruvian Government, under the Law N°27528 approved in 2001, which “declared the project of public necessity and utility and with the highest priority for the State”. In February 2010, the Ministry of Transport and Communications (MTC) ordered Proinversión — the state agency responsible for PPP-related processes — to release the call for tender to award a PPP contract co-financed by the state (also known as a concession contract). The project involves the design, financing, construction, operation and maintenance of a new airport 29km North from Cuzco, in an area that is at an altitude of 3,700 metres above sea level.<sup>150</sup>

In April 2014, Proinversión awarded the project to the Kuntur Wasi consortium. This consortium includes Argentina’s Corporación America Airports S.A. — a company running several airports in different Latin American countries, with headquarters located in Luxembourg.<sup>151</sup> It also features Peru’s Andino Investment Holding S.A. — which incorporates 13 companies that are active in sectors like infrastructure, logistics and maritime services, and whose managers are linked to some of the most important companies in the country working on mining, insurance, logistics and banking.<sup>152</sup>

The investment to start operations would be US\$538 million, and the total investment, including future extensions, would be US\$658 million. The airport would have capacity for 4.5 million passengers per year, with the possibility of further

expansion to 5.7 million passengers per year.<sup>153</sup> It would replace the current Cuzco Velazco Astete Airport upon its completion.

Importantly, the decision to implement this project through a PPP was not based on an analysis of the costs and benefits in comparison with the potential costs of implementing the project through traditional public procurement. In Peru, the methodology of the public-private comparator (a quantitative analysis) is not applied to estimate the “value for money” (VfM) of a given project.<sup>154</sup> Instead, the decision is made on the basis of a qualitative analysis, which gives an excessive margin of discretion.<sup>155</sup>

## The fiscal costs of the project

Initial plans said the financing of the project would come from both Kuntur Wasi (71.4 per cent), and from the state (28.6 per cent). Kuntur Wasi would cover the building and the operating phase, while the state would be in charge of the preparatory work (i.e. earth moving work). The financing provided by Kuntur Wasi (US\$264.75 million)<sup>156</sup> would be reimbursed by the state from the sixth year of the project onwards, with interest — once the airport was built and operational. The contract did not establish the interest rate that Kuntur Wasi would charge, but it gave to the state the power to refuse a financing plan.

The project faced delays due to funding issues. Kuntur Wasi’s plan implied borrowing at an interest rate of 22 per cent.<sup>157</sup> Given the co-financing requirement, this plan implied a payment by the state that amounted to US\$587 million in interest.



Writing on farm wall protesting against plans to build an international airport near the village of Chinchero (Cusco, Peru). Photo: James Bruncker/Alamy Stock Photo

On that basis, the proposal was rejected for being extremely high, and against the public interest. As the state can borrow at an interest rate of 7 per cent, it was considered that the interest rate that Kuntur Wasi should request could not be higher than 9-10 per cent.<sup>158</sup>

At that point, the state had the power to declare the expiration of the contract — it was explicitly established in the contract that this would imply unjustifiable delays in the implementation of the project. However, it did not do so.

Kuntur Wasi asked for a renegotiation of the contract, which was signed in February 2017. It was agreed that 80.7 per cent of the funding would come from the state, while 19.3 per cent would come from the private partner. This changed the funding structure of the project, as the state became the main financing partner. In addition, the renegotiated contract obliged the state to make an initial contribution of US\$40 million before the start of the construction phase, something not even seen in public works projects.<sup>159</sup> Although this addendum violated several articles of the PPP law — for instance, one that requires that an addendum does not change the competition criteria of the contract<sup>160</sup> — it was approved by the Ministry of Economy and Finance (MEF) and the Supervisory Board for Investment in Public Transport Infrastructure (OSITRAN). It was also publicly backed by Ollanta Humala, the Peruvian President at the time.

In addition, there have been allegations of possible conflict of interest. The then Vice Minister of

Economy, Claudia Cooper, was previously an advisor to the private consortium, and one of the executives of the consortium was the sister of the Prime Minister.<sup>161</sup>

Several experts, former ministers and the president of OSITRAN — who resigned her position as a result of this case — questioned the addendum, with some experts saying that the project turned into a ‘public work’ project from a financial point of view.<sup>162</sup>

After a strong report from the Comptroller General referring to economic damages for the state, and in the midst of a national scandal over the project, the Peruvian government finally cancelled the contract with Kuntur Wasi on the grounds of national interest. The then Minister of Transport and Communications Martin Vizcarra resigned his position.<sup>163</sup>

### Transparency and public consultation

Both the contract and pre-investment studies are available on the Proinversión website, but there is no VfM analysis publicly available. This has been a critical question in relation to the evidence-based analysis that supports the decision to go for a PPP.

