Civil Society Guide on

Private-Public Partnerships

annd

Arab NGO Network for Development

شبكة المنظمات العربية غير الحكومية للتنمية

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Introduction

The primary trend in public policymaking began to change drastically since the early 1980s. A new course prevailed, which promoted individual initiative and the private sector, claiming it would improve economic performance, achieve growth and prosperity, and create job opportunities. The new trend grew in the wake of the global crisis in the 1970s that ravaged advanced capitalist countries' economies and those of the Global South alike. The crisis had revealed the limitations of models based on Keynesian principles that had focused on the state's role in managing the economy by expanding the demand for its outputs of goods and services. Enabled by the new trend, capital managed to overturn the balance of power in its favor at the expense of workers. The door was open to the state's retreat regarding many of the social gains of the exploited, the underprivileged classes, and broad swathes of the middle class. The concept of private-public partnerships (PPPs) emerged in this context. It was presented as a solution to continue providing public services in countries suffering from financial crises or lack of funding, preventing them from fulfilling their duties towards citizens, especially the vulnerable and impoverished social groups. In parallel, this new managerial model for public utilities opened up new opportunities for multinational companies to accumulate capital and provided them with new markets in the countries of the South.

This guide aims to enable Arab civil society organizations (CSOs) to better understand PPPs, especially in the Arab regional context. It also proposes a conceptual framework for evaluating PPPs based on a human rights-development approach. It takes into account the 2030 Agenda for sustainable development and its goals as an agreed-upon general global framework. Moreover, the guide aims to highlight the role of civil society and social and popular movements in the social accountability of PPPs. It hopes to influence relevant authorities to provide public services to citizens, especially vulnerable and marginalized groups, and push for adopting alternative policies founded on rights and development.
The guide consists of four parts:

1. ***Part One*** focuses on the definition of PPPs and highlights their potential benefits and disadvantages as a mechanism to meet the needs of "rights holders," especially vulnerable and disadvantaged social groups.
2. ***Part Two*** deals with the experience of PPPs in the Arab world, highlighting their problems and challenges.
3. ***Part Three*** presents the evaluation framework for PPP projects' impacts on people's lives, relying on a human rights-based approach.
4. ***Part Four*** addresses the role of CSOs in PPPs, especially social accountability and transparency, in light of international and Arab experiences in this field. It also highlights the obstacles and challenges that prevent Arab CSOs from playing their integral role.

Part One: *Overview of Public-Private Partnerships*

1.1 General Framework

This guide combines the developmental and rights-based approaches and considers them indivisible. It adopts a development paradigm (most similar to the concept of sustainable human development as elaborated in UN literature) of **5 dimensions** (and not 3): social, economic, environmental, political, and cultural. It also considers 5 **principles** of development: equality, productivity/effectiveness, sustainability, human rights, and empowerment/participation.

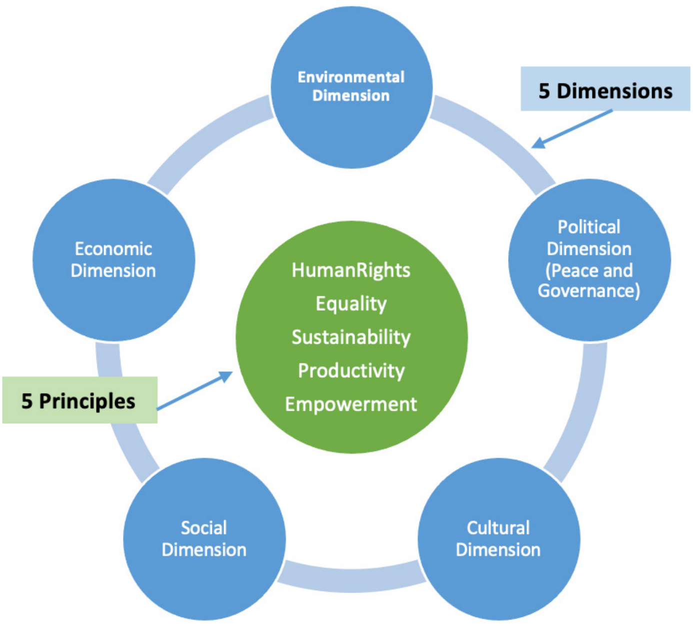


Figure 1: Conceptual Framework of Sustainable Human Development - 5 Dimensions, 5 Principles

A **rights-based perspective** includes the entire human rights system (UDHR, the two Covenants, and all relevant agreements, declarations, positions, reports, and regular related recommendations), including the **right to development** (based on the 1986 international declaration).

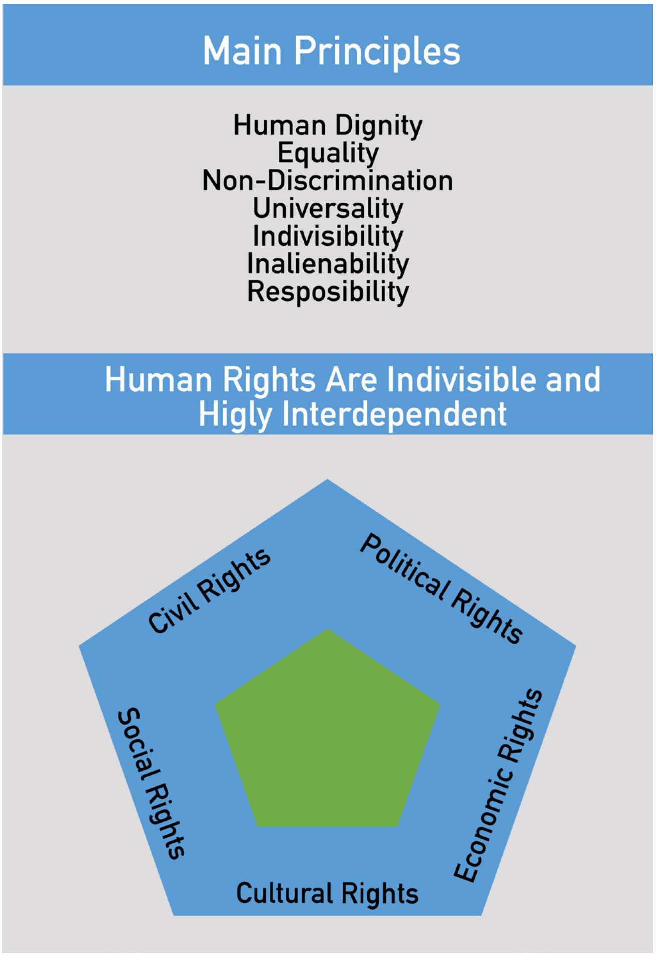


Figure 2: Main Principles and Human Rights

Since the mid-1980s, a gradual convergence has occurred between developmental theories, the concept of sustainable human development, and human rights. The Declaration on the Right to Development was one of its most prominent outcomes. The convergence continued in the following years. The human-rights based approach became an organic feature of developmental and legal thinking. It led to the current situation where the two components of the development-rights based approach can no longer be separated. Being especially true from the civil society perspective, the Arab NGO Network for Development chose to follow this approach.

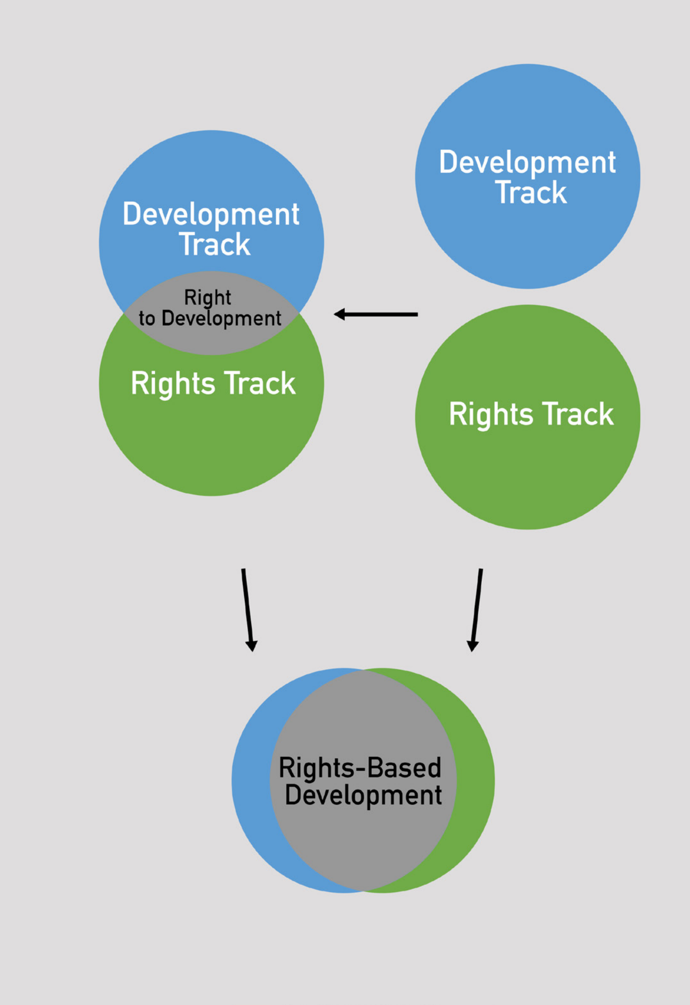


Figure 3: Development from a Rights-Based Perspective

1.2 Partnership in the Development Perspective

The evolution of the (sustainable human) development concept was a crucial transformation in developmental thought. Traditional development theories had been - and still are, to no small extent - primarily governed by the economic approach. However, the concept of human development restored the value aspect in people's lives, including economic activity. The latter became a means of people's well-being rather than a stand-alone goal. It shifted the discussion - from an almost exclusive debate between those who believe that the state alone should lead the development process and those who see that only the market can lead to that path - to a different level. The idea of a tripartite partnership between the state (public sector), the private sector, and civil society was introduced. Development can no longer be achieved without this partnership that achieves consistency between objectives and means in the service of a common goal. Thus, it aims to expand people's choices, improve their living standards, and realize their rights through active participation in the development process and benefit from its outcomes.

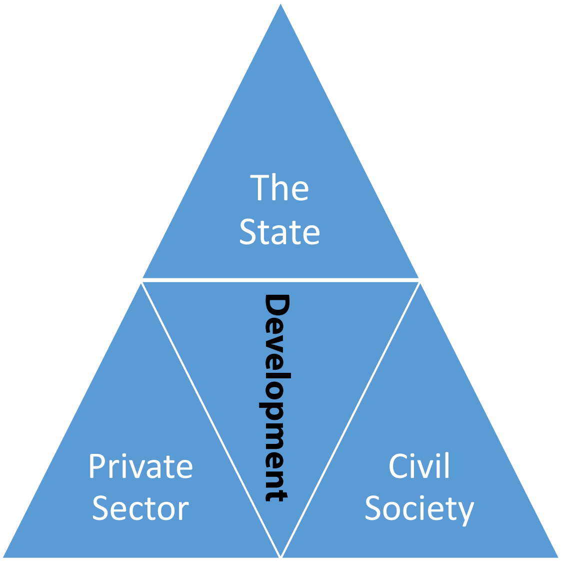


Figure 4: Tripartite Partnership

In this sense, partnership with the private sector from a human rights-development perspective is a special kind of partnership governed by the original idea of development. It is when the economy is in the people's service and not vice versa; when it is a friend of nature and the environment, not a destroyer; and when it is committed to justice and human rights, not a violator. This point is repeated in the context of the guide. Likewise, the tripartite partnership (between the state, the private sector, and civil society) is established on the assumption of serving a common goal, achieving development, and realizing rights. It should not be limited to each party's specific goals, i.e., serving political objectives and accessing and retaining power, with regard to the state, or profit, in relation to the private sector. Such a development partnership cannot materialize unless these principles are respected.

1.3 Defining Public-Private Partnerships

Preface

Development actors, especially CSO, must not lose sight of the fact that the issue involves **PPPs in the context of the comprehensive development track** in a particular country or at the regional and international levels. The question is entirely different from relationships concerning the establishment of various commercial companies and businesses. It is also different from profit-making contracts (commercial or others) among companies or between them and the government sector.

In Arabic, the common root between the word for partnership (*sharakah*) and company/society (*sharikah*) might be confusing. Furthermore, a development partner is not the same as a shareholder in a company or even the concept of stakeholder in mainstream development literature. Shared interest is always necessary for a partnership. However, it goes beyond the concept of narrow profit. And while it is natural for any partnership with the private sector to include an element of profit (otherwise, the private sector may not be interested), profit through PPPs in the development context is but one of several elements underlying and driving the partnership. A partnership that includes achieving a non-profitable development goal providing a public service or similar right, the efficient use of resources, or achieving savings for the state treasury to finance development. The above takes place **in partnership with the private sector, which profits from its contribution, although profit is not the underlying element of the partnership, as in the ordinary business of the private sector.** The goals might differ. The private sector aims for profit, while the state should implement non-profit development projects or programs. In this case, the partnership needs to be clear and include an understanding to serve both sides' goals without harming the third party, the stakeholders targeted by the project.

Mainstream International Definitions

Following this necessary warning, there does not seem to be a unified international definition of PPPs. Each party adopts an approach based on its position and background. The following are three definitions of PPPs used on the international level:

1. **OECD** defines PPPs as long-term contracts between a public (government) entity and a private sector partner or group of private companies. It entails that the latter is responsible, to varying degrees, for the design, construction, financing, operation, and good governance of facilities, to provide a service to the administration or directly to users.

2. The **World Bank** defines it as a long-term contract between a private party and a government entity,

in which the private party bears significant risk and management responsibility.

3. The **European Commission**, on the other hand, adopts four criteria to define PPPs. They are:

- The relatively long duration of the contract;
- The method of funding the project, in part from the private sector;
- The economic operator's vital role in project design, implementation, and funding the project - the public partner concentrates primarily on defining the objectives to be attained (public interest, quality of services provided, pricing policy).
- Distribution of risks.

Traditional Contracts vs. PPPs

PPPs diverge from traditional procurement contracts in several ways. Firstly, there is a difference in the **contract subject** (or what the governmental sector procures from the private sector). In the traditional procurement contract, the subject of the contract is the project inputs. In contrast, it is the outputs in the case of partnerships according to the new model. The state does not buy (or build at its expense) the assets needed to provide public service, as is the case of traditional public contracts. However, it purchases the essential services being produced. For example, public authorities do not buy (or build at their expense) a power station. Instead, they buy electricity to meet society's needs (that is, economic actors and citizens) for this service. PPPs also diverge from traditional procurement contracts in that it is not possible to conclude any traditional procurement deal in the absence of sufficient funds.

On the other hand, in some PPPs, the private partner funds the project without including the investment cost necessary to implement the project in its entirety in the first-year budget. Rather, it gets distributed over the contract's validity period through the payments made to the private partner. These payments are usually variable depending on the size and quantity of outputs.

Table 1: Traditional Contracts vs. New Partnerships

	Traditional Contract Model	New Partnership Mod-(el (PPPs
Contract/ Partnership Subject	Project Inputs (building a power (plant	Project Outputs (actual (electricity service
Financing	Budget available to government	The private sector is a partner in financing
Method of Payment	Specific payments per contract, upon signature, and in certain stages of implementation	Recovering investment through operation and/or scheduled installments for expenditure
Contract Duration	Relatively short/ Project implementation period	Long and continues beyond the completion of the project and throughout management or operation according to the contract
Role of Private sector	Implementation	Plays a role in financing, design, operation, and sometimes ownership

1.4 Examples of PPPs

There are many models for PPPs. Their number is relatively large if their details and parts are considered. The list goes on, with some slight differences in a specific aspect or legal drafting.

However, what is most relevant for CSO is to understand their logic, their main categories, and the main elements that distinguish each group. In this regard, 7 main categories of PPP contracts can be enumerated, as follows:

1. **Service contracts** are traditional contracts whereby a specific ministry or local authority contracts a private company to implement a specific project. The government or public entity provides funding from its budget. The private company's role is limited to implementation (paving a road, constructing a building, equipping governmental offices). The contract subject may be providing a service whereby the official administration or local authority assigns specific tasks to a private partner. It uses a private partner to carry out tasks that government employees can carry out. However, the public entity resorts to a private partner due to competence and skill or to reduce the burden on the outsourcing administration. (For example, most administrations contract service providers from the private sector to clean and maintain government buildings or for the maintenance of computers or electrical equipment instead of employing permanent employees to do these tasks).

2. **Management contracts** are those where the private partner manages a facility or project owned by the public sector. For example, the government contracts a private company to run a government hospital or manage a telecommunications company that remains under state ownership.

3. **Lease contracts** are when the government leases a property, facility, or project to a private company for a specific fee. The lease contract can be simple (renting a property, leasing storage facilities owned by the state to a private sector company to store its products or imported commodities). It could also be a more complex contract requiring a combined effort by the private partner, such as renting a port or bus station.

4. **Concession contracts** are where assets are owned by the state and the private partner is granted the right to finance and invest in the facility (such as building roads) or the wealth concerned (such as oil or gas), in return for usage fees or selling the product directly to the consumer, by collecting the proceeds and sharing them with the government.

5. **BOT (Build - Operate - Transfer of Ownership) contracts** are a new partnership model widely used in various types of activities. Although there are many variations in the details, the common aspect is that the private partner bears the responsibility for financing and risks. Expenses and profits are met from user fees, from the sale of the product, or through government payments over the duration of the project. The ownership of the project is transferred to the government after completion.

6. **BOO contracts (build - operate - own)** are similar to BOT, except that ownership in this case reverts to the private partner during the project's implementation or after its completion.

7. **Joint ventures** are where the public and private sectors enter into a partnership, whereby each owns a stake in the joint venture, and they share risks, gains, and ownership according to shareholding ratios. The project is managed as a private company.

Table 2: Comparison between Various Types of PPP Contracts

Name	Definition/Subject	Examples
Service contract	It includes the various contracts through which the private sector provides a service or product and can be concluded by the government or a local authority. They are subject to the rules of the public sector. Participants are from the .national-local private sector	• Building or maintaining roads • Maintenance contract .in a government institution • Collection contract for .a public institution
Management contract	It involves the full or partial management of a process in the public sector. The role of the private sector is limited to managing the process specified in the contract .and according to its terms	• State-owned cell phone service management .contract • Contract for managing .a government hospital
Lease contract	It is the leasing of a state property or project in return for a fee paid by the private sector investor, which takes over the management of the project during the contract duration. The public sector remains the .owner	• .Regular lease/rent • Private company leasing a public facility (port), whereby it provides equipment .and operation for a fixed fee
Concession contract	Full responsibility for managing, operating, financing, and executing an investment or project. Ownership, especially of assets, remains in the state's hands. Profit/return is collected by the private sector directly from the user/consumer, and a share is paid to the public sector .that owns the facility or project	• Oil or electricity .investment contracts
(BOT (Build-Operate-Transfer	The private sector is responsible for managing, operating, and implementing an investment or project and its full or partial financing. Ownership is then transferred to .the state	• Includes all types of projects, especially large infrastructure (roads, airports, .(facilities
(BOO (Build-Own-Operate	The private sector is responsible for managing, operating, and implementing an investment or project and its full or partial financing. Ownership is then transferred to .the private sector	• As above, except that ownership reverts to the .private sector
Joint venture	It is a full partnership between the public and private sectors, sharing risks, profits, and losses according to the ratios specified in the .contract	• A publicly owned company sells a portion of its shares to the private sector and is managed by a joint board of directors in the manner of private companies (or vice versa, the public sector buys stakes in

The most significant elements of the above contracts are the following:

1. **Ownership** remains in the hands of the public sector in traditional contracts; service, management, lease, and concession contracts; and BOT, which applies to the ownership of project assets in particular. The private sector is a partner in investment financing and sometimes ownership in concession contracts and BOT and of course in the case of joint ventures.

