

12. Low-levels of awareness

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

III. ENABLING SME PARTICIPATION

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

To deal with the various challenges in an FCV context, SMEs may adopt a “coping strategy” aimed at survival rather than focusing on a growth strategy. Included in such a coping strategy may be, for example, relying on personal and social networks⁶², and dealing with traditional or informal institutions, or parallel authority structures⁶³.

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

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

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

⁶³ Annette Hoffman and Paul Lange, *Growing or Coping, supra*, note 18.

PSPs more broadly, as those may be relevant in addition to various SME-specific elements of an enabling environment.⁶⁴

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

A. Policy framework

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

1. Establishment of general PSP policy framework

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

- a. Scope of the PSP policy including definition of key PSP concepts
- b. Rationale for engaging in PSPs and statement of objectives and principles
- c. Identification of priority sectors for PSP

Box III.1 Policy Framework: Example from Rwanda

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

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

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

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

2. Sectorial policies and programs

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

Such initiatives may form a part of sectorial reform policies, which may in turn be part of a broader economic and business environment reform policy of the government.

In and of themselves, policy statements are not sufficient and they need to be backed up by programs. Policy statements of themselves do not influence investment decisions of the

private sector. The question of practical import is “what is the government or donor doing to address risks in the specific case of FCV?”

Box III.2 Policy support for private sector

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

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

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

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

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

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

The main principles of such sectorial reform policies may include: focusing of the central government role in development of sectorial policy; establishment of regulatory bodies; and transfer of operational activities to the private sector⁶⁵. For example, such a sectorial policy instrument may emphasize delegated management of water infrastructure/systems and PWS in semi-urban areas, PSP mechanisms that may be particularly suitable for involvement of SMEs (see examples in the Benin case study).

Box III.4 Policy Framework: Example from Cambodia

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

Such policies can help to defuse tension and distrust between communities and higher authorities in the FCV context by promoting local control and participatory development, thus also helping to defuse factors that may be fueling fragility and conflict.⁶⁶

⁶⁵ See reform of the electricity sector in the Mali case study, *supra*, note 8.

⁶⁶ Rwanda ICR, *supra*, note 14, p. 5.

3. SME policy

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

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

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

- Recognizing and legitimizing the possibility of SME participation on a PSP basis (e.g., as small scale private service providers)⁶⁸;

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

⁶⁸ Baker, *supra*, note 21, p.2.

- Authorizing SMEs to bid alone or in association with other bidders⁶⁹;
- Establishment of small-scale projects which tend to use SMEs as operators;
- Creation of projects at the sub-national and municipal levels, which typically are smaller in scale and may be more accessible for SMEs;
- Reserving certain selection processes only for SMEs;
- Requiring PSP project companies that are not SMEs to engage SMEs in the implementation of the projects (this could be formulated in terms, for example, of sub-contracting a percentage of the cost of construction, or specified portions of project)⁷⁰, or to include local partners;
- Rated proposal evaluation criteria that give credit to and incentivize proposals that include SMEs;
- Steps of various types to take cognizance of gender inclusion and impact issues in the PPP context;
- Special notification procedures directed at SMEs;
- Monetary advances to facilitate strengthened financial capacity;
- Facilitation of access to credit;
- Use of rated criteria (merit points) in the evaluation and comparison of proposals to credit proposals that include SME subcontracting or that exceed minimum levels of SME subcontracting if such minimums are established in the request for proposals;
- Obligatory division of projects into lots;
- Provision of a “light” regulatory framework for small-scale private sector providers that ensure quality and safety, while avoiding increased costs to providers⁷¹.

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

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

⁷⁰ This is a provision found in the Argentine Decree (see note 74), art. 12; that provision also states that the SMEs must be independent from the project company and that half of the subcontractors must be specifically identified in the proposal

⁷¹ Baker, *supra*, note 21, p. 3; the author refers to the possibility that, in countries where quality, safety and environmental standards for operators are low, consideration may be given to issuing regulations for SPSPs which are flexible in respect of service rules.

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

In defining SME support policies and tools, due regard may be given to making the support policies “conflict sensitive”. That includes taking into account coping strategies that may be unavoidable features SME operations in FCV zones and “conflict sensitive” business operations⁷³.