There was no prior consultation with communities in the area of direct impact of the project, even though the regulating norm of the Consultation Law (N°29785) was approved in 2012.<sup>164</sup> The peasant communities of Chinchero are included in the database of indigenous peoples of the Ministry of Culture, meaning they do have this right.<sup>165</sup> The only consultation was during the preparation of a feasibility study, but it only involved community leaders.<sup>166</sup>



## The project threatens to disrupt ancestral customs and lengthen the supply routes used by this population.



### The social impact of the project

Cuzco is one of the poorest cities in the country, with more than 25 per cent of the inhabitants classed as living in poverty. The layout of the airport involved the disappearance of 15 roads that are currently used by the local population, as well as irrigation channels,<sup>167</sup> which will result in longer trips for residents who want to stock up on certain products in Chinchero or sell their products.

Three different local communities would be affected by the expropriation of land. Economic compensation was planned for them, but the distribution of money would be uneven as a result of the different amount of land expropriated to each of them. According to the feasibility study: "this uneven distribution is likely to have consequences in terms of the economic activity of the communities in the short and medium term." However: "there is still no evidence of this change in the economic activity of the people receiving the money".<sup>168</sup>

In addition, Chinchero is recognised in the circuit of the Sacred Valley of the Incas for its textile art, and women are the main artisans dedicated to this work. However, the need to include a gender focus in the project or in the environmental impact study was never identified. Thus, the project threatens to disrupt ancestral customs and lengthen the supply routes used by this population.

### Would this airport be a "white elephant"?

One of the reasons a new airport<sup>169</sup> was planned was to better serve the development of the economy linked to the Archeologic Centre of Machu Picchu, the main tourist destination in the country, which was declared a World Heritage site by UNESCO in 1983.<sup>170</sup> The maximum load of views to the citadel for sustainable use was estimated

### LESSONS LEARNED

- There were serious indications that this project would be a heavy burden on the state and taxpayers when the contract was signed. This situation was aggravated by the approval of an addendum establishing that the state assumed most risks of the project.
- The project suffered from a lack of transparency and public participation. Because no institution in the country works on the basis of an Infrastructure Development Plan, criteria such as sustainability and vulnerability to climate change are not included when projects are devised. This generates conditions for decisions based on political criteria, as well as favouritism and vested interests.

at 2,500 people per day (a capacity supported by UNESCO). However, it has been largely exceeded; in 2017 an average daily flow of 3,800 people was reached.<sup>171</sup> The feasibility study for the airport states that the real daily load capacity is 5,400 people and a saturation scenario, or maximum capacity, is 7,180 visits.<sup>172</sup>

As the reception capacity of the airport would greatly exceed the reception capacity of tourists to the Sanctuary of Machu Picchu, there is a high risk that it will work at half of its capacity, which could lead to insolvency of the private consortium, and therefore the state would have to intervene. Even more worryingly, as the report of the Office of the Comptroller of the Republic states, Proinversión has not adequately supported the viability of Chinchero as the location of the airport.<sup>173</sup>

### The way forward

As a result of the cancellation of the contract, the private consortium has introduced an arbitration claim against the Peruvian state before the WB's International Centre of Settlement of Investment Disputes (ICSID).<sup>174</sup> As of late July it was not clear how much Kuntur Wasi is claiming in the case (some initial indications point to more than US\$270 million in compensation for the cancellation of the contract).<sup>175</sup> Since the government's decision was based on an addendum that is illegal, it is possible that the state could win the claim. However, this process implies a cost that will have to be borne by all Peruvian citizens yet again.

Finally, the state has confirmed its intention to continue with the project but under a different PPP model. This will be a "self-financed concession";<sup>176</sup> following questions about the value of the co-financed PPP model.<sup>177</sup>

# Navigability of the Magdalena River

Country  
**Colombia**

Region  
**Latin America**

Sector  
**Transport**

Year  
**2014**

Contract period  
**13 years and  
six months**

The Magdalena River is Colombia's main river. Many coastal communities and their economies depend on this river for fishing. In addition, it has sociocultural relevance for the country. The country's former President Juan Manuel Santos wanted to improve the river's navigability to boost exports for a large part the country. It was part of his bid to ease travel and reduce freight costs. However, the PPP project launched in 2014 to fulfil this ambition became mired in delays. As a result of a corruption scandal that involved the major shareholder of the private consortium, financial closure never materialised, which led to the collapse of the project. The preliminary works carried out have already negatively affected the environment in and around the river. Communities were never properly consulted to mitigate against these impacts. The current government is revising the project to launch another PPP to implement the project.

## The PPP contract — main features

In September 2014, government agency the Regional Autonomous Corporation of Rio Grande de la Magdalena (Cormagdalena) signed a PPP contract with Navelena S.A.S to improve the navigability of the Magdalena River. This was a consortium made up of the Brazilian conglomerate Odebrecht (with 86.67 per cent of the shares) and the Colombian company Valores y Contratos S.A. (with 13.33 per cent of the shares).

It was the first PPP contract awarded in Colombia following the 2012 PPP Law N°1508, which set out the regulatory framework for new PPPs in the country. It was a Design, Build, Finance, Operate, Maintain and Transfer PPP contract, focusing on a stretch of 908 km between Puerto Salgar and Bocas de Ceniza. This was a huge dredging project involving nine states and 57 cities.