2. **Contract duration** is short-term in transitional and quasi-traditional (services or management) contracts. It increases as we move into the more complex types of contracts.

3. **Operation and maintenance** is the responsibility of the private sector in all the mentioned contracts.

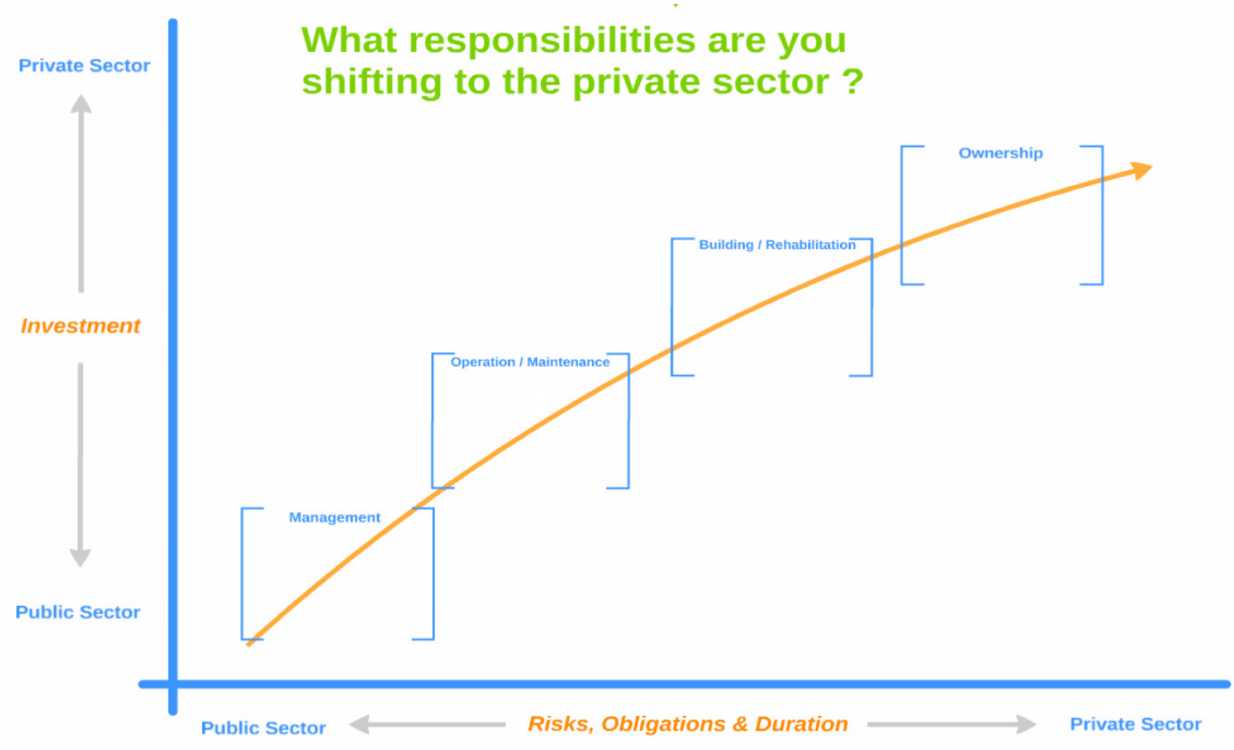
4. **Risks** fall on the public sector in service and management contracts. It is a common responsibility in lease contracts and falls on the private sector in other contracts.

Table 3: Characteristics of Public-Private Contracts

	Services	Management	Lease	Concession	BOT/BOO
Ownership of assets at end of contract	Public	Public	Public	Public/Private	Public/Private
Contract duration ((years	1-3	3-5	10-15	25-30	Varies
Operation and maintenance responsibility	Public sector	Public sector	Public sector	Private sector	Private sector
Capital investment/ Financing	Public sector	Public sector	Public sector	Private sector	Private sector
Who bears the commer?cial risks	Public sector	Public sector	Risk sharing	Private sector	Private sector
Overall level of private sector risks	Low	Low to moderate	Moderate	High	High
Characteristics	Useful as part of a strategy to improve the company's overall efficiency and promote private sector development	Could be a temporary solution to prepare for a wider private sector participation	Could improve operational and business efficiency and develop local employee capacity	Could improve operational and business efficiency, develop local employee capacity, and provide investment financing	Could develop local employee capacity and provide investment financing

A trend towards increasing the role and responsibilities of the private sector (operation, financing, risks) is evident as we move away from traditional and simpler forms into newer and more complex forms of partnerships, as indicated in the figure below.

Figure 5: Development of private sector role and responsibilities according to contract type



1.5 Potential Benefits

Calls regarding the benefits of PPPs are consistent with the prevailing economic, governance, and development discourse, especially since the emergence of the neoliberal trend.

- **Neoliberal economic discourse** is based on reducing the role of the state, especially in the economic field. It calls for expanding the role of the private sector and is consistent with the idea of partnership that entrusts the private sector with tasks usually undertaken by the state apparatus.

- **Governance discourse** and the concept of good governance in relation to business follows the same direction. It considers that the principles of modern governance require a shift to a management style in accordance with the rules of the private sector in aspects related to the performance of government tasks, with the exception of political tasks.

- Since the 1990s and from a different perspective, the **development discourse** is based on the idea of partnership between the public and private sectors in addition to a third partner, civil society. Thus, it adopts the concept of partnership and sees a developmental role for the private sector, even in the context of development and beyond mere profit.

Public-private partnership enthusiasts sum up its benefits as follows:

1. It **achieves better value for money in relation to public spending**, meaning the optimal price for the customer (citizen, user) on the basis of cost throughout the contract, quality of service provided, and risks borne by the private partner. The total price of the public and private sector tender should be less than the cost that the public authorities would bear if they provided the same level of service, including the additional costs of risks (cost overruns, delays...) that the public authorities may face.

2. The partnership contributes to **reducing the deterioration of the public budget deficit**. The partnership provides financial resources to the public authorities to allow them to realize their projects in the areas of infrastructure and the provision of social public services (education, health, water, electricity, sanitation).

3. It improves achievement, management, and performance of public facilities by integrating **private sector efficiency standards** and rules of good governance, improving the quality of services provided to the community.

4. It **meets user needs** by providing quality public services at reasonable prices by taking advantage of the private sector's "management efficiency" and its ability to innovate and stimulate competition.

1.6 PPPs in Practice

There is definitely an objective basis for saying that there are benefits to a partnership between the public and private sectors. However, the matter is not as simple as it appears, as practice has shown that these benefits may not necessarily materialize:

1. **Unconvincing results:** Numerous studies show the limitations of PPP projects and the lack of sufficient data indicating that they are more efficient and better performing. The contribution of PPPs does not, on average, exceed 15 to 25 percent of the total investment in infrastructure. While this percentage is exceeded for some sub-Saharan African countries (reaching 29 percent), two countries, Nigeria and South Africa, account for 60 percent of private investment. Furthermore, a large majority of these projects concern limited and highly profitable sectors such as electricity and telecommunications.

2. Data show that **the cost of PPP projects tends to be greater compared to traditional public deals**. For example, a report by the European Investment Bank (EIB) that reviewed 227 road construction projects in 15 European countries showed that the cost of projects completed through PPPs was 24 percent higher than those achieved through traditional public deals. In fact, PPP mechanisms remain more attractive to governments due to being calculated outside the general budget, enabling these governments to keep the public debt ratio at a low level.

3. PPPs carry with them the **risk of favoritism, monopoly, and exclusion of SMEs, particularly national and local**, from competition. In France, for example, three public works and construction companies have a monopoly on this type of contract.

4. **The justification for reducing the burden on the state or local community budget is not**

based on valid scientific studies as much as on ideological considerations. As long as citizens pay in any event, even in the case of reducing the budget burden in the short term, future generations will bear the cost in the long run.

5. **Interest rates related to PPPs are higher** in most cases than what the government sector receives, which disproves the lower-costs justification in this form of privatization.

6. The **acquisition of PPPs by large companies, especially multinationals** encourages monopoly and reduces the field of competition. Collusion between major groups to raise the prices of projects has been evident in some cases, leading to higher costs, including the prices of public services. Thus, it eliminates the argument of providing public services at reasonable prices.

1.7 Different Opinions

There is a clear difference of opinion regarding the practical implementation of PPP mechanisms in implementing projects, according to the various backgrounds, perspectives, and interests. Four parties are directly concerned with PPPs: the state (government), the concerned private company, current or potential workers in enterprises and projects, and citizens and society (national or local). Each has its points of interest and priorities that do not exactly coincide with the other parties. Thus, partnership evaluation and its results will differ according to each party. The responsible state or government is concerned - at least in principle and in the event that it is not corrupt and in collusion with companies - with providing good-quality and low-cost services to all. On the other hand, contracted companies are only concerned with making profit, albeit without completely excluding developmental concerns. Project workers are concerned with decent work conditions and having their rights respected. Finally, citizens want quality and affordable services. However, as individuals or members of a national or local community, they have further interests: their rights as a whole, protecting the environment and resources, gender equality, and the right of democratically elected local authorities to exercise their freedom in setting policies and prices and managing facilities according to national interests. They are also keen to exercise their right to participate in the management of development and the concerned facility and that they exercise control over the manner their resources are managed.

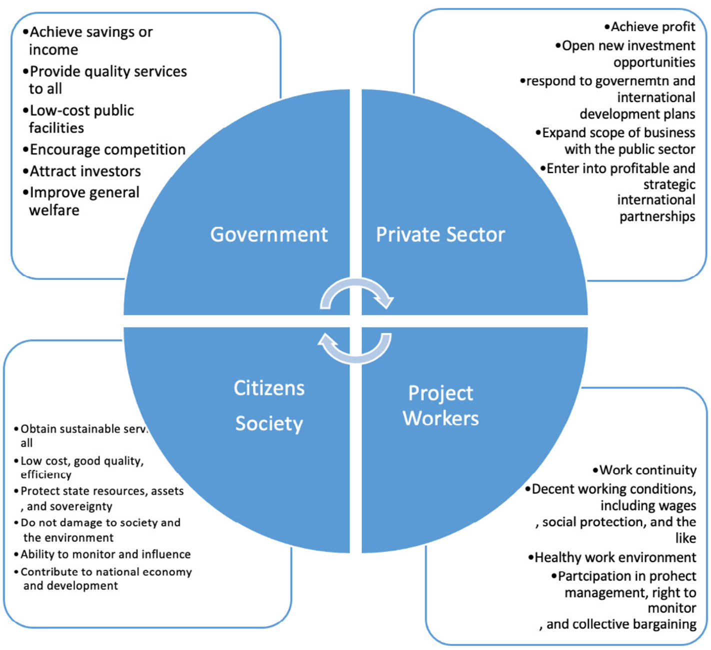


Figure 6: Points of interests and priorities of parties concerned with PPPs

The interests of the four parties are not all compatible or identical. Thus, CSOs, expressing the interests of the general population, must avoid accepting the prevailing discourse that only sees the benefits of PPPs. It must approach the issue and contracts implemented by the state with the private sector from a developmental-human rights perspective, which protects all rights and the direct and future interests of the country and all citizens and residents.

Table 4: Types of contracts

Type		Operations & Maintenance	Financing	Ownership at end of contract	Duration of contract ((years
Management Contract (Service, Management or Operation, Management (& Operation	Service Outsourcing	Private Sector	Public Sector	Public Sector	3-5
Lease Contract	Leasing	Private Sector	Public Sector	Public Sector	5-8
Build, Lease and Own	BLO	Private Sector	Private Sector	Private Sector	25+
Build, Lease and Transfer	BLT	Private Sector	Private Sector	Private Sector	25+
Build, Transfer and Operate	BTO	Private Sector	Private Sector	Public Sector	25+
Build, Operate and Transfer, or Build, Own and Transfer	BOT	Private Sector	Private Sector	Public Sector	25-30
Build, Own and Operate	BOO	Private Sector	Private Sector	Private Sector	25+
Build, Own, Operate, and Transfer	BOOT	Private Sector	Private Sector	Public Sector	20-30
Build, Rehabilitate,Operate and Transfer	BROT	Private Sector	Private Sector	Public Sector	20-30
Build, Rent and Transfer	BRT	Private Sector	Private Sector	Public Sector	15-20
Design, Build, Finance and Operate	DBFO	Private Sector	Private Sector	Public Sector	20-30
Design, Construct, Manage and Finance	DCMF	Private Sector	Private Sector	Public Sector	20-30
Rehabilitate, Lease and Transfer	RLT	Private Sector	Private Sector	Public Sector	15-20
Rehabilitate, Operate, Own and Transfer	ROT	Private Sector	Private Sector	Public Sector	15-20
Rehabilitate, Own and Operate	ROO	Private Sector	Private Sector	Public Sector	20-30
Modernize, Own, Operate and Transfer	MOT	Private Sector	Private Sector	Public Sector	20-30
Concession		Private Sector	Private Sector	Private Sector/ Public Sector	25+
Build, Operate and Renewal of Concession	BOR	Private Sector	Private Sector	Private Sector/ Public Sector	25+
Full Privatization		Private Sector	Private Sector	Private Sector	25+
Partial Privatization		Private Sector	Private Sector	Private Sector	Unspecified or according to licence duration

Part Two: *PPPs in Arab Countries*

2.1 Circumstances Underlying PPP Experiments in Arab Countries

The first experiences of PPPs date back to the beginning of the twentieth century in some Arab countries such as Egypt and Morocco. They gained a strong momentum when Arab countries began adopting the neoliberal model in the early 1980s, based on the trio of economic liberalization, privatization and macroeconomic stability. The neoliberal approach considers, on one hand, that state intervention in the economy and the provision of public services ineffective, given that the public sector often turns into a hotbed of bureaucracy, corruption, mismanagement, and waste of money. On the other hand, the private sector was promoted for its ability to achieve greater efficiency and better management, in addition to its continuous tendency to innovate and use modern technologies. The state's ability to continue playing its economic and social role was limited by the scarcity of financial resources and the need to control the state's budget deficit, external balances (the deficit in the balance of payments), and inflation. Thus, advocates of neoliberal model see PPPs as a preferred solutions to meet the needs of society in terms of public services (due to the existence of an international agreement to liberalize services in hundreds of sectors) and infrastructure such as energy, transport, ports, airports, and even social services, education, health, water, and sanitation.

Financial institutions, including IFIs, such as the World Bank and the IMF, or European institutions, mainly EIB and EBRD, played a pivotal role in pushing Arab countries into adopting a PPP prescription to meet their needs in infrastructure and services. They sometimes used the incentive of "aid for development" or technical assistance and at other times the weapon of conditionality.

Blended Finance

Definition: Blending can be defined as the mixture of public official development assistance (ODA) with private and public resources, principally in order to attract additional development finance from other parties and actors. Blending works in different ways depending on the sources of finance the ODA in question is combined with.

Table 5: Blended Finance Mechanisms: Overview

<table>
<tr><th>Instruments and Approaches</th><th>Description of ODA use</th><th>Associated Risks</th></tr>
<tr><td>Investment Grants</td><td>Used to reduce the general cost of the project and investment needed from other parties. Grants make the project more feasible by attracting external financing, and are subsequently used to pay .for goods linked to the project</td><td rowspan="5">Risk of financial incentives and interests outweighing development principles
Risk to differentiate in favor of middle-income countries rather than poorer countries, or some sectors rather than others.
Risk of crowding out private financing and distorting markets (competition among financiers could lead to inefficient loans or over-subsidization).
Risk of deprioritizing transparency and accountability (banking confidentiality in private sector).
Risk of unclear monitoring and evaluation methods also relating to the amount of tied aid that is reflected in official reports.
Debt risks for developing countries of increasing lending.
Risk of creating double standards for ODA projects, risk that blending will not be subject to the same principles and requirements as traditional forms of support.</td></tr>
<tr><td>Interest Rate Subsidies
((Blended loans</td><td>The grant is used to cover part of the interest payments. The project beneficiary then obtains a subsidized loan at a below-market interest rate. The interest-rate subsidy is generally provided in relation to loans from third actors (e.g. a development .(finance institution</td></tr>
<tr><td>Technical Assistance
(Technical/Operational
(Expertise</td><td>A technical assistance grant is given to a company to reinforce its structure and increase the chances of attracting finance. It can also be used after funds have been granted to increase the chances of success. It is usually combined with other systems of finance.</td></tr>
<tr><td>Loan Guarantees</td><td>A grant is used to cover the lender's losses in case of default so that it agrees to finance the project .or to proceed on better terms</td></tr>
<tr><td>Structured Finance</td><td>Donors offer finance with a lower repayment priority than the debt issued by other financiers. In case of default, donors would first absorb the losses. Mezzanine loans are a form of structured .finance blending debt and equity interests</td></tr>
<tr><td>Equity Investment</td><td>A grant is used as a direct capital support to a company or investment fund, usually to send a hint to .other investors and attract additional capital</td><td></td></tr>
</table>

2.2 Size and Sectoral Distribution of PPPs

The infrastructure needs of Arab countries (water, energy, public services in cities, etc.) are estimated at 300 billion US dollars (Econostrum 2011). However, the volume of investments through PPPs remains modest if compared to the achievements of recent years. During the past three decades (1990-2019), the total investment in the infrastructure sector in which the private sector participated in the Middle East and North Africa reached 60.8 billion US dollars, through a total of 221 projects (201 PPPs and 20 projects or 9 percent outside the partnership mechanism). These projects were implemented in 12 countries (Algeria, Djibouti, Egypt, Iran, Iraq, Jordan, Lebanon, Morocco, Syria, Tunisia, Palestine, and Yemen). The highest annual investment in 2017 was nearly 6 billion US dollars, compared to 5.5 billion in 2006. It was less for the remaining years. The 5-year average preceding 2019 was about 3 billion dollars (see the following figure).