Apart from sectorial policies that call for SME participation in PSP arrangements, establishment of policies and strategies that promote economic development inclusive of SMEs is another potentially helpful component of the overall policy framework that may facilitate participation of SMEs. Coordination with such policies and strategies may to one extent or another assist in creating opportunities for SME participation, building SME capacity, facilitating access to finance, and simplifying SME participation in public procurement proceedings, including those connected with PSPs.

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

4. Government commitment

Strong government commitment to policies that enable SME participation on a PSP basis can be a key success factor. Adoption of a policy framework provides a visible vehicle for expressing a strong government commitment to a sectorial decentralization policy that provides for community management of water infrastructure works with operation by SMEs on a PSP basis⁷⁴.

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

⁷³ Hoffmann and Lange, *Growing or Coping?*, *supra*, note 18, p. 5.

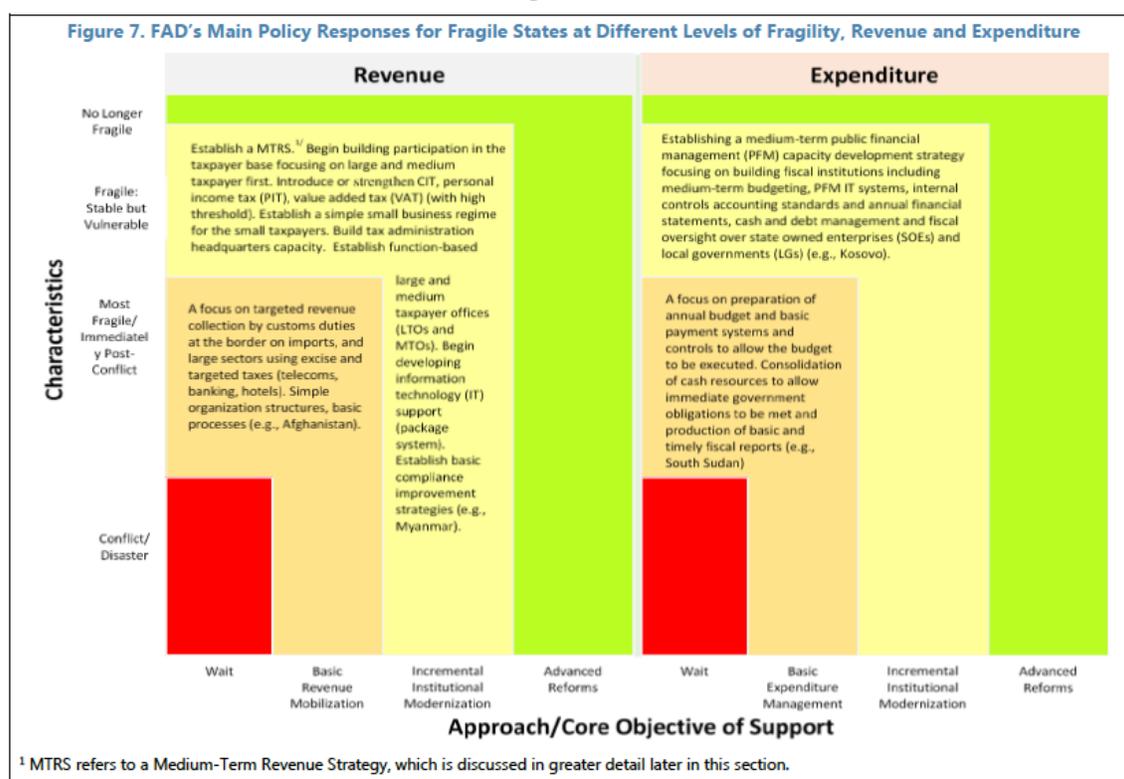
⁷⁴ See Rwanda ICR, *supra*, note 14, p. 5.

5. Taxation

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

The level of fragility of a particular country will play into the choice of fiscal approaches to be applied. For example, at early stages of recovery tax collection may be targeted at low-hanging fruit such as customs tax. That progression is outlined in the chart below⁷⁶.