The estimated value of the contract was COL1.3 trillion (approximately US\$390 million). The financing for the project would come from the General Budget of the Nation, royalties from the territorial entities and other public funds. When all payments throughout the project were considered, the cost would rise to COL2.5 trillion (approximately US\$750 million) — representing a 90 per cent increase from the contract value.

Navelena would receive remuneration depending on compliance levels, not during the pre-construction phase (18 months long), when the consortium would have to provide the final design of the project and get financial closure — i.e. ensure the finance needed to implement the

project. In addition, during this phase Navelena was also in charge of dredging works between Barrancabermeja and Bocas de Ceniza.

## Contractual issues

Several conflicts were identified, particularly in the distribution and financing of "risks". According to the "risk matrix", Cormagdalena took on the demand risk, environmental regulation or special regulation variation risk, and risks related to tariff collection, among others. In addition, a "force majeure" clause was established in case of delay or failure to obtain environmental licenses for reasons not attributable to the company. Reasons included if the company had to consult with a community to obtain a licence, which then had to be compensated by the state. This is of great concern, as it represents an incentive not to follow a constitutional obligation of consulting with local communities.

The contract also established compensation measures for communities, regions, localities and the natural environment affected by negative impacts generated by the project, which could not be avoided, corrected, mitigated or replaced by the private partner. To cover these compensations the private partner initially put aside COL20.9 billion (approximately US\$7 million). However, if the compensation was to be higher than that, Cormagdalena would have to assume all of the exceeding amount. As the contract was signed without a thorough environmental impact assessment, this placed a heavy potential burden on the State.



A dredging ship on the Magdalena River. These activities have had an impact on the environment. Photo: Asociación Ambiente y Sociedad

### Transparency and public participation

The contract and other related documents, including studies, are publicly available on the standard website "Colombia efficient purchase"<sup>178</sup> ["Colombia Compra Eficiente"]. However, Cormagdalena did not share the project with local communities, CSOs or academia during the planning phase and as a result, the project was subject to a range of complaints.<sup>179</sup>

The contract established that, during the execution phase, Navelena had to set out and develop a strategy for social dialogue and participation with communities in the area of influence.<sup>180</sup> During the short time that project implementation actually took place, Navelena organised some meetings with coastal communities, but they were only informative.

### The impact of the project on local communities

Although the project never went into the construction phase, there were actual or potential environmental and social impacts identified. In December 2016 the Comptroller General's Office reported that, since Navelena changed the materials required for public works for cheaper and lower quality materials, that would put the stability and durability of works at risk.<sup>181</sup>

In addition, in the pre-construction phase the company undertook activities associated with dredging between Barrancabermeja and Barranquilla. These activities had environmental impacts caused by inappropriate placement of the sediments taken from the river, which risk drying up the swamps, and negatively impacting biodiversity. The drainage also negatively affected fishing communities, and the area of the land where peasant farmers develop agricultural activities was reduced.

Some sources state that the construction of the project would alter the river flow, which could impact on thousands of fishermen and families, and risk the food sovereignty of the coastal communities. The project seemed incompatible with fishing, given that the main beneficiaries of the project would be companies linked to coal and hydrocarbon. In addition, ecosystems such as swamps could be negatively impacted as a result of changes in the river flow, the speed and the volume of water.<sup>182</sup>

These impacts have to be added to the current problems that the Magdalena River and its habitants face, such as the high level of pollution, the systematic exploitation of its resources, deforestation, extensive farming and climate change.<sup>183</sup>



**In the pre-construction phase the company undertook activities associated with dredging between Barrancabermeja and Barranquilla. These activities had environmental impacts.**



**The Odebrecht corruption scandal**

In 2015, when Navelena was working to get financial closure for this project, former Odebrecht CEO Marcello Odebrecht was convicted on corruption charges. By May of that year, Odebrecht was seeking to cede its stake in the project and, as a result, Cormagdalena gave multiple opportunities for either a change in the composition of the consortium, or to confirm financial closure.

After a failed attempt to access a loan from Sumitomo Mitsui Banking (Japan’s second largest bank),<sup>184</sup> financial closure never materialised, and Cormagdalena declared the contract void on 24 March 2017. Colombian business regulator Supersociedades started Navelena’s judicial liquidation process in early 2018.

**What about the future?**

The current government is working to launch another PPP to continue with the initial plans for the river, which might imply revising how the project was structured.<sup>185</sup>

The Colombian CSO Ambiente y Sociedad<sup>186</sup> urges the inclusion of social and environmental impact assessments linked to project viability. In addition, the contracts must include more stringent and specific clauses on the identification and management of risks.

It is important to evaluate the real cost of PPPs with a system of accountability, access to information and clear indicators to evaluate the impacts of PPPs in all areas (financial, social and environmental).