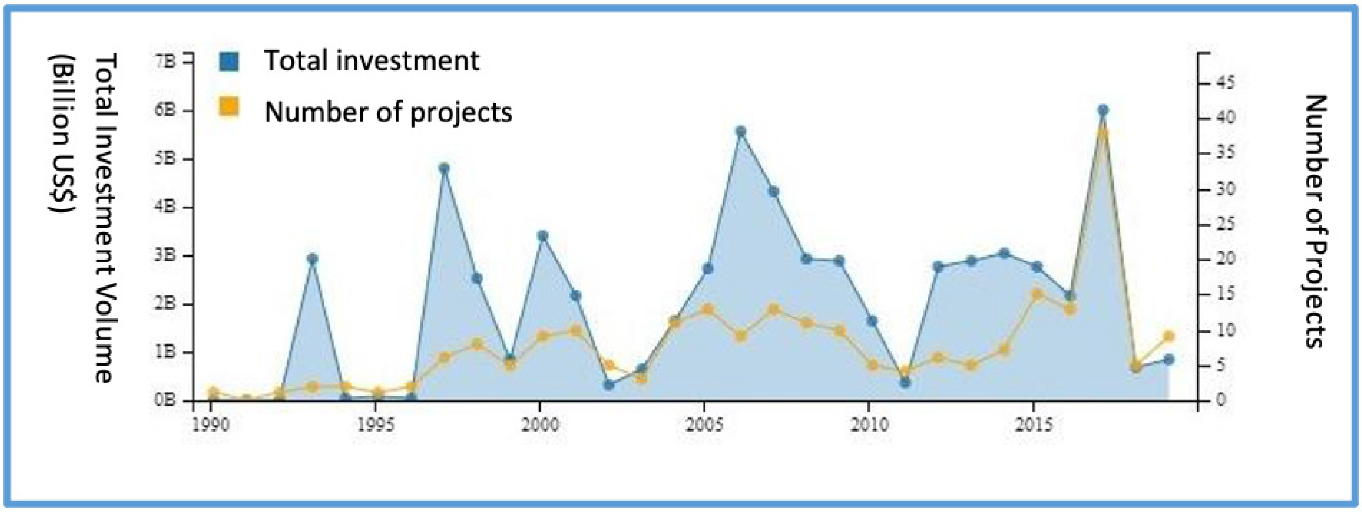


Figure 7: Total Investment and Partnership Projects in the MENA Region 1990-2019

This trend confirms the modest volume of private investment in infrastructure, including PPPs, in the MENA region compared with other regions in the world. As the figure below shows, MENA's share has always been the lowest during the past decade. It amounted to less than half the share of sub-Saharan Africa (144 billion US dollars compared to 60 billion for MENA, for 758 projects compared to 221 - see the following figure).

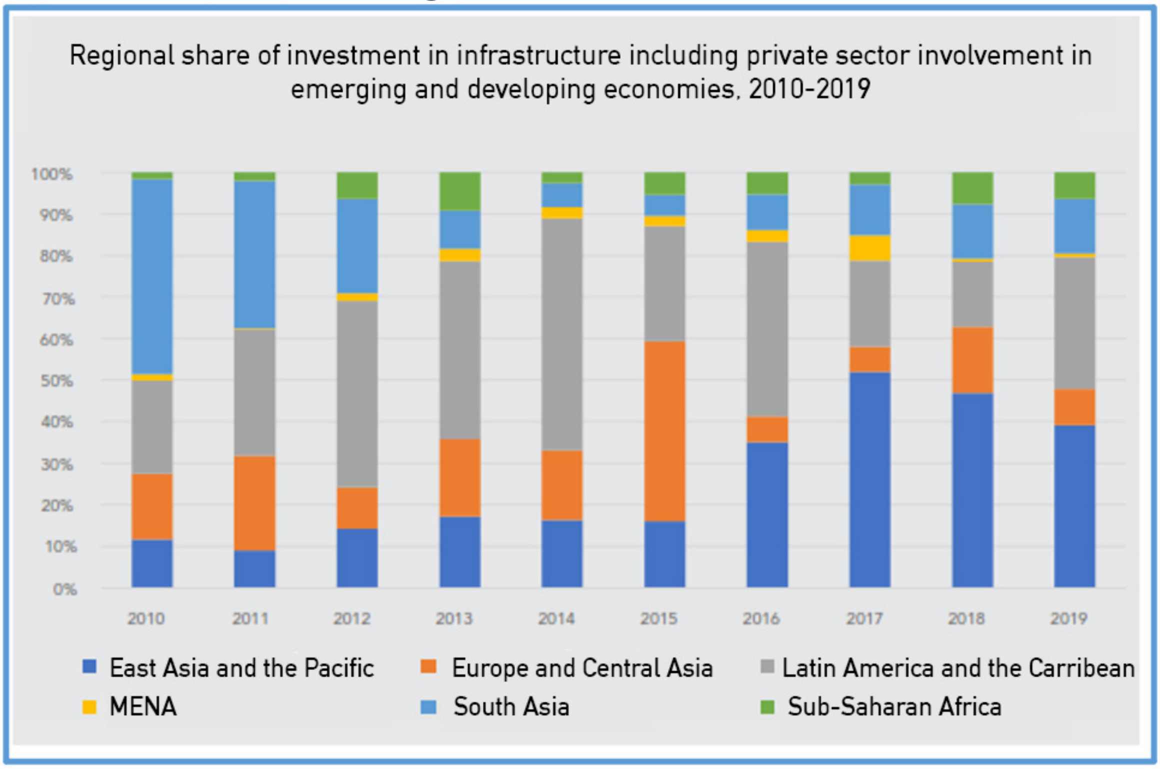


Figure 8: Partnership investment distribution by region and time period

During the past 30 years, electricity projects accounted for about half of the total number of projects (108 projects out of 221) and investment volume (33.9 billion US dollars out of 60.8 billion). The remaining sectors received the other half, as shown in the figure below, including the ICT and transport (ports and airports) sectors.

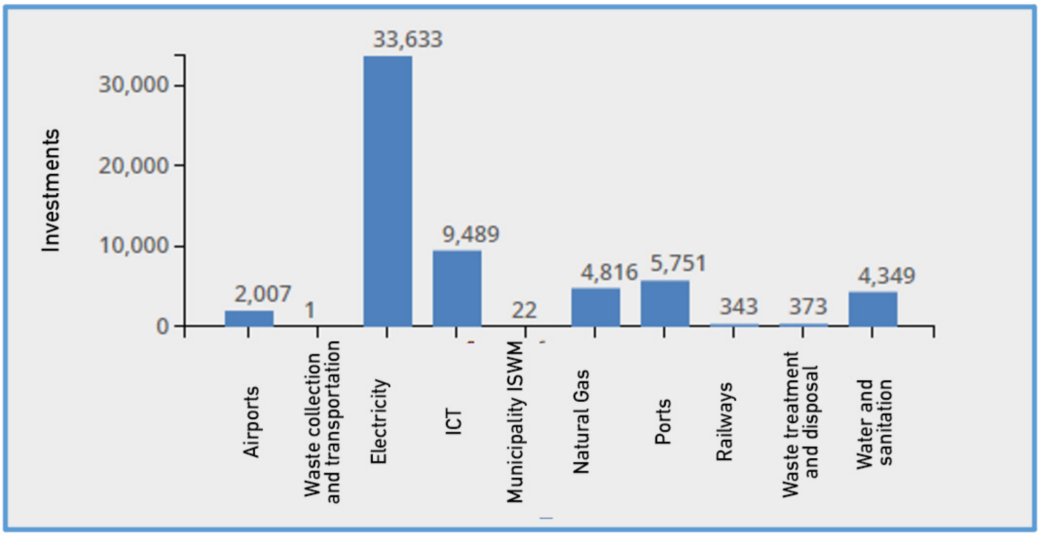


Figure 9: Partnership investment by sector - MENA (in million US dollars) 1990-2019

2.3. Fluctuation in investments

Notably, the number of projects and the volume of investments are not fixed. Large variations are recorded from one year to the next (as we can see from Figure 8 above) due to several factors such as the availability of funding, the process of negotiating the partnership, and the situation in the countries concerned. Stability and profit rates in a country can stimulate investment or constitute a factor of expulsion from one region to another. In some cases, South Asia is at the forefront of attractive regions. At other times it might be East Asia and the Pacific or Latin America, or Europe and Central Asia. Strategic political developments play a major role, since investments in partnership are large and long-term. They are also affected by the degree of saturation, the absorptive capacity of the countries concerned, and the presence of previous investments. However, the share of sub-Saharan Africa is stable and at a low level, while the share of Arab countries is the lowest, as previously mentioned. The 2019 data indicate that five countries, namely China, Brazil, India, Vietnam, and Russia, together account for about 63 percent of total investments in infrastructure in the form of PPPs. In 2019, MENA's share declined to less than 1% of total investments (see Figure 8).

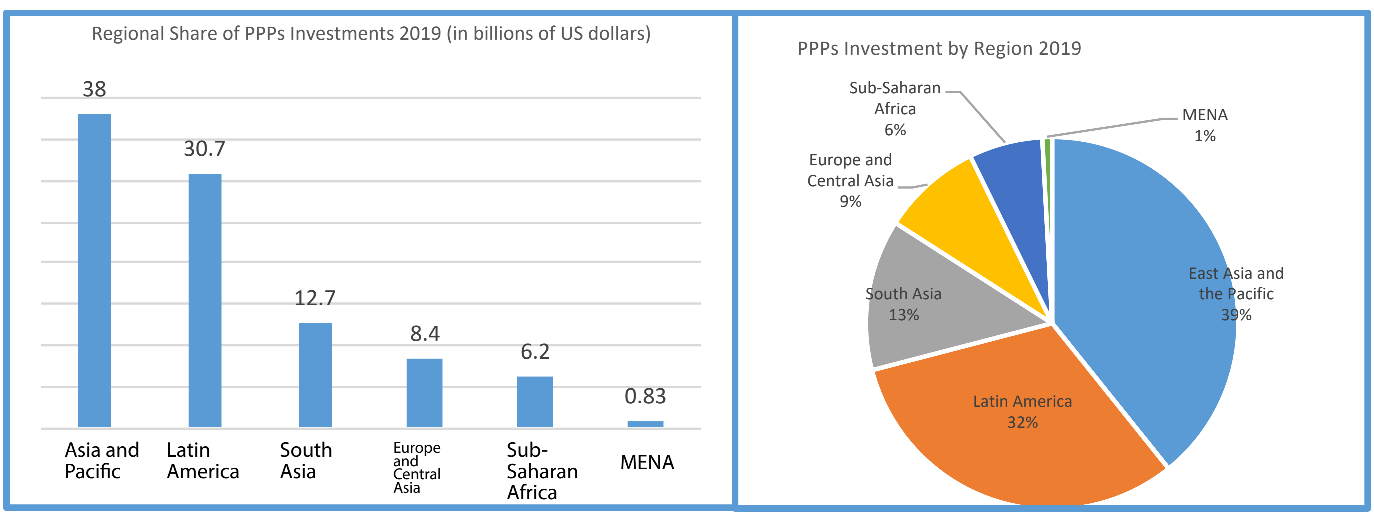


Figure 10: Share of Investment and Partnership Projects by Region 2019 (million $ and %)

The biggest contributors to investment in the region during the past three decades were France (8.6 billion dollars), Spain ($4.6 billion), the UAE and Saudi Arabia ($4.4 billion each), Japan and Morocco ($3.4 billion each), Denmark ($1.8 billion), and Egypt and Korea ($1.6 billion each). Greenfield projects accounted for 68 percent of investments, brownfield projects accounted for 12 percent, and the remaining went for divestiture.

2.4. PPPs in Arab Countries

Necessary clarification

As mentioned earlier, a distinction must be made between the private sector's contribution to infrastructure projects and projects governed by PPP mechanisms. The previous paragraphs were taken from the World Bank database on private sector contribution to infrastructure, which is the preeminent international source in this field. However, as was noted previously, the related regional division does not fully align with the scope of this research (the Middle East and North Africa - where Iran is included and four Arab countries of concern are excluded). It also excludes GCC countries. The database also covers all private sector contributions and is not limited to the PPP mechanism. However, only 9 percent of projects in the region since the early 1960s were implemented outside the partnership mechanism.

Nevertheless, the database cannot be ignored. It is the largest and most organized and allows international comparisons between different regions to be made relatively easily. But despite the regional discrepancy explained above, it is generally expressive of realistic trends in the countries of the region (without the GCC). In this context, regional and national NGOs need to exert some effort to delve into the research and select relevant indicators and data, especially with regard to the geographical scope, and to distinguish between PPPs and other projects, which the database allows with relative ease.

The following paragraphs include a targeted use of the database to extract what is related to PPP contracts between 1990 and 2019 in all Arab countries (15 countries covered by projects, except for the six GCC countries for which no data is available as they are considered highly developed countries and Libya). A sub-database was built from the 11 Arab countries included in the site's MENA region, in addition to 4 Arab sub-Saharan countries: Mauritania, Comoros, Somalia, and Sudan. The 20 projects that were not implemented within the PPP mechanism were also excluded. The following are the most notable results:

PPPs in Arab Countries

Based on the database above, the first PPP contract was signed in Yemen in 1990. The number of PPPs since then reached 217, totalling US$55,420 billion and implemented in 15 countries.

The highest share of projects went to Egypt (55 projects), followed by Jordan, Morocco, and Algeria. The largest share of funding went to Morocco (35 percent), followed by Jordan, Egypt, and Algeria. The last four countries received 83 percent of total funding and 73 percent of total

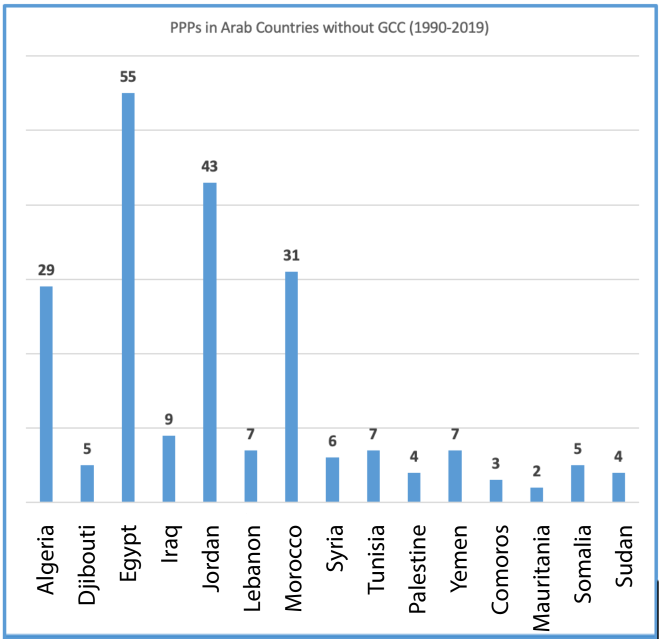


Figure 11: PPPs in Arab Countries without GCC (1990-2019)

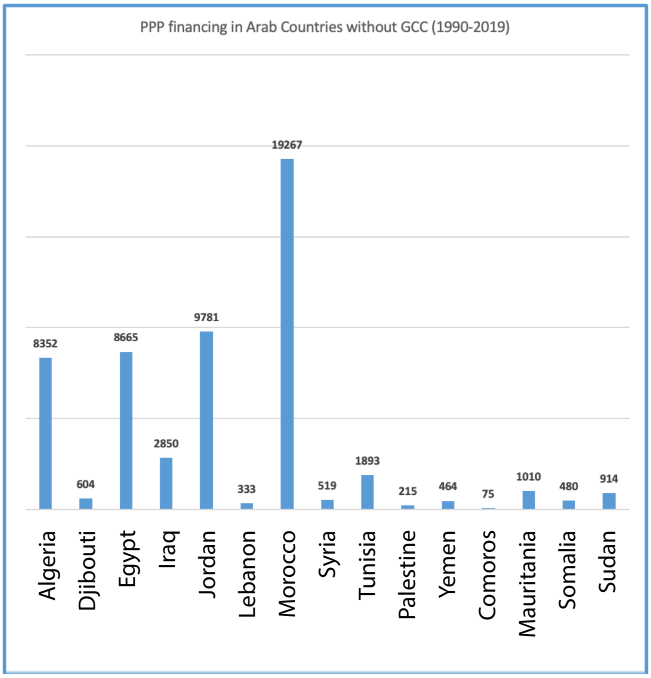


Figure 12: PPP financing in Arab Countries without GCC (1990-2019)

In general, the level of private sector investment, especially foreign, in a particular country is determined by politics (external relations, internal political orientations, stability, national legislative framework) and profit (investment environment, facilities, level of profit and availability of sectors that are of interest to global companies, geographical proximity). However, other factors emerge when analyzing other PPP components.

Distribution by Year

Neither the number of PPP projects nor the volume of their funding is stable from year to year. Several other factors intervene in determining investment levels, including purely technical ones related to the availability of financing or the level of internal satisfaction and absorptive capacity of receiving countries. (See Figures 13 and 14 below).