Figure III.1



6. Donor support and coordination

Donor financial support is likely to play a key role in PSP transactions in the FCV context. PPIAF has played a coordination role in getting donors involved in both the design and implementation stages, thereby helping to solidify long-term donor commitment to PSP

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

⁷⁶ *Ibid.*, p. 20.

programs involving infrastructure services in FCV scenarios. That may present a challenge to the extent that donors are not habituated to providing support over an extended period to infrastructure services.⁷⁷

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

Maintaining donor engagement in the face of fragility reflects a paradigm shift as to the response of donors to fragility that recognizes the essential need to prevent sliding further into fragility and support for stabilizing forces and the centrality of engagement with FCV countries in the development policy agenda.⁷⁸

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

-- *Fragile Settings/Lasting Impact* (note 28), p. 39

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

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

Donor support: Example from Rwanda case study

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

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

⁷⁷ This has been the case in Afghanistan and in Palestine; see Andrew Jones, *supra*, note 28.

⁷⁸ See discussion of such a paradigm shift in *Fragile settings/Lasting Impact*, *supra*, note 28, p. 31; see also *Development for Peace and Security: BMZ Strategy Paper 4* (2013) by the German Federal Ministry for Economic Cooperation and Development.

⁷⁹ <http://www.ppiaf.org/sites/ppiaf.org/files/documents/PPIAF-Assistance-in-Mali-July-2011.pdf>

6. Selection of beneficiary community

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

“The perception of winners and losers from private investment can exacerbate pre-existing tensions.”
-- *Seven Approaches to Developing Projects in Fragile Governance Environments*, OPIC Office of Accountability (2014) (note 77), p. 6

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

7. Sustainable procurement policies

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

⁸⁰ See *Fragile settings/Lasting Impact*, *supra*, note 28, p. 39, citing examples, from Indonesia, Sri Lanka and Burundi.

⁸¹ *Ibid.*, p. 40.

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

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

B. Legal framework

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

1. PPP Law

A growing number of states have enacted legislation on PPPs. Such legislation may deal with issues such as⁸⁴:

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

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

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

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

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

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

http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2003Model_PFIP.html; additional references for the contents of PPP legislation may be found in the World Bank *PPP Reference Guide*, *supra*, note 29, pp. 66-69

- (b) Rules and procedures governing award of PPP contracts⁸⁵ (including rules and procedures for awarding PPP contracts; provisions that enable participation in procurement processes of joint ventures and consortia, which may provide an avenue for SME participation in PPPs; provisions that enable subcontracting, which may provide an additional way for SMEs to participate in PPPs, while protecting the public interest against sale of procurement contracts or other abusive practices that may involve subcontracting as a way of circumventing procurement processes; procedures for dealing with unsolicited proposals)
- (c) Contents and implementation of PPP contracts, including, for example,
- i. Issues to be addressed in the PPP contract
 - ii. Governing law
 - iii. Acquisition of rights related to the PPP project
 - iv. Easements
 - v. Security interests
 - vi. Operation of infrastructure
 - vii. Compensation for specific changes in legislation
 - viii. Revision of the PPP contract
 - ix. Takeover by the contracting authority
- (d) Duration, extension and termination of PPP contract
- (e) Settlement of disputes

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

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

Box III.8 Legal Framework: Example from Mali

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

2. Sectorial legislation

Particularly impactful on the possibilities and process for engaging SMEs in PSPs providing infrastructure services are sectorial laws and regulations. Such legal texts typically govern activities and define roles and responsibilities in the concerned sectors (e.g., legislation governing management of water resources that sets fee principles and structures for users, establishes water quality standards, and may establish institutional and organizational arrangements for management of water resources). In some cases, such legislation may specifically mandate the operation of small-scale networks by SMEs under the auspices of local government and community bodies.

⁸⁵ For a sampling of procedures and practice for procurement of PPP projects, see *PPP Reference Guide* 29, pp. 160-189.