**LESSONS LEARNED**

- This PPP lacked transparency and suffered from poor planning. The authorities were not able to foresee the ecological, political, social or economic complexity of the Magdalena River project, and did not take into account the cumulative impacts of individual works carried out.<sup>187</sup>
- This project still represents a threat to fishing communities and their livelihoods. Therefore, it is necessary to monitor its evolution and any conflict with communities.<sup>188</sup>

# Jakarta's Water Supply

Country  
**Indonesia**

Region  
**Asia**

Sector  
**Water**

Year  
**1998**

Contract period  
**25 years**

The population of Jakarta might have had high hopes when private companies Thames Water and Suez signed a PPP contract in 1997 to deliver the city's water supply. Yet promises that 70 per cent of Jakarta's population would have piped water by 2002 were never realised. Instead, today most of the city's population still has no access to clean, piped water and the public water utility PAM Jaya has suffered huge financial losses. Meanwhile, the private sector companies that took part in the PPP in 1997 have reaped financial rewards. As of 2018, both original companies have sold either all or part of their stakes in the project — a project that has had far-reaching, negative consequences for the citizens and government of Jakarta

## The private sector: offering new hope for Jakarta's water supply?

In 1991, the World Bank kicked off its plan to improve water services in Indonesia's capital, Jakarta, with a US\$92 million loan for infrastructure improvements.<sup>189</sup> Consultants were appointed to advise Jakarta's water provider, PAM Jaya, in a process that paved the way for private sector involvement. The plan was presented as a solution to the failure of Jakarta's public water delivery and unequal access.

Following negotiations, in 1997 the supply of drinking water was handed to two private operators, with whom PAM Jaya signed PPP contracts to provide water to both east and west Jakarta (hereafter "Jakarta Water"). They were leading multinationals: France's Suez and Britain's Thames Water,<sup>190</sup> and the contracts became effective from February 1998 for a 25-year period.

To enter the market, both companies brokered deals with the political elite. Suez formed PT PAM Lyonnaise Jaya (Palyja). Meanwhile Thames Water created the company that would become Aerta Air Jakarta (Aetra). Both benefitted from favourable contracts that were not put out for public tender.<sup>191</sup>

Despite an attempt to take water back into the public sector, and a series of strikes, a new agreement was signed in 2001. In 2006, Suez sold 49 per cent of its shares to the Indonesian company PT Astratel Nusantara and Citigroup Financial Products Inc.<sup>192</sup> In the same year, Thames Water sold all shares to a Singaporean-based company.<sup>193</sup>

In 2007, the PPPs received the backing of international financial institutions. The World Bank's Global Partnership on Output-Based Aid approved a US\$5 million grant, to "(expand) access to water services to low income households", and "(pilot) an innovative approach to 'illegal' community service access".<sup>194</sup> The Asian Development Bank also approved a US\$50 million private sector loan to partially fund its capital expenditure programme for 2008-2012.<sup>195</sup>

## Promises of a bright future

According to the World Bank,<sup>196</sup> in 1996 PAM Jaya recorded just 45.3 per cent tap water coverage, and 57 per cent of non-revenue water (water lost to leaks or stolen). For this reason, the PPPs had two main goals: (a) to expand service, with an emphasis on poorer residents and neighbourhoods; and (b) to improve the quality of service in poor neighbourhoods and the overall quality of the water.

Ambitious targets were set: Jakarta Water committed to achieving universal coverage by 2023 and to supplying clean water by 2007. The contract required IDR 732 billion (US\$318 million at the 1997 exchange rate) over the first five years of the project: to expand the existing pipeline; to add 1.5 million customers; to increase the water supply; and to reduce non-revenue water. With these additional customers, over 70 per cent of Jakarta's population would have access to piped water by 2002, and water losses were to be reduced to less than 35 per cent by 2003.<sup>197</sup>



Filling up at a pump station before delivering water to residents in Jakarta's slums. Photo: Garry Andrew Lotulung/Pacifiv Press via Alamy

The PPP contracts established that the assets, including network, treatment plants and equipment, were transferred to the private companies with the agreement that they would be returned by 2023, at the end of the concession. The two private companies took charge of the raw water supply, cleaning the raw water, pipe network and customer service. PAM JAYA remained responsible for setting the tariff applied to consumers. For these services, it pays a "water charge" to the two companies while customers pay "water tariffs" to PAM Jaya.<sup>198</sup>

The partnerships lacked transparency and accountability from the start. The contracts did not grant PAM Jaya access to the consortium's financial records, undermining its ability to oversee implementation of the PPPs.<sup>199</sup> They were also hidden from public sight until 2013 when the Jakarta Government considered terminating the contracts with the private providers.<sup>200</sup>

#### **Broken promises: the financial cost**

The contracts were designed to be lucrative for the private partners. Jakarta Water received a fee based on volume of water supplied, and calculated on a rate of return of 22 per cent.<sup>201</sup> This provided a guaranteed profit, and protected them against the uncertainties of raising water tariffs. The contract also included a "management know-how" fee to the parent companies, and a safeguard for

the private partner against any risk from foreign exchange or interest rate movements, as they were compensated by the government.<sup>202</sup>