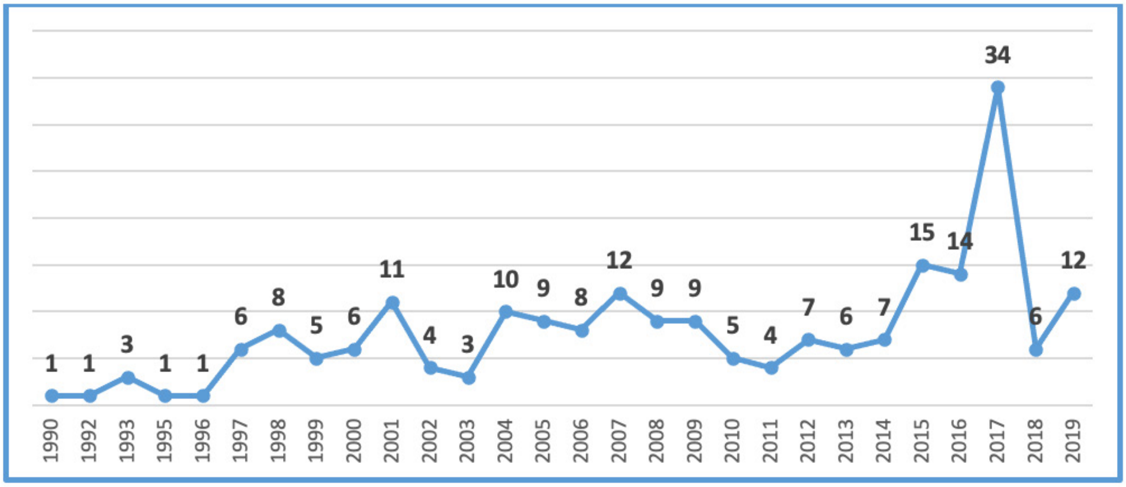


Figure 13: Number of PPPs in Arab Countries (without the GCC) by Year

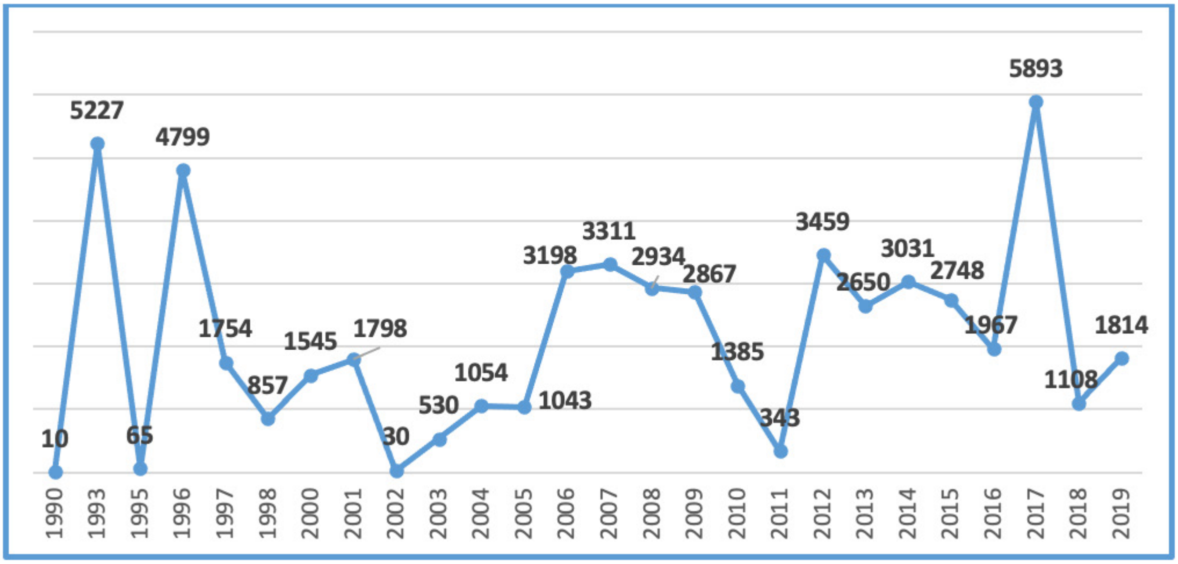


Figure 14: PPP Investments in Arab Countries (without the GCC) in US$ millions

Two points of interest for regional and national sides appear:

1. The **investment level** through PPPs (and especially foreign private sector contribution to infrastructure projects) **cannot be accurately predicted** for the following years. Thus, it is not possible to draw trends and projections for economic growth and the impact of such projects, unless negotiations have come a long way, and they are ready for signature and implementation.

2. By monitoring the **interconnection between fluctuations in the level of funding in these projects and international political and economic developments or specific regional or national developments**, regional and national networks can carefully follow-up such potential interdependence and analyze the impact of specific policies, legislation, or events on future investments, whether in terms of developments in the countries sponsoring the financing or within beneficiary countries.

Preferred Sectors for PPPs

The distribution of projects by sector indicates the private sector's preferred focus when partnering with the public sector. According to available data on 15 Arab countries (without the GCC), 59 percent of total financing over three decades went for conventional and renewable electric energy projects (around US$32.5 billion, out of 55.4 billion). The same applies to the number of Projects (103 out of 217). Next in importance is investment were the natural gas, ports, and water and wastewater sectors. The shares coincide with the increasing global interest in environmental affairs, climate change, and energy, as most of the projects are related to new trends in this field.

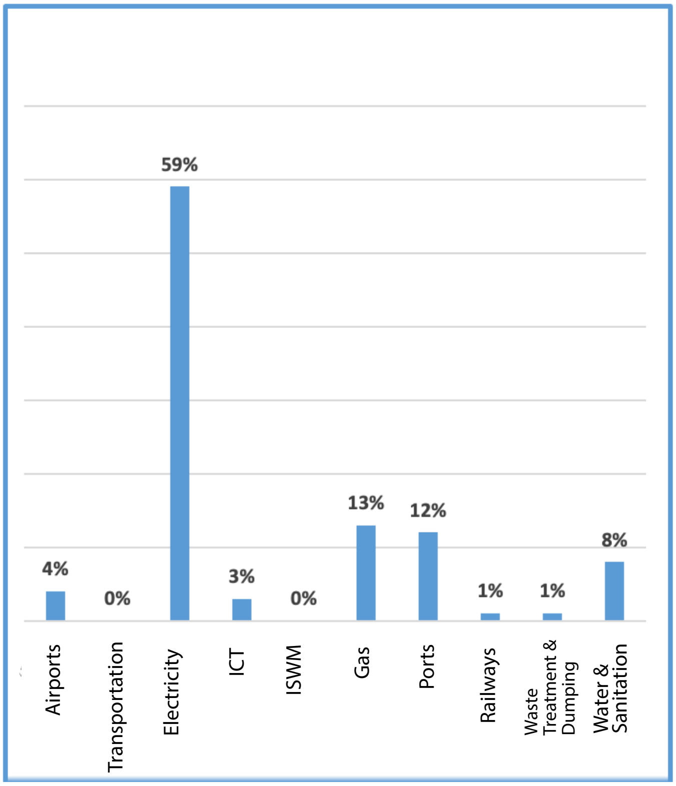


Figure 15: PPPs Distribution by Sector in Arab countries without the GCC (1990 - 2019)

The distribution by number of projects is almost the same. The discrepancy with financing ratios is due to the cost and size according to sector, without implying less profitability. For example, the ICT sector received 11 percent of the projects and 3 percent of financing, suggesting lower costs. On the other hand, airports represent 6 percent of the projects and 4 percent of financing. The database also allows projects to be classified according to their size when needed.

Types of Contracts

The nature and type of contracts is another aspect in PPPs that deserves attention. Most notably, the private sector in the Arab region seems to have a preference for partnership with the public sector in greenfield projects. This type of contract represented 71 percent of the total number. Contracts for developing or expanding existing brownfield projects and converting them into PPP contracts represented 15 percent. The remaining 14 percent went for management contracts, where projects do not require construction or physical rehabilitation (see the column to the right in Figure 16).

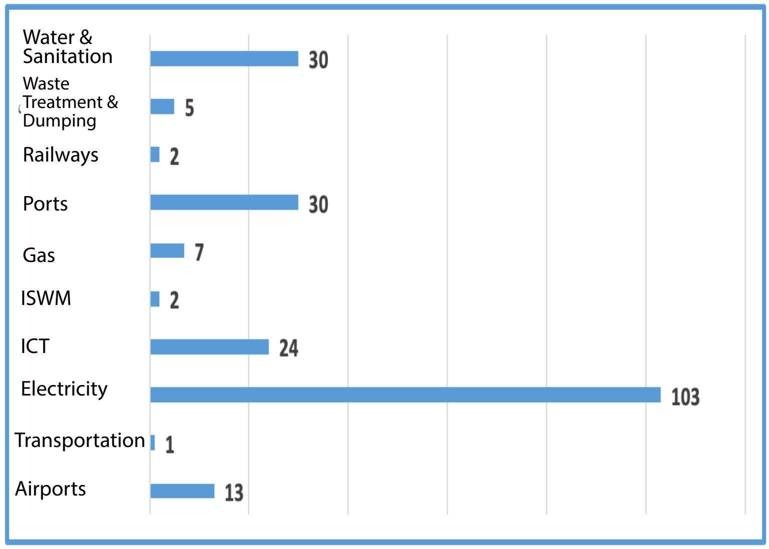


Figure 16: Number of PPPs by Sector in Arab Countries (without the GCC)

On the legal level and national PPP regulations, the annexed figure shows the distribution of projects according to legal type of contract (see Table 4: Types of Contracts in Section One). The biggest share or 38 percent went to BOO contracts, which transfers ownership to the private sector and are considered a form of direct and explicit privatization. The second biggest share (29 percent) went to BOT contracts, where the private sector has a major role in building, financing, and management, as well as benefiting from revenues throughout the contract period before returning the ownership to the state. If BROT projects are added to BOT projects (as the former includes the additional component of rehabilitation), the share will add up to 38 percent. Other types of contracts seem to be less important. However 13 percent of contracts involved management.

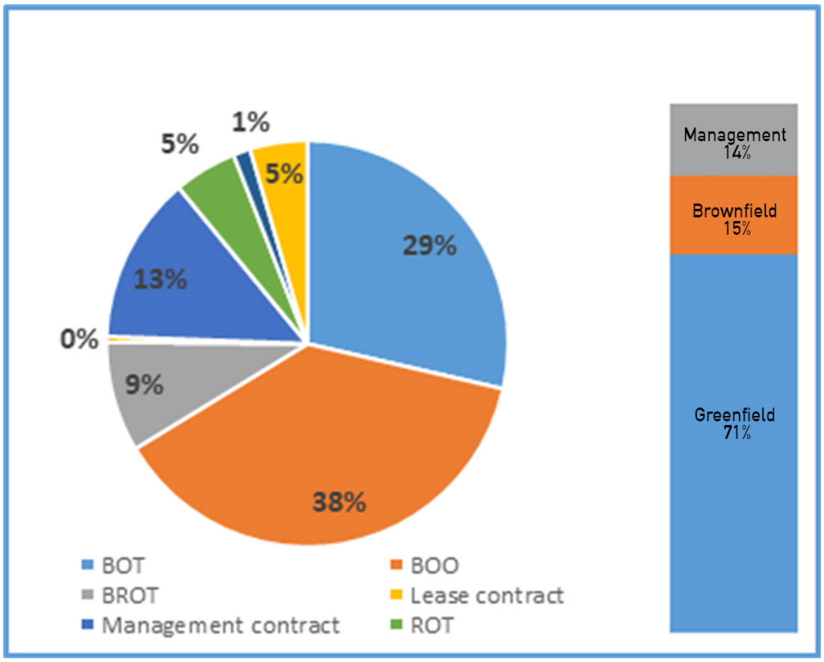


Figure 17: Distribution of PPPs by Type of Contract in Arab Countries (without the GCC) 2019- 1990

2.5 Breakdown of PPPs in 2019

The total amount of funding made available through PPP mechanisms in the MENA region in 2019 amounted to about US$826 million allocated to 9 projects, an increase of $160 million from 2018 ($666 million earmarked for 5 projects). The number of projects for 2019 was 9 and the number of participating countries was 4: Egypt, Morocco, Tunisia, and Jordan. Adding Arab countries classified by the World Bank in the sub-Saharan Africa region, namely the Comoros, Mauritania, and Sudan, the number of countries covered becomes 7, in which 12 projects have been implemented, with a total financing of $1.914 billion.

The following table shows the distribution of investments and projects among the seven countries:

Table 6: PPPs in Arab Countries 2019 - by Country and Sector

Country	No. of Projects	Investment (million US$)	Sector and Type of Contract
Egypt	2	485	Port (BOT); Wind Energy (BOO)
Morocco	5	257	Waste Management; Solar and Wind Energy (BOO)
Jordan	1	74	Solar Energy (BOO)
Tunisia	1	10	Solar Energy (BOO)
Sudan	1	604	Port (Management)
Mauritania	1	310	Port (BROT)
Comoros	1	74	ICT (BOO)
Total	12	1814	

Port management projects received 59 percent of the total funding. Electricity projects - especially renewable - represented 31 percent, compared to 6 percent for waste collection and treatment projects, and 4 percent for ICT. Data on the countries contributing to financing in Sudan, Mauritania, and Comoros is not available. However, for other MENA countries, the number one contributor in 2019 was Japan ($276 million, out of $826 million), followed by the UK, the UAE, and Ireland.

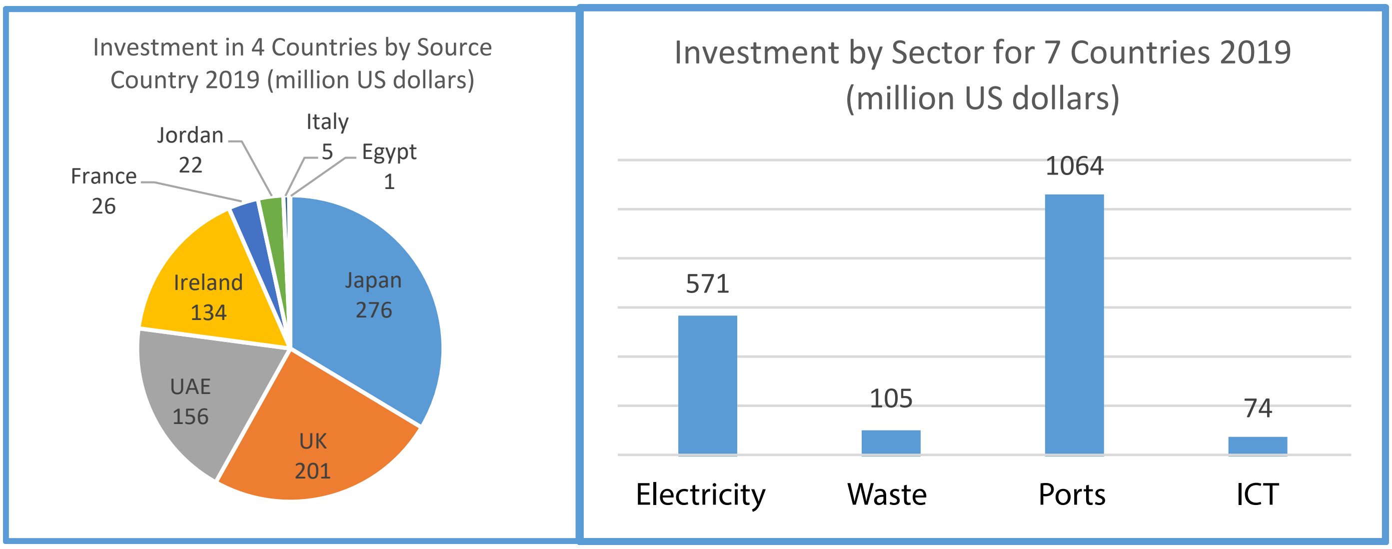


Figure 18: PPPs in Arab Countries by Sector and Source of Financing – 2019 (million US dollars)

The database provides detailed information on six out of the nine projects, all of which are in the BOO category. All projects have a duration of 20 years, except for the 25-year contract in Tunisia.

The Arab region does not seem attractive for PPP projects due to several factors. They include the effects of the global financial crisis on the capacity and terms of credit provided by international banks; political instability, wars, and conflicts that haunt the region; and the lack of guarantees that meet multinational companies' investment requirements.

On the other hand, global financing comes from several sources. Loans make up the biggest share and amount to 67 percent of total investments (46 percent in external debt and 21 percent in internal debt). The attached figure shows the total funding distribution for 2019.

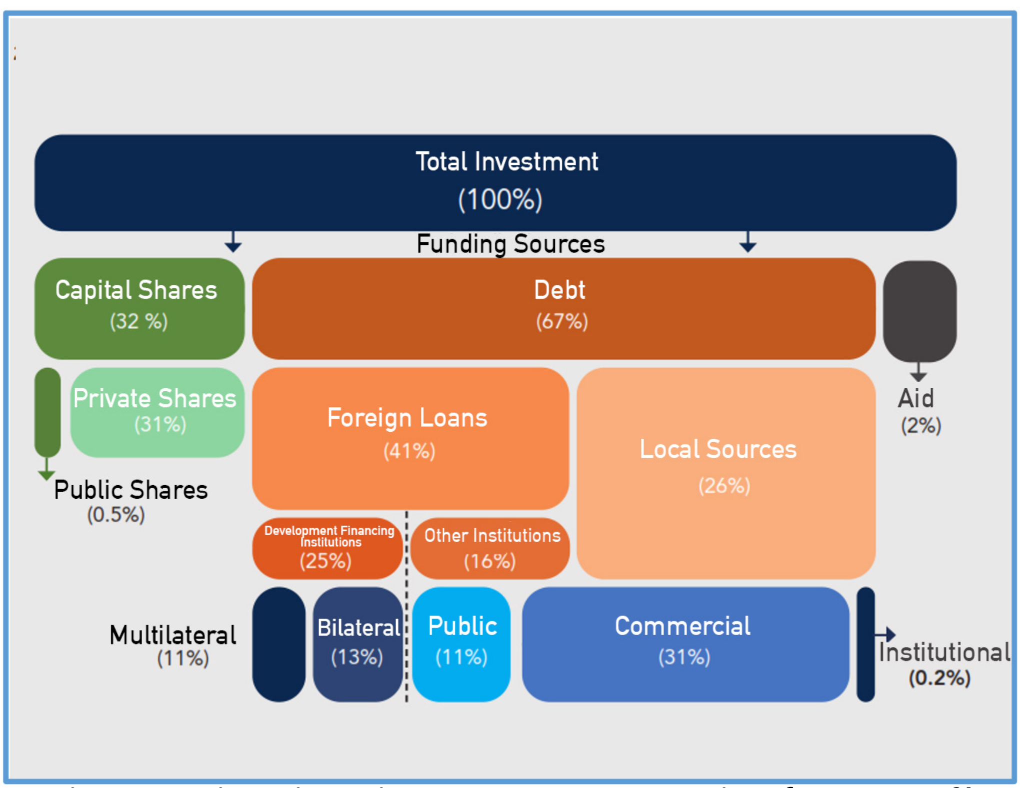


Figure 19: Financing Private Sector Investment in Infrastructure[24]

However, the share of foreign debt in the MENA region amounted to 94 percent in 2019 (up from 58 percent in 2018). The great discrepancy from one year to the next (in all regions of the world) means that it is not possible to rely on a few years to map development trends due to the rapid changes in investments (as indicated in several paragraphs above). Even for relatively long-term averages, future ratios cannot be predicted due to uncontrollable external factors, making forecasting techniques based on econometric projections less accurate. The figure below shows that the share of external debt from financing was highest in the MENA and much higher than other regions, which is an indicator of external dependency.

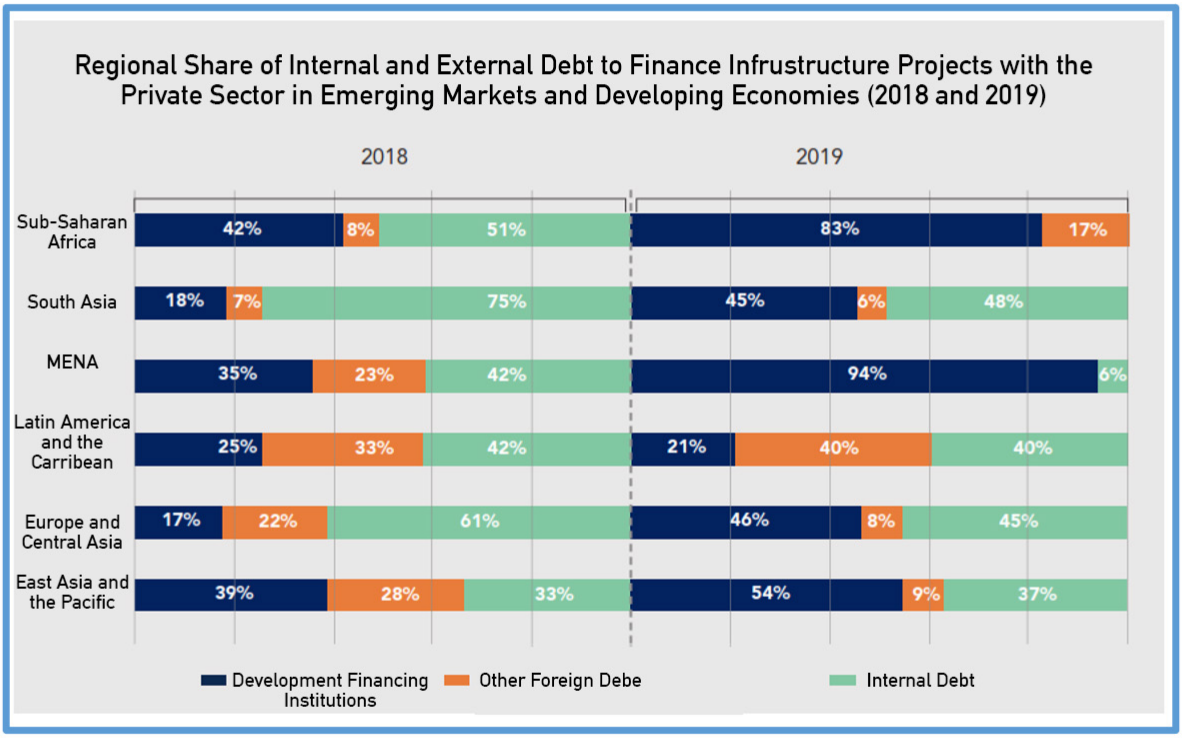


Figure 20: Share of Internal and External Debt from Total Investment Financing by Region (%) 2019 [25]

2.6 PPPs in the GCC

Although data on the GCC and advanced industrial countries is unavailable through the database above, in the past decade, GCC states were prominent in the Arab region regarding the use of PPP mechanisms. Between 2007 and 2011, PPPs made up more than 80 percent of projects with private financing in the region, amounting to 54.4 billion US dollars. The biggest beneficiaries were UAE and Saudi Arabia, with 37 percent and 30 percent of total funding for projects concluded in the GCC.

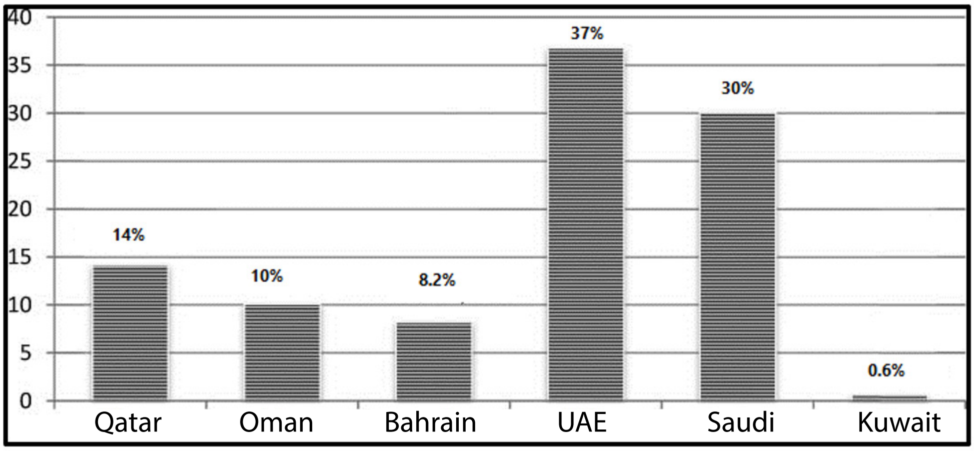
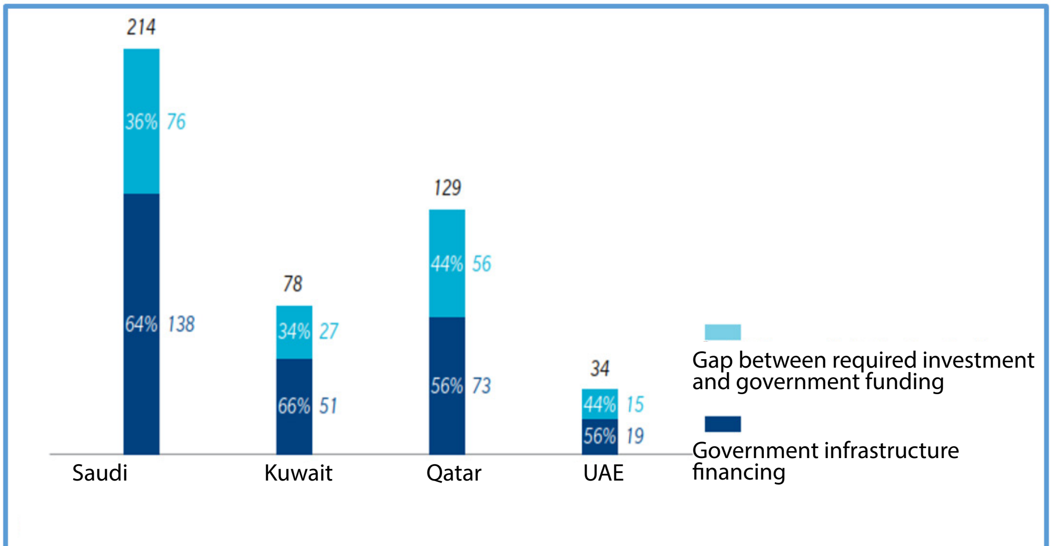


Figure 21: Distribution of PPP Financing in the GCC 2007-2011[27]

GCC's experience with PPPs is unique. Its rationale is different from developing countries' high need for financing - especially external - due to the shortage of internal resources and budget deficits. GCC countries, on the other hand, aim to diversify their economies by employing the financial surpluses they accumulated. Their neoliberal choices means further integration into the global economy in both directions (receiving investments and financing and contributing to investment and financing in other countries as one form of investing their financial surplus). However, the financing aspect has not been completely absent, especially in recent years. Frequent fluctuations in oil prices, heightened tensions in the Gulf, and the increase in military spending, which consumes a large part of the surplus, had threatened to delay or cancel some projects and required additional funding.

The main growth driver in the GCC countries is based on huge investments in infrastructure, especially the transport sector (land, sea and air), and water, including desalination and wastewater treatment projects (due to climate pressure and water scarcity), and energy (electricity, oil and gas), in addition to the critical construction sector. Some of those projects are expensive and amount to several billions of dollars (for example, 4 billion for Al-Khairan Power Station in Kuwait, 2.5 billion for Umm Al-Hol Power Station in Qatar, and 1.2 billion for Prince Muhammad bin Abdulaziz Airport in Saudi Arabia; projects also include huge installations and equipment for the World Cup in Qatar and the Dubai Expo, both of which were to be completed by 2020). Despite the availability of relatively large financial surpluses in these countries, the cost of these planned projects amounts to $455 billion between 2018 and 2022. A study conducted in 2018 found that the financing gap was around 38% of the amount. The gap is expected to be greater due to the general economic decline in the countries of the region, especially with the decline in oil prices and the exacerbation of wars, conflicts (Yemen), and hostility with Iran, in addition to recent tensions with Qatar (see figure below).



Note: Analyses considers infrastructure projects planned by the state up to 2040, based on various national developmnet strategies. Commitments were then adjusted for 2022-2018. Source: Saudi Vision 2030, Kuwait National Development Plan, Qatar National Vision 2030, UAE Vision

Figure 22: Projected Financing Gap 2022-2018 in GCC Infrastructure Projects (billion US dollars)[29]

Despite the enabling environment for PPPs in the GCC, the contribution of these mechanisms is still limited in practice. In 2017, 70 projects in the GCC were under these mechanisms, but PPP contributions made up less than 5 percent of total infrastructure financing between 2011 and 2017. Sectoral distribution for 2018-2022 shows that transportation would receive the biggest share, followed by construction (24 percent), and electricity (21 percent). The three sectors make up 70 percent of the total planned financing of US $118 billion for the same period.[30]

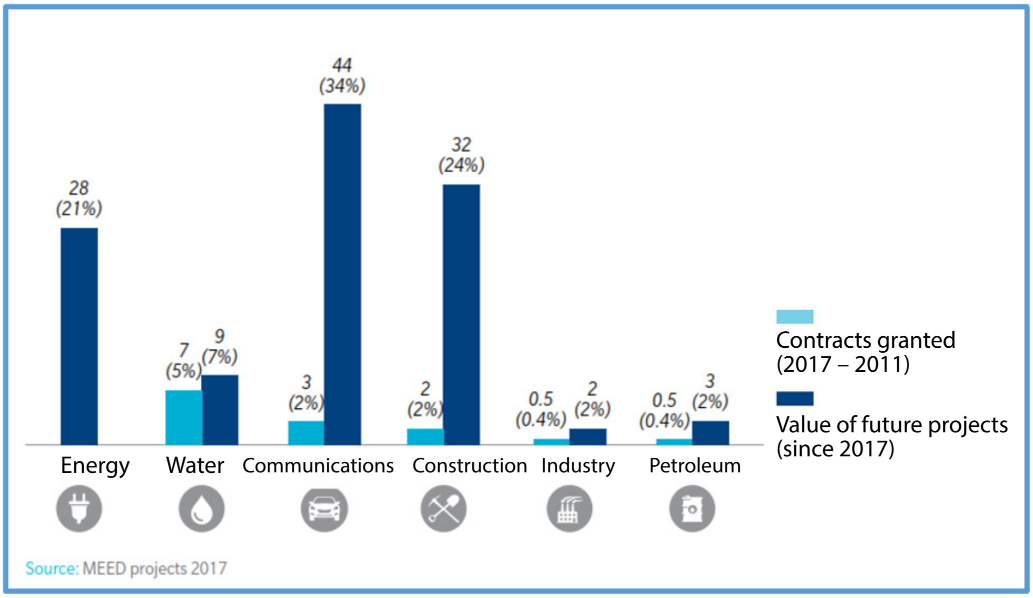


Figure 23: PPPs in the GCC by Sector (million US dollars, % of total)[32]

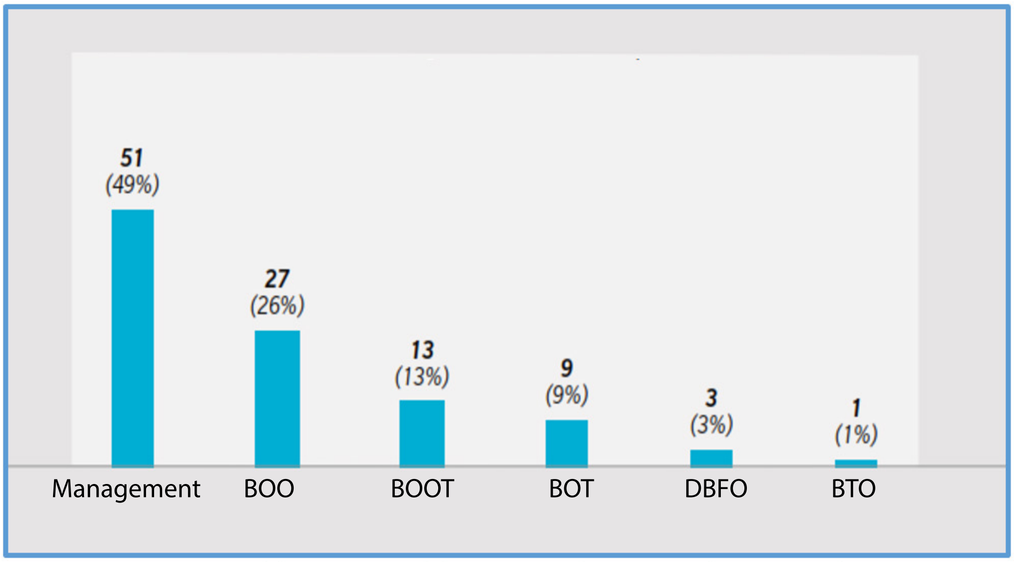


Figure 24: PPPs in the GCC by Type [32]

The preferred type of PPPs in the GCC seems to be management contracts, which have the biggest share. By nature, they require less participation from the private sector in financing and risk bearing compared to other types. Management contracts alone constitute about half of the total (49 percent). The other types are distributed according to Figure 23.

The above share is due to several factors. Some are related to the characteristics of private, especially foreign, ownership in the GCC. It is prominent in the transport and construction sectors, especially in highways, airports, and huge construction projects (sports stadiums, hospitals, university complexes) and where the natural tendency is to keep state ownership. It could also be due to regional instability that does not encourage the private sector, especially foreign investors, to assume the great risks involved in more complex and longer-term types of contracts.

2.7 PPPs in Arab Countries: Examples and Evaluation

Figure 24 below shows the most prominent projects considered successful by the OECD. They are mainly in the energy sector (renewable energy in particular) and airports, followed by health and sanitation.

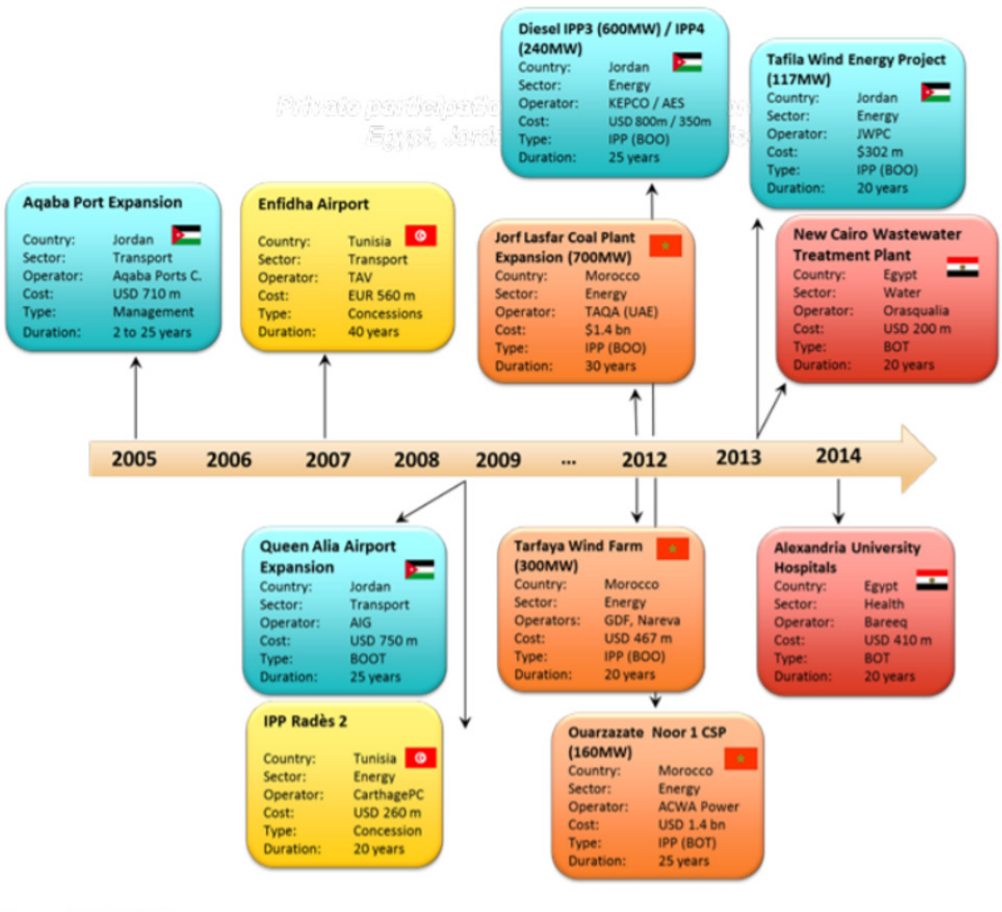


Figure 25: Successful PPPs in the Arab Region According to OECD [33]

A. New Cairo Wastewater Treatment Plant - Egypt

The project aims to improve sanitation services and accommodate the projected population growth in New Cairo, in addition to ensuring efficiency and accountability and reducing costs on the treasury. The PPP is a concession agreement under which the private partner shall design, finance, construct, operate, and maintain a new wastewater treatment plant with an initial capacity of 250,000 m^3 per day and a final capacity of 500,000 m^3 per day. The International Finance Corporation (IFC) was asked by the Egyptian Government to help develop and implement a model PPP that could be replicated in other infrastructure projects, and was appointed as lead advisor.

Between US $150 and 200 million were mobilized and the Egyptian government paid the company for wastewater treatment, in fixed payments to cover the investor's fixed expenses and variable payments according to the volume of actually treated water to cover the investor's variable costs. The concession was awarded in 2009. Business started in 2010, then stopped in 2012 due to the political situation. Operations were delayed due to social instability, political turmoil, and economic collapse after the 2011 uprising, which was not anticipated by contractors. Orasqualia was finally able to continue construction under three successive governments.

B. Queer Alia Airport Expansion - Jordan

The project was supported by funds from the governments of Canada, France, Japan, Kuwait, the Netherlands, the US, the Islamic Development Bank, and USAID. The project includes the rehabilitation of existing facilities, the construction of a new terminal, as well as the operation of the airport. The project is part of the policy of liberalizing the aviation sector in general, restructuring civil aviation, improving competitiveness, and reducing the burden on the general budget. The consortium was contracted to foreign companies, with the IFC as lead advisor. It was funded through loans and shareholder shares. It faced challenges related to legislative changes, high upfront capital costs, and long payback periods, as the loan term is about 15 years. Furthermore, commercial banks were not prepared to provide long-term financing for the project without mitigating political risks. Today, however, it is one of the most successful PPPs in the region.

C. Enfidha Airport - Tunisia

The first major infrastructure PPP project to be implemented in Tunisia, Enfidha Airport received around $560 million from the IFC and other international donors. The private operator TAV received $12.1 million in support from the Tunisian state. Civil society reports have questioned the transparency of company selection and offers. While the company's offer was the best, it was based on unrealistic numbers, with or without the economic crisis. The company began a long and costly negotiation process with the Tunisian government in 2010 to review the royalties the company pays to the state, and then the company stopped paying these fees. After threatening to initiate an investor-state dispute settlement (ISDS) procedure, the state entered into negotiations with the company and suspended payments in 2010.

D. Examples from Iraq

The Iraqi experience provides numerous examples to evaluate the impact of PPPs, from various perspectives and based on a variety of goals and criteria.

Eight PPP contracts were awarded in the cement industry, particularly for al-Muthanna, al-Samawa, and Karbala factories, to private companies from the UAE, Egypt, Iraq, and France, in addition to Chinese and German subcontractors. The partnerships included a mix of national, Arab, and other foreign companies. They involved the development and rehabilitation of brownfield projects, which had been operational before the US war on Iraq in 2003. The contracts aimed to rehabilitate, restart, and expand production lines and transfer ownership to the state. Success varied from complete failures (al-Muthanna) to successfully increasing the quantity and quality of products such as in Karbala.