Therefore, most economic benefits were to be reaped by the companies, and the risks were to be borne by the government. The risks materialised during the Asian financial crisis, when PAM Jaya accumulated additional debt. Given that people were already facing rising costs, the Government instructed PAM Jaya to hold tariffs steady for the first three years of the contract.<sup>203</sup> Meanwhile, inflation spiralled to 120 per cent. PAM Jaya was squeezed on both sides — unable to increase tariffs, while having to make grossly increased payments to the private operators, which meant that taxpayers subsidised tariffs. Finally, PAM Jaya broke with Government policy and increased tariffs three times in under three years.<sup>204</sup> From 1998, water tariffs increased 10 times, amounting to a 300 per cent increase.<sup>205</sup>

The contracts resulted in significant losses for PAM Jaya, paid for by taxpayers. In 2011, the financial loss of PAM Jaya was IDR 154.3 billion (US\$18 million), in addition to a significant decrease in the value of assets.<sup>206</sup> The President of PAM Jaya is quoted as saying the PPP contracts "would sink the public water utility into huge financial losses (up to IDR 18.2 trillion [US\$2.4 billion]) if the cooperation agreement continued as planned until its expiry date in 2022".<sup>207</sup>



### The consequences for the people of Jakarta

According to the Amrta Institute for Water Literacy, PAM Jaya says the service coverage ratio in 2013 was targeted for 66.37 per cent, but Jakarta Water reached only 59.01 per cent. The leakage level is 44 per cent, while the Interior Ministry's regulation specifies that it should not be higher than 20 per cent.<sup>208</sup>

To make matters worse, the poorest continue to miss out. Only 25 per cent of new connections between 1998 and 2004 were to low-income households. In 2003, over 85 per cent of networked connections were for middle and rich households.<sup>209</sup> Although PAM Jaya implemented a subsidy to lower the monthly bill of poor families, this was still not always affordable. Residents often rely on groundwater from community wedge wells, or buy water in jerry cans, which can cost as much as half a person's daily income.<sup>210</sup>

People covered by the piped water network are not free of challenges. Cuts are frequent and in 2013 nearly 40,000 complaints were registered about water deficiencies.<sup>211</sup> Also, the water often smells, causes skin irritations and is sometimes muddy.<sup>212</sup>

Consequently, hotels and wealthier residents have taken to digging their own private deep wells to get pure ground water.<sup>213</sup> This is serious, as it means Jakarta is sinking faster than any other big city on the planet.<sup>214</sup> Forty per cent of the city is already below sea level. In one decade, North Jakarta, which is home to millions of residents, could be under water.<sup>215</sup> The excessive use of groundwater used by the poorer residents is also a major public health issue, because it is dirty and highly polluted due to the lack of an adequate sewerage system.<sup>216</sup>

### The future of Jakarta's water — Is there an alternative to PPPs?

For decades, trade unions and civil society groups have demanded that water management should be returned to public ownership.<sup>217</sup> After years of litigation, the Indonesian Supreme Court ordered the termination of water privatisation and restoration of public management to ensure the human right to water.<sup>218</sup> However, it has not issued a clear order to cancel the agreement.<sup>219</sup>

Meanwhile, the private company Moya Indonesia, which now owns Aetra, recently acquired two water PPPs in the surrounding areas of Jakarta — Bekasi and Tangerang — for 25 years. Moya Indonesia aims to renegotiate Aetra's Jakarta contract into a Build, Operate and Transfer contract, which presumably will also be for a long duration.<sup>220</sup>

This is despite success stories showing public water supplies can work. Surabaya, the second largest city in Indonesia, has a public water supply covering 95.5 per cent of the population in 2016 — twice as much as Jakarta Water<sup>221</sup> — and water is much cheaper. The Amrta Institute has calculated that the average price of water in Jakarta is triple that of Surabaya.<sup>222</sup> Surabaya accumulated a net profit of over US\$14 million (IDP 280 billion) in 2017.<sup>223</sup> Lobina and Hall (2013) have also shown that public operations enjoy an advantage over the private sector.<sup>224</sup>

### LESSONS LEARNED

- The PPPs for the provision of water in Jakarta represent a threat to public finances, equality and democracy. On 9 October 2017,<sup>225</sup> a Supreme Court ruling ordered the end of the project, and the return of the water services to the public water utility, PAM Jaya, as the private companies "failed to protect" residents' human right to water.<sup>226</sup>
- Experience in Indonesia's second biggest city, Surabaya, shows that public water services can be significantly cheaper and accessible to all.



**Most economic benefits were to be reaped by the companies, and risks borne by the government.**



# Khandwa Water Supply Augmentation Project

Country  
**India**

Region  
**Asia**

Sector  
**Water**

Year  
**2009**

Contract period  
**25 years**

A PPP agreement to construct, operate, maintain and supply municipal water in the small Indian town of Khadwa has proved very controversial. First, the local community was never consulted on the project, and a public outcry ensued when information was finally shared. Second, there have been serious delays in the construction and operation of water provision. And third, the public purse has been — and could in future be — hit hard. A strongly worded report by an independent committee raised serious concerns and recommended that the town's water supply services should be handed over to public ownership. But this has yet to happen.

## The PPP contract

India saw one of its first water and wastewater PPP contracts signed in 2009. The PPP was to construct, operate and maintain the municipal water supply in Khadwa, a small town in the state of Madhya Pradesh. The contract was signed between Khandwa Municipal Corporation (KMC) and Vishwa Infrastructure and Services Pvt. Ltd (Vishwa), a Hyderabad-based water service private company. It is a "build-own-operate-transfer" PPP under a central government scheme called Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT). The project was set to run for 25 years: two years for construction, which would commence in 2010, and 23 years for operation and maintenance. The project would supply 29 million litres per day to Khadwa's population (over 200,000 people) for domestic consumption, increasing to 43 million litres per day by the end of the contract period in 2034.<sup>227</sup>

The total agreed capital costs of the project were US\$20.96 million, and the estimated annual operation and maintenance cost was US\$1.4 million. KMC — through UIDSSMT — provided US\$15.54 million as a capital subsidy, while Vishwa provided the remaining US\$3.68 million. As a result, the lion's share of the project was financed by public money. The investment made by Vishwa was in the form of equity (25 per cent) and debt (75 per cent),<sup>228</sup> including a loan from the World Bank's private sector lending arm, the International Finance Corporation (US\$5 million also covered a water and wastewater project managed by the same company in the Kolhapur Town).<sup>229</sup> Vishwa

also raised money in the form of equity from two investment funds: Axis Private Equity Ltd. and New Enterprise Associates.<sup>230</sup>

The estimated internal rate of return for the project is 12 per cent. According to the contract, the company would recoup its own costs and the estimate return through residents' payments.

## Losses to the public purse — present and future

The project has been costly to the public sector, and therefore to citizens, mainly as a result of the high government subsidy provided to the PPP project. In addition, KMC also provided the private company with support in administrative clearances, technical and human resources.

Citizens have also been negatively impacted as a result of costly meters that people will have to pay for, as well as through water tariffs, and their regular revision. The contract stipulated that the water tariff — set at US\$0.22 per kiloliter (Rs 11.95/kl) — would increase by 10 per cent every third year but it can also be increased by the company when there is a shortfall in revenue.<sup>231</sup> The water tariff revision would be done by a Price Review Committee that would include the accountant, auditor and engineer of the municipal corporation and representatives of the private company. Crucially, there are no people's representatives included in the committee, which resulted in unilateral control of Vishwa in the tariff revision process. As a result, if the private water supply rates are implemented, it is estimated that the households would have to pay around US\$75 per year instead of US\$12.<sup>232</sup> At the time of signing



CSOs campaigning about the water supply in Khandwa. Photo: Patrika Newspaper

the contract, unemployment in the town was high; 35 per cent of the population was poor and the average per capita income was close to US\$380 per year, according to an economic survey of the state in 2009-2010.

There is also no obligation on Vishwa to maintain service quality and performance. What is worse, as a result of the PPP contract, residents face significant restrictions or prohibition on complaining against the company in case of poor service delivery.<sup>233</sup>

The agreement also includes a clause on “no parallel competing facility”. This means that neither the state government, the municipal corporation nor anyone else, including the local residents, would be allowed to use any other source for fulfilling their water needs. Not only this, the capacity of the already existing facilities could not be increased for public welfare or otherwise. Importantly, around 65 per cent of households do not have a regular piped water connection and depend on public stand pots, tanker supplies and other sources of water.<sup>234</sup>

It is also possible that the project will result in hidden costs. Local sources state that, although the project construction period was two years, even after almost a decade the project is not fully operational as per the terms and conditions of the

contract. Water supply has partially commenced in only two wards of the municipal corporation area — where the private operator is supplying bulk water and the distribution is by the municipal corporation. However, it is difficult to estimate the losses due to the delay in project execution.

According to a 2014 report by the World Bank, which reviewed five water PPPs in India: “The KMC is partially financing the construction costs and must compensate the operator for persistent customer defaults (50 percent under recoveries that remain pending for a year). They also assume responsibility for change in scope, including expansion of facilities.”<sup>235</sup>

It further states that: “The risks to achieve financial sustainability are (i) the acceptability of consumer tariff, which will be tested only when the project commences operations, (ii) the ability of the city to implement tariff revisions as per the price escalation formulae agreed in the contract, and (iii) the ability of the city to finance changes in scope and future capital expenditure needs. This last risk is significant because the city was unable to fund the increased scope of the distribution network rehabilitation that led to a stalemate, which is not fully resolved. The financial strength of the city is also weak and careful planning will be required to meet future needs.”<sup>236</sup>

## LESSONS LEARNED

- Development projects must be planned through a democratic process and in consultation with local populations. The process should guide public policy decisions, particularly when it comes to the provision of public services such as water.  
.....
- The implementation of PPPs supported by central government programmes depends a lot on local municipal government capacities and expertise regarding monitoring and regulation of such projects. Without these, the authorities are hampered in regulating and monitoring the private company and ensuring the timely execution and delivery of services.