However, there are other criteria to be considered in the evaluation. In the successful experience of the Karbala plant, 183 Iraqi engineers and workers were laid off after contracting with the French company. Rehabilitation was implemented by non-Iraqi workers. Moreover, the the developmental impact of this project was mostly negative, as the following table shows:

Table 7: Summary Evaluation of PPP Experience in Karbala Cement Factory

	Theme	Indicator	Impact	Result
Local Level	Economic Development	Impact on small and medium projects	Provide products for construction material plants	Positive
		Impact on small holders	N/A	N/A
		Technology Transfer	Operating production line, rehabilitating the plant at a cost of 55 million Euros	Positive
	Social Development and Poverty Eradication	Decent work	The partnership did not create new job opportunities	Neutral
		Rights of local communities	Degradation of grazing areas for nomads in the region	Negative
		Impact on local natural resources	Environmental Impact was not evaluated	--
National Level	Economic Development	Economic Efficiency	Achieving examination certificate ISO (9001:2015) Production reached 90 percent of design capacity	Positive
		Macroeconomic Impacts	Increase National production	Positive
	Social Development and Poverty Eradication	Access to quality services Impact on employment	No data available 183 workers dismissed	-- Negative
		Climate change mitigation and adaptation	Inefficiency in means of reducing pollutants Failure to complete the green belt The use of explosives instead of machinery in the extraction of rocks	Negative
		Possibility of environmental disasters	Possible	Negative
Gender mainstreaming			Lack of data disagregated by sex or gender impact	--
PPP governance and democracy			N/A	--

Another example involves the management of 4 ports in Iraq under 30 rehabilitation, expansion, and management contracts, 26 of which went to non-Iraqi parties. Here too, the performance was mixed. The volume of ships and cargo at the Umm Qasr and Khor al-Zubair ports increased significantly. On the other hand, the situation deteriorated in Abu Flus and more dramatically in al-Maqal Port. Nevertheless, the improvement in the former two ports was necessarily the result of management and rehabilitation rather than a general increase in trade and transport operations. The summary evaluation table included several negative elements in the social and environmental fields. According to the Ministry of Environment, Umm Qasr port suffers from an increase in industrial pollutants, not to mention the 2016 oil leak in 2016 from loading platform A.

2.8 PPP Legislation in Arab Countries

Evaluating the legislative framework governing PPPs, including in Arab countries, is not limited to merely monitoring the performance of the private and public sector. It involves the observation and evaluation of the joint space created by an actual legislative and legal framework. This space should be examined in terms of the law's consistency with human rights standards, development requirements, and the provisions of the text.

Since 2010 and especially between 2014 and 2017, most Arab countries have adopted PPP laws influenced by external factors (demands by international funds, investors, and donors). It led to the establishment of certain models for relations across legislations of various countries. PPP laws have already been adopted by 10 Arab countries and they are under discussion, including in parliament, in most others (see Table 8 at the end of the section).

However, international players tend to evaluate PPP laws based on their interests and investment and work model, which might not fully coincide with the vision adopted by the government, citizens, or civil society. They focus on ensuring the best conditions for foreign investments and preventing any preferential terms for contracting with national companies under the pretext of fair competition. External investors also focus on increasing guarantees for their investments and the possibility of recovering any financing, missed profits, or "losses" resulting from measures taken at the national level or any kind of emergency that impacts their profits and the terms of the contract.

CSOs and development actors do not consider it enough to merely adopt a law. It may contain structural or partial flaws. It may be formulated from the perspective of foreign investors and large companies, rather than protecting national interests and providing fair conditions for national companies, especially SMEs, in government contracts.

Case Study: PPP Law in Tunisia

The following paragraphs contains a summary of the main critique of the Tunisian law put forward by the Tunisian Observatory for the Economy (TOE). It also serves as an example of the work required from CSOs regarding their national laws.

PPPs in Tunisia are regulated by two key laws: Law No.49 of 2015 and Law No.23 of 2008. The 2008 law deals exclusively with concessions and defines them as "contracts by which a public person called" the obligor "is delegated, for a specific period, to a public or private person called 'the obligor', to dispose of a public utility or use and exploit public property or equipment, in return for user fees extracted for its benefit according to the conditions provided by the contract." On the other hand, the 2015 law excluded from its definition of PPP contracts the mandate to dispose of a public utility, but included the following:

"[A PPP contract] is a written contract for a specified period, according to which a public person entrusts a private partner with a comprehensive task related in whole or in part to the design and creation of facilities, equipment, or physical or immaterial infrastructure necessary to provide a public facility. The PPP contract includes financing, realization, alteration, and maintenance for a fee paid to the private partner by a public person for the duration of the contract according to the conditions indicated therein."

The TOE study provides a critique of Law No.23 of 2008 concerning the Enfidha Airport project mentioned above.

- Firstly, the law exposes public finances to major financial risks, as it places the responsibility of the public body to maintain the financial balance of the contract, without specifying under what circumstances the public entity bears the risks with the private sector. This makes it unclear in terms of sharing duties and risks and is susceptible to discretionary interpretation.

- Secondly, the law does not adequately address the issue of monetary risk and exchange rate change. It does not specify who bears this risk, which is crucial in light of the low exchange rate of the Tunisian dinar.

- Thirdly, the concessions law does not require that all bidding documents be included as part of the contract, as confirmed by the ongoing dispute between TAV and the Tunisian state regarding Enfidha airport. In this case, TAV declined to consider the proposal as a binding contractual document. The law does not explicitly mention the contract's documents, in particular the file that the company submitted during the bidding process (technical and financial bids in this case) or the required specifications.

- Fourthly, the legal framework fails to consider the weak administrative capacities of the Tunisian state.

According to the study, the 2008 law was amended through a "horizontal law" pushed by the World Bank Group in particular. The "horizontal law" aimed to revise and coordinate between a set of laws, including the 2015 law, to improve the investment climate in the country. However, it failed to deal with the problems mentioned above and led to more flaws, including:

1) Firstly, it granted local and regional authorities the right to engage in PPPs, although the central government itself has proven that it does not have the capacity to deal with complex concession projects.

2) Secondly, the amendments weakened administrative oversight over PPPs.

3) Thirdly, they weakened the rules of good governance and equal opportunity in bidding procedures.

4) Fourthly, they created a concessions category with "simplified procedures" for large public services and infrastructure projects and removed several crucial safeguards.

2.9 Conclusions from PPP Experiments in Arab countries

It does not take great effort to explain how PPPs are not a magical solution to finance development projects, particularly in Arab countries. The region is the least attractive for such projects - assuming they are useful for development - and there are no indicators that the situation will change in the future. Rather, its share of PPPs is expected to decline due to the ongoing global crises (such as Covid-19) or regional and national turmoil ranging from prolonged wars to shrinking state resources and lack of political, institutional, and legislative stability.

Added to their modest number, several announced PPP projects have not materialized, including in the GCC where conditions for success are better.

For example, only 23.7 percent of PPPs in the GCC were completed. Most were abandoned, in particular large structural projects such as the 6 billion dollar railway land bridge between Riadh, Jeddah, and Dammam. Another example is the $3 billion Mafraq-Ghweifat International Highway and Tawam Hospital project in Abu Dhabi. Failure was for several reasons, mainly the lack of loans usually mobilized by global capital due to the 2008 financial crisis. Another reason was the exorbitant costs of these mega-projects, which are not commensurate with their actual economic importance. Their developmental impact is also limited if not non-existent or detrimental. For instance, what is the economic, environmental, or developmental return for building the Burj Khalifa in Dubai? Is there any positive developmental impact of such a gigantic endeavor at a cost of nearly $1.5 billion?

On the other hand, PPP projects in the Arab region lack transparency on all levels, from bidding to implementation and operation. The absence of transparency may open the door to favoritism and intervention under regimes dominated by crony capitalism and the overlapping of power and wealth. PPP projects tend to be technocratic in their formulation and management, marginalizing popular participation in the various stages of the project cycle. There is also the absence of impact assessments covering human rights (particularly with regard to gender equality and women's rights) and the environment, in addition to committing to relevant standards during implementation (especially workers' rights).

On another level, the focus on economic efficiency standards - in the narrow sense - in selecting and implementing PPP projects leads to giving priority to profitable projects, marginalizing sectors of a social nature, and ignoring environmental impacts.

There are also real concerns that multinational companies will acquire PPP deals and monopolize the market, leading to a negative impact on the prices of basic public services (especially water, electricity, and public transport), in light of their ability to better access information.

In conclusion, to serve citizens and the public good, PPPs require public, democratic, and effective governance. Public accountability should be based on the principles of social justice and equity, through economic, social, gender, and environmental assessment and mobilizing CSOs and social movements.

Table 8: Legislative Framework for PPPs in Arab Countries

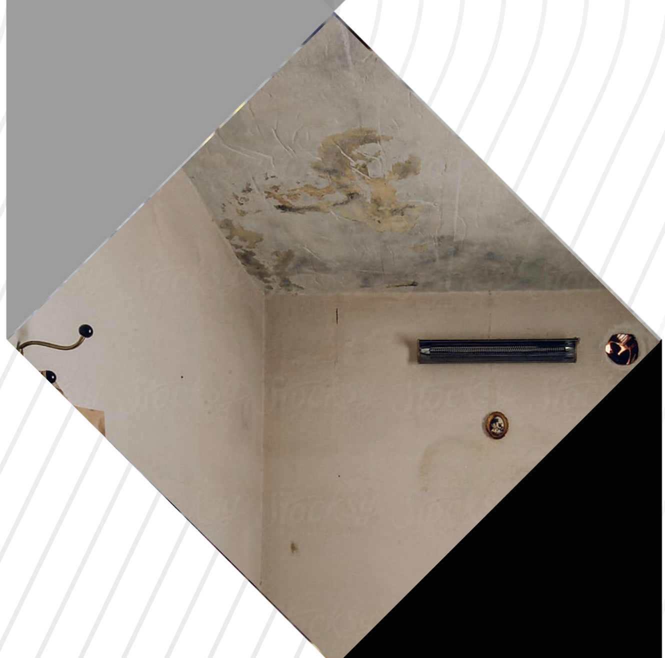
Country	Law	Regulatory Body	Notes
Algeria	None		Replaced by a public tenders law: Presidential Decree No.247-15 on September 2015 ,16 on regulating public procurement and delegation of public services. Privatization and partnerships are governed by sectoral or specific laws. For more details: http://www.aflsf.org/sites/default/files/PPP20%Country20%Profile20%-20%Alg%C%3A9rie.pdf
Iraq	PPP Law	Article 4/First stipulated the formation of a "PPP Council"	Link:
Morocco	Law No.86.12 on PPP contracts (Royal Decree No.1.14.192 on December 2014 ,24): https://www.justice.gov.ma/downloading/file/maktaba/%20%8D%8A%7D%84%9D%85%9D%8A%7D%8AF%D8%A%20%9D%8A%7D%84%9D%8A%5D%8AF%D%8A%7D%8B1%D8%9A%D%8A20%9%D%88%9D%8A%7D%84%9D%85%9D8%A%7D%84%9D%98A%D%8A20%20%13/9	Ministry of Economy, Finance and	For more details: http://www.aflsf.org/sites/default/files/PPP20%Country20%Profile20%-20%Maroc.pdf
Palestine	None	Officer of the Minister of State for Economic Affairs	

Egypt	Law No.67 of 2010: http://www.asa.gov.eg/attach/665_law_2010_67.pdf	Central Unit for	Amended: https://www.youm7.com/story/8/9/2019/%D%8AA%D%8B%9D%8AF%D8%9A%D-84%9%D%8AC%D%8AF%D8%9A%D%8AF-%D%81%9D-89%9%D%82%9D%8A%7D%86%9D%88%9D-86%9%D%8AA%D%86%9D%8B%8D8%9A%D%-85%9D9%85%D%8B%4D%8A%7D%8B%1D%83%9D%8A-9%D%8A%7D%84%9D%82%9D%8B%7D%8A%7D8%B%-9D%8A%7D%84%9D%8AE%D%8A%7D%8B-5%D%81%9D-89%9%D%85%9D%8B%4D%8B%1D%88%9D%8B-%9D%8A%7D%8AA/4407100
Jordan	PPPs Law No.17 of 2020: http://lawpedia.jo/%D9%82%D%8A%7D86%9%D%88%9D%-86%9D9%85%D%8B%4D%8B1%D%88%9D%8B%9D%8A%7D%8AA-%D%8A%7D%84%9D%8B%4D%8B%1D%8A%7D%9%83D%80%9D%8A-9	PPP Unit	The new law replaced Law No.31 of 2014
Syria	Law No.5 of 2016: http://www.pministry.gov.sy/contents/12539/%D%8A%7D%84%9D%82%9D%8A%7D%9%86D%88%9D-86%9	Partnership Council	The law was adopted to prepare for engaging the private sector in reconstruction.
Yemen	Currently in Parliament	Ministry of Planning	Law proposal not available online
Lebanon	PPP Law: https://www.lp.gov.lb/Resources/Files/3dcd3eb-6f5a40-1ab-ac9b-126646636fc5.pdf	Higher Council for	
Tunisia	PPP Law No.49 for 2015 on November 2015 ,27: http://www.legislation.tn/sites/default/files/news/ta2015491.pdf Amended by Law No.47 on May ,29 2019 on improving the investment environment. Concessions Law No.23 of 2008: http://www.igppp.tn/sites/default/files/Loi20%23-202008%AR.pdf	• Public Authority for PPPs • Strategic Council for PPPs	•

Kuwait	Law No.2014/116 and its executive regulations Law No.2008/7 and its executive regulations Law No.2010/39 Promulgating the Incorporation of Kuwaiti Joint Stock Companies to Undertake the Building and Execution of Electricity Power and Water Desalination Stations in Kuwait http://www.kapp.gov.kw/ar/%D%8A%7D8%9%4D%8AA%D%8B%4D%8B%1D8%9A%D%8B9%D%8A%7D%8AA2	Kuwait Authority for Partnership Projects	
UAE	Resolution No. (1/1) of 2017, issued by the Council of Ministers, regarding the guide to provisions and procedures for partnership contracts between federal entities and the private sector The regulatory framework for PPP contracts in Dubai: Local Law No.2015/22: https://dlp.dubai.gov.ae/Legislation20%Ar20%Reference/2015/%D9%82%D%8A%7D86%9%D%88%9D20%86%9	Ministry of Finance	
Bahrain	None		Law No.2002/41 regarding privatization policies and controls
Saudi Arabia	None - Partnerships are usually regulated under investment and competition laws, as well as dispute resolution laws, human resource systems, and intellectual property laws. A bill has been brought up to the public - yet to be passed.	National Center for	In the framework of Vision 2030, and as part of the attempts to diversify the economy and attract more foreign investment

Qatar	Law is under debate and expected to be adopted soon		In the framework of Strategy 2030
Sudan	None	Ministry of Finance - Planning Agency - PPP Unit	Still under the Procurement and Contracting Law of 2010 A law was discussed before Bashir's fall - the law was criticized for seeking to "buy" businessmen supporting the uprising and that it would entrench patronage. The project to regulate PPPs in Sudan was supported by the World Bank, in cooperation with the Castalia Consulting Company.
Mauritania	PPP Law No.2017/006: https://www.droit-afrique.com/uploads/Mauritanie-Loi-06-2017-PPP1.pdf		
Djibouti	None		
Somalia	None	By sector	
Libya	Law under discussion		

Section Three: *PPP Evaluation Framework*



Preface

This part aims to assist civil society activists and social movements in assessing the transformative impact of PPP projects on people's lives and on development. It takes into account civil society's priority areas (such as, economic value added, job creation, respect for human rights by the private sector, transparency, and environmental sustainability). The development-rights approach will be used as a basic normative framework for assessing the impact on economic, social, environmental, civil, and cultural rights, in coherence with the principles of the 2030 Agenda for Sustainable Development.

3.1 Foundations and Principles: the link between rights and development

The proposed evaluation framework is based on the developmental-rights approach as the conceptual framework for the human development process. It includes the legal component of the international human rights system and relevant national legislation and institutions. The International Bill of Human Rights consists of international and regional human rights charters and international labor standards, in addition to basic international documents on the environment as a right, and charters on the rights of women, children, the elderly, persons with disabilities, and marginalized groups.

The performance of international and national institutions, business companies and the private sector is measured by the extent to which human rights are respected and protected, the extent to which the institution or state fulfills its obligations towards these rights, and the practical impact of policies and projects. This guide focuses on the impact of PPP projects on rights and development in particular, which requires adopting more specific methods for identifying and measuring this impact. It utilizes the framework of the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015 as the global development agenda. The framework translates the list of human rights into specific, observable, and measurable development goals and objectives, whose achievement reflects the level of realization of rights in practice.

The guide also resorts to the Guiding Principles for Business and Human Rights, which stipulates steps that countries should take to enhance business respect for human rights. They should form the basis on which companies can rely on managing risks of adverse human rights impact and provide stakeholders with a set of criteria to assess business respect for human rights. Principle 5 says clearly that "states should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services." It adds that "states do not relinquish their international human rights law obligations when they privatize the delivery of services" and that "the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights."

Two main reasons are behind the focus on these two references (2030 Agenda and the Guiding Principles). On one hand, achieving the SDGs is contingent on implementing Goal No. 17 related to "strengthening the means of implementation and revitalizing the global partnership for sustainable development," namely Objective 17.17 to "encourage and promote effective public, public-private, and civil society partnerships, building on the experience and resourcing strategies of partnerships." On the other hand, PPPs are framed internationally by the (non-binding) Guiding Principles on Business and Human Rights on the importance of respecting human rights in PPP projects.

PPPs, in their broadest sense, are not new. However, recent focus aims to promote it as a mechanism for financing development and as one of the means of implementing the SDGs, as stated in Goal 17. The emphasis on these partnerships as a means to implement the 2030 Agenda's development goals entails a specific path for "development" cooperation that seeks to establish principles for development partnerships between various stakeholders, including mutual accountability and a focus on development results. The following principles can be identified with regards to PPPs.

- National ownership,
- Achieving development impact and results,
- Transparency and accountability,
- Leave no one behind.

In addition to its commitment to human rights and sustainable development principles, the private sector is internationally obliged to be committed to transparency and accountability to other development partners, especially when entering into partnerships with the public sector. Strict control of the private sector partnering with the public sector is needed, as it benefits through from public money belonging to the general population and taxpayers. The private sector also benefits from official development support allocated to the concerned state, which is skin to public money and subject to public accounting principles. In this sense, the subject and goal of the partnership cannot be purely commercial. It must necessarily include a developmental dimension, entailing the partnership project's adherence to the standards of development and rights. Otherwise it does not deserve to be included in the concept of development partnerships.