### Lack of transparency, and of due process

The contract documents and agreements were not made publicly available when the project was planned, even though public disclosure and sharing of information are part of UIDSSMT guidelines. Finally, under the Right to Information Act 2005, they were made available. The other documents relating to assessments, analysis and performance evaluation are still not in the public domain.

Public consultations did not take place before the project began, as proposed under the guidelines. Even the leader of the opposition in the local council stated during an interview that he was not aware of the full details and impacts of the PPP. The final project bid was approved by the Mayor-in-Council (MIC), but this did not follow any debate in the KMC General Assembly. Therefore neither local representatives nor the general public were involved in this phase. This leaves much to be desired in terms of the concept of free, prior and informed consent of the local people before a public welfare project is approved.

Several other significant decisions related to the preparation and approval of the water project were taken by the MIC, bypassing the general body of elected councillors in the municipal corporation. These included selecting the consultancy firm for preparing the 'Detailed Project Report' and other project documents; approving the various targets under the urban reforms programme; decisions related to tender notification and changes in it; and payments to the private company and the consultant, among others.<sup>237</sup>

### A public outcry calling for the water supply to return to municipal authorities

In December 2012, KMC published the notification called "Water Metering and Regularisation Rules, 2012", regarding the Vishwa water supply in town, and invited objections and comments from citizens. This was four years after the contract was awarded. After a media campaign, and a door-to-door action by citizens, more than 10,000 households filed their objections against the project within a period of 30 days. This was in a town where the total number of regular domestic water connections at that time was around 15,000.<sup>238</sup>

Due to the significant number of objections, the Government of Madhya Pradesh (GoMP) formed a seven-member independent committee to look into the objections and resolve them. The committee submitted its report to GoMP on 1 June 2013. The report notes that changes in terms and conditions and specifications of the project have been made to benefit a specific private company. It also states that there were serious irregularities committed by the KMC in the selection of the private consultant for the project, and even in the tendering process, including issuing tenders only locally and not at the national level, and allowing changes to specifications after tenders had been called.

The report further notes that, despite objections and repeated reminders by official bodies such as the State Level Empowered Committee, the KMC municipal commissioner did not heed its advice and acted in the interests of the private company. It also points to the inefficiencies of the private company and raises questions about how such an inefficient company, which has not been able to complete a two-year construction phase after four years, can be trusted to deliver an essential service like water for the next two decades.

It recommends that the PPP contract should be cancelled and the water supply services of the town should be handed over to a public water board. It also recommends that there should only be a municipal water supply, and that the number of public standpipes should be increased in order to support the right to water of the urban poor.<sup>239</sup>

Despite the strongly worded observations from the government-appointed committee, the project remains operational.

# Conclusions and recommendations

Around the world, PPPs are being put forward as a way of plugging funding gaps to help countries achieve the SDGs by 2030. PPPs are currently a much-favoured solution among many governments as a way of leveraging private finance to fund development projects such as building hospitals and other large scale projects, or providing vital services such as energy and water supply to vulnerable citizens around the globe.

As this report has shown, MDBs such as the WBG have played a guiding role in providing advice and finance for PPP projects in different sectors.

This report offers an in-depth analysis of the impact of 10 PPP projects based on evidence drawn from projects across four different continents, in both the global north and global south.

We analysed the impact of PPPs on the public purse and on citizens of the countries in question and, more generally, we reviewed whether PPPs have delivered results in the public interest. We also looked at the PPP process and the impact on democracy, equality and fundamental rights, including human, social and environmental rights.

In the 10 case studies that we investigated, we found that PPPs have failed on many different levels — failures that have had a serious impact for citizens of the countries in question.

Although we do not want to generalise our conclusions, our findings do illustrate some of the most common problems PPPs are facing on a global level. In our opinion, this evidence raises serious red flags about the capacity of PPPs to deliver results in the public interest.

We found that:

**All 10 projects came with a high cost for the public purse, an excessive level of risk for the public sector and, therefore, a heavy burden for citizens.** For example, the Queen Mamohato Hospital in Lesotho has had significant adverse and unpredictable financial consequences on public funds. Latest figures suggest that in 2016 Tsepong's 'invoiced' fees amount to two times the "affordability threshold" set by the Government and the WB at the outset of the PPP. Contributing factors to cost escalation include flawed indexation of the annual fee paid by the government to Tsepong (unitary fee) and poor forecasting. In Sweden, the total construction cost of Nya Karolinska Solna (NKS) hospital has rocketed — from €1.4 billion to €2.4 billion — and has been beset by technical failures. It is now known as the "most expensive hospital in the world".

**Every single PPP studied was riskier for the state than for the private companies involved, as the public sector was required to step in and assume the costs when things went wrong.** A significant example is the case of Jakarta Water in Indonesia, where two PPP contracts resulted in significant losses for the public water utility, PAM Jaya. In 2011, it reported a financial loss of US\$18 million. Estimates suggest that losses will eventually total US\$2.4 billion if the cooperation agreement continues as planned until its expiry date in 2022.