3.2 Impact Assessment Analytical Framework

The proposed analytical framework is based on three pillars governing the SDGs and their objectives: the economic, the social, and the environmental, in addition to the general principles related to community participation, transparency, and accountability (Figure 25). The framework seeks to provide civil society actors and social movements with analytical and practical tools to assess the impact of PPPs on development and human rights. These effects may be positive or negative, depending to a large extent on the balance of power between private companies (foreign or national) and other national or local actors (such as the state, trade unions, local communities, CSOs, social movements). In the absence of the appropriate power balance and effective control mechanisms, development and human rights may be at risk if profit becomes the main goal and social or environmental dimensions are ignored. According to the *Guiding Principles on Business and Human Rights*, "adverse human rights impacts" occur when an action deprives or limits a person's ability to enjoy his or her human rights. Guideline 19 also states: "In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts" either through their activities or as a result of their business relationships.

The impact of PPP projects on human rights can be approached at the micro, meso, and macro levels.

1. At the **micro (local) level**, most negative impacts on development and human rights occur during the planning and construction stages, including on people (especially workers and communities) and the environment.

a. **Impact on workers:** Studies and reports have documented that PPPs do not always respect decent work standards as defined by the ILO. The

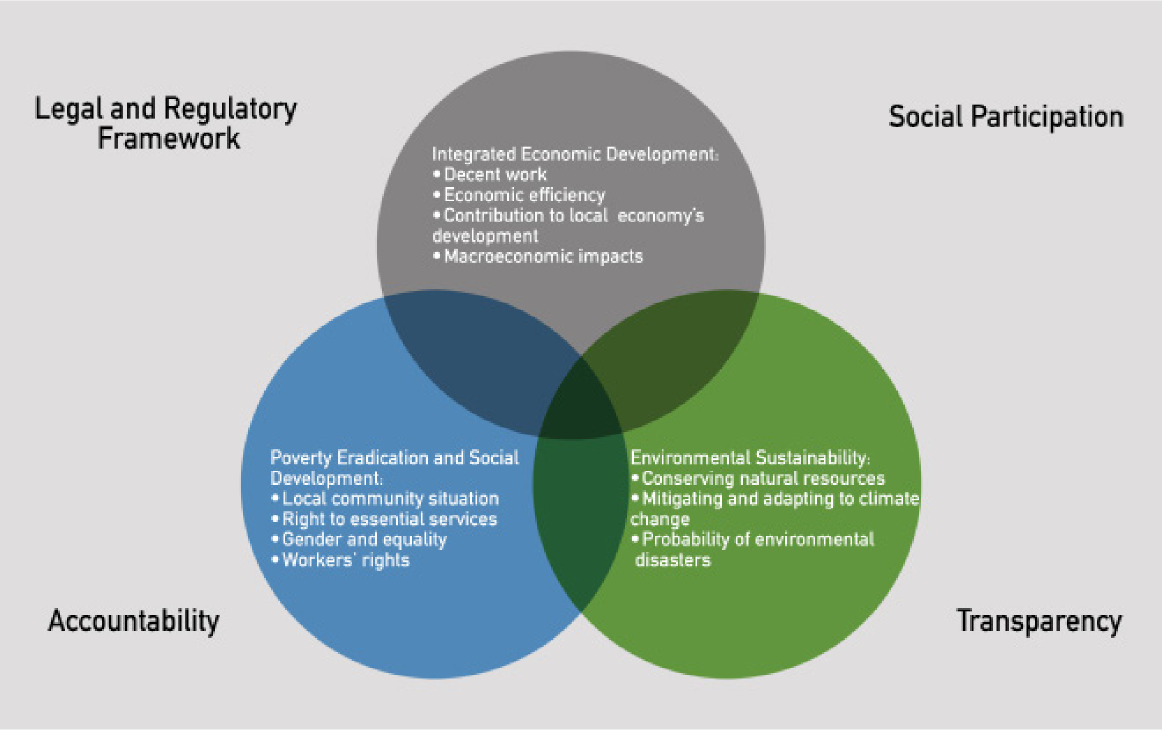


Figure 26: PPP Evaluation Framework

obsession with reducing costs invested in the framework of the partnership leads to a reduction in wages and compensation for workers assigned to build the project. In addition, basic labor standards are likely not to be respected (especially freedom to unionize, collective bargaining, child labor, forced labor, discrimination, and living conditions). In some cases, people evicted from their lands to build the project are forced to work in construction for the company in charge of construction, often in conditions close to slavery. On the other hand, foreign companies assuming construction tasks within the PPP framework tend to recruit foreign workers and import inputs from abroad, which adversely affects employment and local SMEs.

b. **Impact on Local Communities:** Construction works are likely to have a negative impact on local communities and populations in terms of health and personal safety. It could be in the shape of dust or noise, for example, or more difficult issues such as loss or damage of property, deteriorating health environment, and deaths due to building and construction operations. The influx of job seekers and service providers on the project site may create disturbances in the local public space and threaten the health, safety, and security situation. On the other hand, the purchase or temporary occupation of lands, pollution, and excessive exploitation of wealth may limit the ability of local communities to benefit from natural resources such as water, forests, and fisheries, in addition to local culture.

c. **Environmental Impact:** Air, water, and soil pollution at the PPP project site may have negative repercussions on the surrounding environment. In some cases, it has led to changes in the prevailing traditional lifestyles and livelihoods, in the relationship between people and local nature, and in social relations between individuals in the community or among family members.

Such repercussions are likely to continue to cast their shadows on the project during the operation phase of the project facilities and after dismantling them at its end. Several human rights issues arise during PPP project cycles and various stages. Freedom of expression and freedom of peaceful assembly and association could be violated, especially if governments or private economic actors resort to intimidating workers or members of civil society or in the case of use of force against peaceful protests regarding specific PPP projects. Likewise, exercising the right to access information and the right to participation on the part of project workers and civil society components may face significant obstacles if project owners refrain from disclosing the potential impacts of the infrastructure to be built during the planning, implementation, and operation stages.

Survey on Private Sector Participation in Infrastructure Projects

In 800 ,2015 people affected by infrastructure development projects and the extractive sectors were surveyed in 8 countries around the world. According to the survey:

- %94 said they were not consulted regarding their development priorities in the country or region;
- %88 said that they were not consulted during the project planning stage;
- %85 did not believe that their opinions were taken into consideration in project planning;
- %82 said that their priorities were different from those of their government;
- %78 said they did not feel safe to ask questions or provide opinions about the project;
- %65 said that amendments to the project could have been introduced to achieve the same goals with less damage;
- %64 said they did not know where to get information about the project;
- %14 said they believe that the project will benefit the population of the country as a whole;
- %0 said they believe that the projects will benefit their communities
- In addition, most of the participants objected to the practices of the World Bank in consulting with governments and companies, but not local communities.

2. At the **meso (intermediary) level** and in contrast to the micro level, the impact on users of infrastructure during its operation involves broader population groups. Vulnerable and poor segments, or those suffering from structural discrimination, are exposed to the brunt of the damage caused by the project. The impact is particularly evident in the level of access to services provided through the infrastructure (such as transport, water, electricity), in the event when the project design is not inclusive or unaffordable. For example, according to the United Nations Committee on Economic, Social, and Cultural Rights, the human right to water and sanitation entitles everyone, without discrimination, to obtain sufficient, safe, acceptable, available, and affordable water for personal and domestic use, in addition to reasonable sanitation services, in all fields of life. The services must maintain privacy and ensure dignity. Even in cases where the task of providing services is delegated to third parties (private or public companies, for example), the government is obligated to regulate their activities to ensure that all aspects of this human right are observed.

Major challenges, however, may prevent the realization of this right on the ground through PPPs. For example, partnership in the water sector in Morocco led to higher prices at the expense of the purchasing power of consumers. The principle of non-discrimination was also harmed, as the mandated management companies did not abide by their obligations in terms of connecting needy families to the water, electricity, and sewage networks.

On the other hand, expectations and needs for services provided by PPP projects differ from one population group to another. Women, youth, the elderly, people with disabilities, and marginalized communities may use infrastructure differently than the typical consumer. This is true, for example, with regard to the use of transportation by men compared to women, due to the need for lighting and safety and security conditions.

Thus, women and people with non-stereotypical identities face more obstacles than others in the presence of means of transportation that do not inspire confidence and safety or that are deteriorating. Consequently, planning and managing infrastructure projects should take the diversity of users into consideration, responding to the special needs of both genders, various social and age groups, and people with disabilities.

3. At the **macro** level, adopting PPP mechanisms for infrastructure projects, especially larger projects, affects human rights as a whole, particularly as a result of minimizing financial costs or exaggerating the projects' financial, economic, and social benefits. Infrastructure projects are often based on weak cost-benefit analysis and a fragmented assessment of social and environmental impacts, leading to the failure to meet the general population's needs and priorities. These projects may also carry significantly harmful environmental and social impacts and may destroy certain lifestyles in some cases. For example, dam projects in Lebanon are expected to cause great environmental damage and destroy archaeological sites and agricultural lands, in addition to being wasteful and increasing the size of the public debt, which currently stands at around 170 percent of GDP in a country that went through a major economic and financial crisis in 2020.

In **Egypt**, some partnerships have notably degraded the rights of various populations. In Aswan villages, many children suffer from respiratory problems as a result of their exposure to sanitation facilities and insects and bacteria that they carry. It should be noted that 89% of villages in Egypt suffer from weak sanitation services or lack thereof. After villagers communicated with the local government to solve the crisis, the authorities issued a ministerial decision to establish filtering stations and equipment in the area. The project was assigned to the Arab Contractors Company at a cost of 50-55 million Egyptian pounds. However, it was stopped abruptly after two years due to lack of financial resources without disclosing additional details to the public. The partnership did not give the expected results and kept the villagers at risk of contracting diseases.

PPPs in Egypt also suffer from lack of transparency, an infringement of social rights in many cases where citizens do not participate in decisions and public opinion is not consulted. Within Egypt's partnership project to build distinguished schools with the private sector, companies were granted the right to own schools for 40 years and benefit financially, although Article 2 of Law 67 stipulates that the maximum period of partnership contracts is 30 years in Egypt. The reasons behind this exclusion from the stipulation were not explained to the public that had not been informed of the process that led to this decision or involved in it.

Furthermore, the reasons and public interests behind the selection of specific partners in this project such as NI Capital have not been clarified and they can be controversial given that the National Investment Bank (affiliated with the company) was only announced in December 2015, months before initiating the PPP. The company did not have sufficient experience as an institution to maintain a project of this size and impact. More technical expertise was needed to implement the project and add value to the population that was not involved in the decision.

In **Morocco**, French company VEOLIA provides Tangiers with electricity at the highest prices in the country's market, adding to the financial burdens on weak segments. Moreover, companies managing water, electricity, and sanitation projects benefited from the lack of legal obligation to retain former workers. The companies resorted to excessive temporary employment, adding to precarity and preventing workers from accumulating expertise and training to achieve the projects' goals.

As a result, projects failed to achieve their aims, despite their obligations and people's expectations. For example, VEOLIA's Amendis Group only completed 3,030 out of the 10,000 connections it had committed to in Tangiers. Similarly in Casablanca, the French company Lydec completed 45,806 out the expected 90,000 connections, leaving many without proper electricity, water, and sanitation.

3.3 Impact Assessment: Check-list and Indicators

State commitments under PPPs lead to medium- and long-term financial pressures, arising from future payments involved in the contract as well as repayable guarantees. They could lead to increased financial risks, as they are not included in state budgets. The possibility of these risks occurring at the medium and long levels limits the state's ability to fulfill its obligations towards citizens. According to Article 2 of ICESCR, "[e]ach State Party to the present Covenant undertakes to take steps[...]with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

As illustrated in previous sections, anticipated savings by resorting to PPPs for development projects fail to materialize. Project costs are often higher than those of traditional mechanisms, including implementation by the public sector or local authorities using contractors directly. In many cases, such projects are welcome, as they are funded from outside the state budget. However, this deprives the state of particular resources over the length of the contract and could lead to additional debt for future generations. It highlights the need to conduct economic, social, and environmental impact assessments before embarking on any partnership and to be used to follow-up implementation on the ground on the local and national levels.

Table 9: Analysis Matrix of the economic, social, and environmental impact at the local and national levels

<table>
<tr><th></th><th>Inclusive Economic Development</th><th>Social Development and Poverty Eradication</th><th>Environmental Sustainability</th><td rowspan="7">Good Governance and Democracy in PPPs</td></tr>
<tr><td rowspan="3">Local Level</td><td>Impact on SMEs</td><td>Decent work</td><td rowspan="3">Impact on Local Community's natural resources</td></tr>
<tr><td>Impact on small holders</td><td rowspan="2">Rights of local communities</td></tr>
<tr><td>Technology transfer</td></tr>
<tr><td rowspan="3">National Level</td><td>Economic efficiency</td><td rowspan="2">Access to quality services</td><td>Mitigate and adapt to climate change</td></tr>
<tr><td>Macroeconomic impacts</td><td rowspan="2">Possibility of natural disasters</td></tr>
<tr><td colspan="2">Integrate the gender-based approach</td></tr>
</table>

The evaluation focuses on some crucial goals that encompass the elements of sustainable development and establishes several qualitative and quantitative impact assessment indicators. The following paragraphs propose key questions to guide civil society's checklist of issues to be investigated, monitored, and evaluated, which make up the elements of the overall evaluation of PPP impacts on development and rights. The list is intended to be indicative, flexible, and adaptable according to project and national and social characteristics. The list includes the social, economic, and environmental components in order, as a practical application of the analytical framework for assessing PPPs presented in Figure 25.

First: Poverty Eradication and Social Development:

This component includes several dimensions, such as the situation in the local community, access to basic services, gender equality, labor rights, and PwD inclusion. The following indicators and questions are suggested:

1. **Decent Work Indicators**

a. Number of new decent work positions (direct and indirect) provided by the PPP project (in absolute terms and in comparison with employment rates in the local or national economy).

b. Did layoffs occur as a result of adopting the PPP project?

c. Level of wages: the average wage of workers (disaggregated by gender, type of work contract: permanent or temporary) compared to the minimum wage then with the cost of living, and its proportionality with the nature of the job.

d. Working conditions:

i. Frequency and type of violations against workers' rights,

ii. Average working hours per week,

iii. The extent to which the company monitors the respect of workers' rights by its suppliers,

iv. The percentage of workers who benefit from training (quality and length of training),

v. The percentage of workers covered by collective agreements or a collective contract,

vi. Percentage of workers in trade unions, etc.

2. **Community Rights Indicators**

a. The approximate number of community members who work and get paid by the company.

b. The extent to which the infrastructure provided by the company is utilized.

c. The number and nature of disputes over the use of the community's natural resources (including disputes over land and water) by the company.

3. **Access to Basic Services Indicators:**

The impact on services is measured according to the nature of the project and adverse effects, in addition to the following examples:

a. **Impact on education:**

i. Was enrollment affected negatively or positively by the project? What is the percentage of increase? Are girls included?

ii. If the project itself is related to education: has there been an improvement in the quality of education? Are schools better equipped? What indicators can be monitored and measured?

b. **Impact on health:**

i. Did the project result in direct or indirect health damage (pollution, smoke, destruction of crops or forests, chemicals)?

ii. Does the project take health and work conditions into account in its facility?

iii. Do project workers have health insurance for themselves and their families?

c. **Impact on public utilities:**

i. Have inclusive standards been adopted in the implementation of the project to allow everyone access to facilities and infrastructure?

ii. Are safety specifications, adequate lighting, and security requirements taken into account?

4. **Gender Equality Indicators:**

a. Have women and men's characteristics been included in the various stages of PPP projects (for example, but not limited to, was the potential impact on men, women, and their equality included in the project feasibility study?).

b. Did the project lead to improving women and girls' social welfare by reducing the rate of malnutrition, diseases, girls 'mortality, and job illiteracy and increasing the rate of girls' schooling at all school levels?

c. Does the project advance gender equality through available economic opportunities, especially with regard to job opportunities created by PPP projects, including social protection and access to resources (financial, for example)?

d. Has the project committed to ensuring greater representation of women in the bodies and organizations established within the PPP framework?

Second: Inclusive Economic Development

This section encompasses decent work, economic efficiency, and contributing to national or local economy including technology transfer and macroeconomic impacts.

1. **Economic Efficiency:**

a. Have PPPs led to a decrease in cost?

b. How did public service prices evolve (for example, such as in water and electricity in cities?

c. Has the quality of the services provided improved compared to public sector capacities?

d. Did marginalized groups (especially women, children, PwDs, the poor, the unemployed, and residents of rural or isolated areas, for example) benefit from the services?

2. **Contributing to National and Local Economic Development**

a. Does the PPP project contribute to national or local industrialization (for example, by requiring foreign companies producing renewable energies to develop a local industry to produce specific parts such as wind turbines?)

b. Does it contribute to technology transfer for the benefit of national or local companies and qualified labor?

c. Does the PPP project provide some services, financial, for example, to support local SMEs? What is the impact of these services?

d. What is the total number of SMEs (or small farmers) that are involved in the PPP project's value chain? What is the percentage of purchases (in-kind and in cash) from local SMEs?

e. Were local individuals, families, or small owners displaced by the company's activity? How many? Was this done with their consent? What was the compensation obtained?

3. **Macroeconomic Impact:**

a. Did the PPP project result in a significant increase in the size of the public debt that may put pressure on the state budget in the foreseeable future?

b. Is there information on the identity of private shareholders in the PPP project?

c. Does the foreign private partner resort to tax havens to reduce the amount of taxes that must be paid to the state?

d. Is financial information published

regarding the profits generated by the PPP project and the size of taxes paid to the state?

e. Did the PPP project cost less than it would be if implemented under traditional mechanisms?

Third: Environmental Sustainability

1. Does the PPP project conserve natural resources (water, forests, land, etc.) at the local and national levels?

2. Does it contribute to the increase or decrease of pollution?

3. Does it contribute to adapting to climate change and mitigating its effects, and are there practices and programs that have been established by the PPP project for this purpose, for example?

4. Is there a possibility of environmental disasters occurring during the implementation or as a result of the PPP project (floods, poisoning, etc.)?

5. Does the project lead to the destruction of traditional life patterns, especially small family farming patterns?

6. Does the project destroy archaeological or cultural sites or those considered symbolic by the population?

Fourth: Democratic Governance of PPPs

It covers the legal and institutional framework, transparency, accountability, community participation, and similar issues.

1. **Legal and Institutional Framework:**

a. Do those responsible for the project abide by the national law?

b. Do companies pay their taxes in full?

c. Does the country have a strong legal and regulatory framework ensuring the private investor's commitment to respect human rights, social and environmental standards, and high standards of transparency and community participation?

d. Does the state have a plan for PPP projects it intends to implement?

e. Is it obligatory to consult with rights holders, especially the marginalized and the most vulnerable?

f. Does the project fall within the framework of a participatory national development plan?