**Five of the 10 PPPs reviewed impacted negatively on the poor, and contributed to an increase in the divide between rich and poor.** For instance, in the case of the Queen Mamohato Hospital in Lesotho, the increasing and inflexible cost of the PPP hospital comprised necessary investment in primary and secondary healthcare in rural areas where mortality rates are rising and where three-quarters of the population live. In Jakarta, Indonesia, the provision of water through private operators (Jakarta Water) resulted in a radical increase in its monthly bills, which are unaffordable for many poor families. Residents often rely on groundwater from community wedge wells, or have to buy water in jerry cans, which can cost as much as half a person's daily income.

**Three of the PPPs resulted in serious social and environmental impacts.** Poor planning and due diligence accounts for some of these. For example, on the Mundra coast in Gujarat, India, where a thermal power station project has taken place,

there were serious social and environmental violations from the outset. Following flawed impact assessments, there has been a deterioration in water quality and fish populations; community health impacts are evident due to air emissions; access to fishing and drying sites has been blocked; forced displacement of fishermen has taken place. This has also impacted on the life of women. Girls in particular have also been pulled out of school to perform physical and domestic labour to survive. In Colombia, the PPP project designed to improve the navigability of the Magdalena River suffered from poor planning. Although the project never went into the construction phase — it collapsed due to the failure of the company to get the financing needed to implement it — the preliminary works carried out have already negatively affected the environment in and around the river.

**Nine out of 10 of the projects lacked transparency and/or failed to consult with affected communities, and undermined democratic accountability.**

The failure to publish contract details does not chime well with the risks that the public sector is forced to take on. In the small Indian town of Khadwa, for example, where a PPP was launched to provide municipal water, it took four years to finally inform the population about what was happening. More than 10,000 households filed objections against the project within a period of 30 days. This was in a town where regular domestic water connections totalled 15,000. In Liberia, where the government outsourced its public pre-primary and primary schools, initially to Bridge International Academies Ltd (BIA), the process was not competitive, local communities were not properly consulted, and there was not full transparency.

**All cases showed PPPs were complex to negotiate and implement,**

and that they required specific state capacities to negotiate in the public interest, including during the renegotiation process. In Peru, the renegotiation process to build a new airport through a PPP in Chinchero resulted in a change to the entire funding structure of the project. After a strong report from the Comptroller General referring to economic damages for the state, and in the midst of a national scandal over the project, the Peruvian government finally had to cancel the contract on the grounds of national interest. The construction of a courthouse in Paris proved so complex, costly and controversial that the new French Justice Minister has decided that her Ministry will never engage in a PPP again.

**Three of the PPP contracts had to be cancelled due to an evident failure in the process,**

including proper due diligence to identify the possible impacts of the project. For example, the Castor Project — feted as Spain's biggest offshore gas storage plant — was halted after gas injections caused more than 1,000 earthquakes. Despite never being used, the Castor Project has so far cost the public €3.28 billion, which is currently set to be paid through increased gas bills.

This joint CSO report makes the following recommendations to the WBG, the IMF and other public development banks, together with the governments of wealthy countries that play a leading role in these institutions:

**Halt the aggressive promotion and incentivising of PPPs for social and economic infrastructure financing,** and publicly recognise the financial and other significant risks that PPPs entail.

**Support countries in finding the best financing method for public services in social and economic infrastructure,** which are responsible, transparent, environmentally and fiscally sustainable, and in line with their human rights obligations. Prioritise tax revenues, whilst augmenting them with long-term external, and domestic, concessional and non-concessional finance, where appropriate.

**Ensure good and democratic governance is in place before pursuing large-scale infrastructure or service developments.** This should be done through informed consultation and broad civil society participation and monitoring, including by local communities, trade unions, and other stakeholders. Uphold the right to free, prior and informed consent, and ensure the right to redress for any affected communities. The rights of affected communities should be taken into account.

**Ensure that rigorous transparency standards apply,** particularly with regard to accounting for public funds — the contract value of the PPP and its long-term fiscal implications must be included in national accounts. Contracts and performance reports of social and economic infrastructure projects should be proactively disclosed. The public interest ranks higher than commercial interests.

Finally, we urge all those concerned with justice, equality, sustainability and human rights to resist the encroachment of PPPs and to push instead for high-quality, publicly-funded, democratically-controlled, accountable public services. The wellbeing of our communities and societies depends on it.

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- 155 For instance, the VfM methodology for projects co-financed by the state establishes that the MEF recognises the use of qualitative criteria when there is not enough information to make the comparison. However, several experts interviewed confirm that the use of a qualitative analysis is the general practice, and not the exception. See [https://www.mef.gob.pe/contenidos/archivos-descarga/Anexo\\_RM249\\_2014EF15\\_2.pdf](https://www.mef.gob.pe/contenidos/archivos-descarga/Anexo_RM249_2014EF15_2.pdf).
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