2. **Transparency:**

a. Is information made public: during preparation and when bidding is announced? Was information published on selection and awarding standards?

b. Was the PPP contract, its contents, and conditions disclosed, especially commercial and financial data related to cost and profitability?

c. Is information provided about the project's expected development, social, and environmental impacts and consequences?

3. **Community Participation:**

a. Is there effective civil society participation in decision-making at the various stages of the project?

b. Did the PPP project holder establish an organized mechanism to involve concerned local communities (especially the vulnerable and marginalized groups) in dialogue about company policies and practices that impact their lives?

3.4 Examples of Project Impacts

Below are examples of the impact of PPP projects on human rights, drawn from various international experiences. The guide has previously focused on infrastructure in view of its dominance over other sectors in PPP projects. The following will look into the impact on the education sector due to its importance in achieving development, especially for disadvantaged and marginalized groups whose right to quality education is violated widely and almost everywhere.

Impact on the Right to Education

PPPs and privatization in general are usually sought to compensate for a deficiency in access to education. However, the approach may risk the exercise of the right to education for middle, poor, and marginalized social groups. It could impact the availability and accessibility of free education, equality in educational opportunities, and the quality of the educational process (there are several types of PPPs utilized in the education sector).

According to the United Nations special rapporteur on the right to education, regardless of the provider: "The state remains the guarantor and organizer of the right to education." The decision also emphasized that PPPs must not impede access to free quality education for all, and that the state must regulate and monitor these partnerships. However, practice shows that there is a possibility that PPPs may lead to the violation of the right to education on four levels.

1. **Discrimination and Increased Inequality: In theory, if well designed, regulated and** monitored, PPPs should not discriminate or increase inequality. However, the voucher system has resulted in high inequality (clearly shown in PISA results), segregation, and discriminatory practices in school admissions (such as parents' marriage certificate, religious certificates, etc.). The voucher system in the US raised questions regarding increased discrimination, particularly against students with disabilities. In the Punjab region of Pakistan, the experience had aimed at reducing the number of children not enrolled in school education and combating disparities in enrollment opportunities and attendance rates through private schools and with World Bank support. However, it failed to achieve its goals and further marginalized children with disabilities. The goal of achieving equality between boys and girls also remained elusive. It is imperative to look at the extent of potential human rights violations in countries where corruption is rife and who do not have standards for the democratic accountability for private actors charged with providing public services.

2. Serious concerns remain about the ability of states - or their political desire - to **track and monitor private education service providers** according to minimum standards, especially in low-income countries or where corruption is rampant (such as in Ghana, Uganda, Kenya, and Pakistan). On the other hand, the private sector, in its pursuit of profit by reducing costs, provides teachers with low salaries (as is the case in PPP schools in Pakistan and Colombia) and often resorts to employing unqualified teachers. However, private education companies continue to pressure governments not to organize the educational sector.

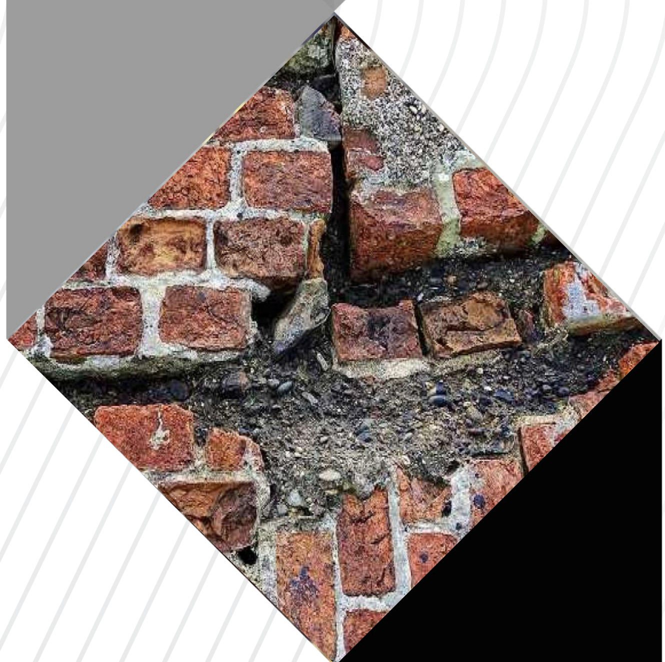
3. PPPs can undermine the human nature of education and related rights. Profit and competition prevail and the focus shifts to getting children to past tests to improve the school's classification. This trend also leads to discrimation (hidden and overt) against some students. The most capable students are chosen. Those with lower than average performance are screened and excluded from educational institutions to maintain an advanced success rate. On the other hand, the educational process is evaluated according to cognitive standards and indicators and excludes values and behaviors such as gender

equality, citizenship, solidarity, tolerance, respect for obligations, participation in democratic life, and respect for the environment.

4. Principles of transparency, participation and social accountability are rarely respected. PPP projects are often designed away from public opinion and stakeholders and behind closed doors. Concerned groups, including professors and teachers, who are considered the cornerstone of the educational process according to UNESCO, are not involved. Furthermore, these partnerships are rarely based on adequate studies and a real test of their potential effects on inequality and discrimination, especially for vulnerable groups.

This section aims to draw the attention of civil

Section Four: *Role of Civil Society*



society actors and social movements to the importance of social accountability mechanisms to ward off the risks of PPPs and maximize their benefits, by presenting some international experiences in this field. It also suggests some practical steps for producing knowledge for human rights advocacy in this regard.

4.1 Definitions

What Do we Mean by Accountability?

At its core, social accountability relies on popular participation by individuals and groups in holding decision-makers accountable. More precisely, it is "an obligation by those in power to be held accountable and responsible for their actions. Power-holders are those who hold any political, financial, or other form of power. It includes government officials in, private enterprises, financial institutions, CSOs, international organizations, and donors."

Researchers distinguish between two types of accountability:

- **Vertical Accountability:** It is "imposed externally on governments, or officially through electoral processes, or indirectly through citizens and civil society, including the media." External actors aim to impose standards of good performance on officials. Elections are the most commonly used mechanism for exercising vertical accountability.

- **Horizontal Accountability:** It is imposed from the inside on governments and is practiced through institutional oversight mechanisms, checks and balances, and refers to "the ability of state institutions to control the violations committed by agencies, public bodies, and other governmental authorities, or requiring agencies and bodies to report violations."

Given the ineffectiveness of traditional accountability mechanisms, especially in fighting corruption and bribery, the concept of social accountability emerged. It entailed grassroots community participation by ordinary citizens and/or CSOs to pressure decision-makers. Social accountability "is a type of accountability stemming from the actions of citizens and CSOs aimed at holding the government and other actors (such as the media, the private sector, and donors) accountable."

Accountability requires monitoring and evaluating PPP projects from a rights-based perspective as a prerequisite. The questions and indicators presented in Part Three of this guide can be used, for example, to monitor and evaluate the impact of PPP projects on human rights.

Who should be held accountable?

The Guiding Principles on Business and Human Rights are based on three main pillars:

1. The state's responsibility to protect human rights through policies, regulation, and dispute settlement,

2. The companies' responsibility to respect human rights by exerting due diligence to avoid violations and address harmful human rights impacts,

3. Victims' ability to obtain an effective remedy through judicial, administrative, legislative, or other appropriate means. Some international financial institutions, such as the World Bank, the IMF, and the EIB, provide mechanisms for accountability by civil society.

Roadmap to Accountability

The civil society roadmap for PPP accountability includes several steps (which are almost the same as those required for accountability in general). They begin with follow-up and monitoring, then documentation, then evaluating the situation, planning for mobilization and advocacy campaigns, and their implementation to achieve the goal.

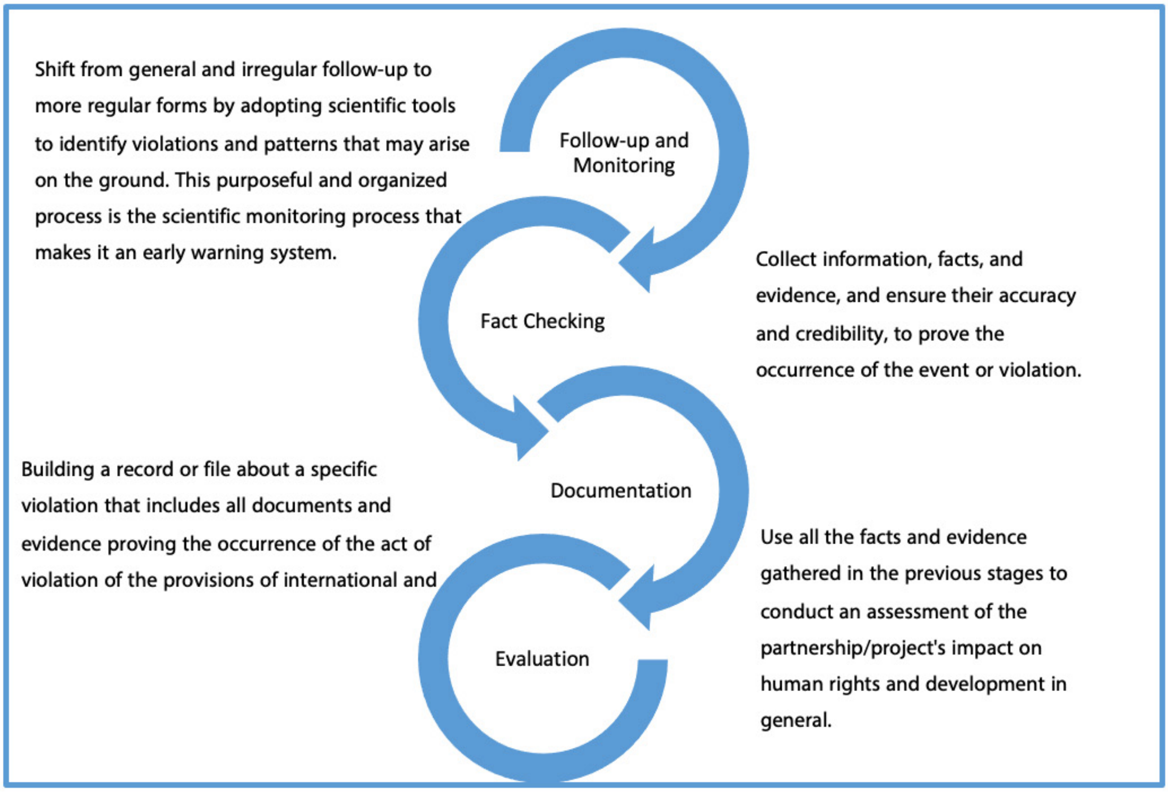


Figure 27: Accountability Roadmap

Requirements for Social Accountability

To exercise accountability tasks, the right to access information by rights-holders and civil society must be guaranteed. This right is fundamental for possessing the knowledge necessary to influence or inquire about decisions and express demands. Access to information and transparency also contribute to curbing corruption. On the one hand, corruption restricts transparency, and can lead to impediments to accountability if it acts as a barrier to information exchange between different actors. However, access to information is not a sufficient condition for successful accountability. It requires an auxiliary environment, a legislative system, and a practice that allows knowledge and informed positions to be transformed into change through the decision-maker’s response to pressure. In short, accountability requires the existence of a democratic system, the separation of powers, and adherence to the principle of supremacy of the law. As accountability in authoritarian regimes is difficult, partial, and sometimes almost impossible, it turns into the political questioning of the whole system due to the latter’s lack of flexibility or the rejection or merely formal recognition of human rights.

In the absence of texts guaranteeing the right to access information, or if the practice is restricted despite the existence of legislation, CSOs are forced to exert pressure on two levels. The first involves organizing campaigns to pass such laws and ensure their respect in practice. The second entails using available resources and means to reach the facts through direct observation, opinion polls, field research, and cooperation with academic institutions, research centers, and independent researchers. Other tools include using traditional and new journalistic means, including social media after checking its content. Concerned CSOs may develop a complex network of information sources in their field of work that enables them to set up their own dossiers, document violations, and develop their action plans accordingly.

Examples of Social Accountability

Monitoring and Evaluation:

- In **Mexico**, over 100 NGOs and social movements documented(link is external) more than 80 cases of corporate abuse across the mining, energy, oil & gas, agribusiness, construction and other sectors. These cases identified clear trends in the nature of corporate abuse and framed recommendations that were submitted to the UN Working Group on Business & Human Rights. Trends across the cases included complicity between government and corporate actors, structural reforms (e.g. in areas of energy and labor) that weaken human rights protections, lack of free prior and informed consent, barriers to justice, and intimidation of rights defenders.

- In **Guatemala**, communities and NGOs documented(link is external) 10 cases of the harmful impacts of dam building for indigenous communities. These were presented at a thematic hearing before the Inter-American Human Rights Commission on March 20. Using these cases as evidence, the report provides recommendations for hydropower companies regarding indigenous rights and human rights defenders.

- In the **EU**, CSOs have been holding the EIB accountable for several years by issuing reports on the grievance and redress mechanism that the bank provides to those affected by the PPP projects it finances in Europe and the Mediterranean region (including the Mediterranean Arab countries). These organizations criticized the mechanism's loss of independence and its marginalization within the bank's structures, in addition to the non-binding nature of its recommendations.

- In **Morocco**, mandated management companies failed to fulfill their obligations and led to successive increases in the price of water, electricity, and sanitation. Moroccans in several cities took to the streets to oppose the measures. The protests reached their climax in 2006 after companies affiliated with French groups Suez and Veolia decided on large increases in water and sanitation rates in Casablanca, Rabat, Tangiers, and Tetouan. To aggravate the situation further, the rate hike coincided with a significant increase in the prices of fuel, transport, and foodstuffs. Despite their initially spontaneous nature, these protests were still framed by CSOs. Popular resistance took many forms, including refusing to pay water bills, organizing vigils outside local government buildings, spontaneous marches in the streets, sit-ins outside company branches, signing petitions, and organizing roundtables on neoliberal globalization, privatization, and the right to water. The Regional Civil Society Council in Casablanca issued a statement calling for an open discussion on the reasons behind not reviewing the contract linking the city with the Lydec company of the Suez Group. They also called for a dialogue on the failure to take the company to court for not fulfilling its obligations and the need to consider terminating the contract.

- In the **Education Sector**, the Global Initiative on Economic Social and Cultural Rights (GI-ESCR) in Partnership with the Privatisation in Education Research Initiative (PERI), and the Right to Education Project (RTE), have been working together to research and assess the impact of the growth of private education in light of human rights standards. The initiative covered Morocco, Ghana, Kenya, Uganda, Brazil, Chile, and Nepal. CSOs in each country researched the issue and produced a parallel report that was submitted to international (UN) and regional human rights institutions (including CRC, CEDAW, and the CESCR). One of the results of this research and advocacy work was that the CRC Committee questioned the gap created by privatization in society between those who have access to the best expensive schools and others who feel discrimination and inequality. It also reminded Morocco of its obligation under international law to provide quality public education for all to combat inequality, instead of encouraging private education, which has exacerbated geographical and economic inequality and social isolation. The Committee indicated that it will closely monitor the Moroccan government's implementation of these observations.

● On September 5, 2020 in **Lebanon**, the World Bank notified the government of the partial cancelation of disbursements under the Bisri Dam Project, due to non-completion of the tasks that are preconditions to the commencement of dam's construction. The World Bank's decision comes after years of campaigns against the project, which, according to activists, would cause great damage to the valley's environment and destroy archaeological heritage sites. Activists and citizens have organized demonstrations, sit-ins, and camps since 2019, as part of the *#SaveBisri* campaign to show their dissatisfaction with the construction project. The campaign also tried to influence the World Bank directly by sending a request for an additional investigation. It conveyed key concerns and proposed alternatives to the project. They were rejected and demonstrations were held outside the World Bank offices in Beirut. The campaigns had a symbolic and practical impact on the project's feasibility, as they attracted more attention on the issue at hand, built a new scientific dossier on the project, and mobilized public support on the ground.

● Accountability may also take place on the **international level**. One of the examples involves three NGOs that filed a complaint through the World Bank's Council Advisor Ombudsman (CAO) that accused Amalgamated Plantations Private Limited (APPL) of violating workers' rights. APPL is a partnership between the World Bank's IFC and the Indian TATA Group. The organizations focused long working hours, undue compensation, poor hygiene and health conditions, and lack of freedom to association. However, these types of accountability mechanisms have proven to be limited for civil society. Along with another grievance complaint in 2009, the report did not lead to a change in the situation, nor did it prompt the IFC to consider withdrawing from a partnership that seems to have no weight for workers' rights. It seems profit remains IFC's strategy's biggest concern.

Accountability Challenges for CSOs in the Arb Region

CSOs in the region still suffers from many restrictions related to civic space, mainly:

1. Restrictions on association and ability to function.

2. The state's authority to dissolve, suspend, or ban associations and their boards of directors.

3. Severe restrictions imposed on financial sources, especially foreign donations.

Despite the different situations in each country, CSOs and social movements are generally unable to engage in initiatives to increase accountability and transparency.

Despite the eruption of Arab revolutions for human dignity, freedom, and social justice, the situation of Arab civil society is in decline. Civil space has been reduced and social movements continue to be oppressed. These obstacles are evident in the broad list of restrictive, repressive and, obstructive measures faced by associations. They may include self-censorship, withdrawal of funding, forms of physical and verbal violence, and the criminalization of individual or group activities (including judicial harassment, arrests, house arrest, detention, acts of violence by the authorities, and prevention of travel orders). Restrictions have reached the extent of the rights of organizations working specifically on "sensitive" issues, such as migrant rights, minority rights, feminist demands, or economic and social rights.

On the other hand, protest and social movements against austerity measures that are incompatible with the economic and social rights of citizens are exposed to various forms of oppression and persecution in North African countries (for example the Rif and Jarada movement in Morocco, the Tatween movement in Tunisia).

There is also the issue of implementing laws that guarantee effective social accountability and transparency. Most Arab countries have actually ratified legislation to comply with the UN Convention against Corruption, as well as legislation to increase transparency and accountability. However, their implementation is still slow and important oversight mechanisms are absent or ineffective. The gap between legislation and practice remains. The right to information also faces obstacles due to the entrenched mentality of withholding information and administrative bureaucracy that does not believe in this right, but considers it a violation of the secrets of the official state apparatus.

Several Arab countries are in the midst of a conflict, occupation, or internal divisions with negative consequences on state institutions and fewer chances for accountability and transparency. Conflicts may also severely limit citizens' ability to collectively claim their rights due to insecurity, displacement, or fear of punishment if they engage in political activity.

Internal obstacles also hinder Arab civil society's ability to hold PPPs socially accountable, most notably the weakness of CSOs and limited internal democratic practice.

For Arab CSOs in particular, challenges also include the absence of consultation with stakeholders, lack of information and transparency, especially in procurement procedures and competition conditions, and the unsuccessful management of PPP contracts. CSOs also face difficulties related to tracking and monitoring PPPs, given the inconsistency of information, which helps the private investor (this is observed, for example, in the relationship that governs delegated management contracts in Morocco).

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