⁸⁶ <https://pppknowledgelab.org/countries/mali>

Box III.9 Legal framework: example from Cambodia (energy)

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

Legal framework: Example from Somaliland

Somaliland Water Act: Establishes the legal framework to support the National Water Strategy, defining organizations, mandates and responsibilities, as well as procedures, obligations and interdictions in a general way - Approved by the parliament on 21 March 2011 by Parliament and signed by the President

Legal framework: Example from Benin (Water)

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

3. Decentralization legislation

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

4. Procurement procedures

While awarding of PSP contracts is subject to the general principles and procedures of public procurement, procurement of PSP contracts does raise a number of considerations that require procurement provisions specifically relevant to the PSP context. Key features of such provisions, which may be included in a procurement law, or in a PPP law, include:

- a. Open, competitive and transparent procedures for solicitation and evaluation of proposals, competitive procurement processes, even in the cases of PSPs being established at the communal level, that allow multiple bidders to compete for the right to operate infrastructure facilities, which can play a key role in ensuring affordable tariffs for

⁸⁷ <http://www.adb.org/sites/default/files/publication/29921/assessment-ppp-cambodia.pdf>

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

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

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

- a) Preparedness for emergency procurement (e.g., possible support for coping strategies that communities may have adopted, at least during the initial response phase; integration of procurement into national disaster preparedness and risk reduction plans; pre-establishment of framework agreements that may be used in emergency scenarios; establishment of governance structure for FCV procurement and designation of special emergency procurement/supply chain teams; capacity building for public officials in emergency procurement procedures and processes; conducting market survey of available relevant suppliers/contractors/consultants; establishment of list of relevant prequalified suppliers/contractors/consultants);
- b) Application of streamlined procurement methods where use of more complex methods might not be suitable;

- c) Application of proportional qualification requirements (in particular, setting qualification requirements to the qualifications of available and competent local and regional contractors and suppliers);
- d) Enhanced flexibility in choice of fit-for-purpose procurement method (see World Bank new Procurement Regulations for Borrowers⁸⁸);
- e) Use of output/performance based contracts;
- f) Use of technology such as geo-tagging, satellite imagery, and digital photography to facilitate contract management; use of mobile technology to transfer cash and monitor contract execution;
- g) Measure to manage and mitigate various types of risks (security risk, participation risk, payment risk, delivery risk, monitoring risk)
- h) Reversion back to normal procurement procedures when circumstances permit;
- i) Community and stakeholder engagement;
- j) Use of NGOs and community groups to supervise projects, or, in some cases, directly to implement projects;
- k) Hands-on support from donors such as the World Bank (enhanced, pursuant to the World Bank's new Procurement Framework);
- l) Capacity building assistance to local companies, including SMEs;
- m) Applicability of Open Government and Open Contracting principles, including documentation of procurement processes;
- n) Applicability of professionalism, ethics and accountability standards

5. Contractual framework

The legal framework for PSP arrangements consists of more than just the applicable legislation and regulations. An essential component of the legal dimension of an enabling environment for SME participation on a PSP basis is the contractual framework that governs the role of the private sector party contracted through a PSP arrangement. Below is a listing of key issues that may be dealt with in contracts between the public sector party and the SME operator, depending in detail upon the subject matter and type of the PSP, as well as the level and number of public sector parties involved.⁸⁹ It should be noted that the increasing diversity of PSP transactions and parties is resulting in a growing diversity of contractual arrangements.⁹⁰

a. Rights and obligations of private sector operator, including

⁸⁸ <http://www.worldbank.org/en/projects-operations/products-and-services/brief/procurement-new-framework>

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

⁹⁰ OECD, *Managing Water for All*, *supra*, note 2, p. 17.

- i. Definition of service area
- ii. Any construction, rehabilitation and maintenance obligations, and compliance with applicable legislation, regulations and technical standards
- iii. Any obligations as regards installations on the property or in residences of customers
- iv. Requirements as to service levels and quality (e.g., in electricity, voltage levels of electrical current to be supplied)
- v. Insurance requirements
- vi. The obligation to cooperate with local government even if the SME is recruited by the central government, which in such cases could be stipulated in a separate collaboration agreement between the SME and the local government)
- vii. Duty to respect the environment
- viii. Obligation of continuity of service in accordance with stipulated minimum levels (e.g., number of consecutive hours per day)
- ix. Provisions governing interruptions of service (e.g., for maintenance and repair, and related liability issues, notice obligations)
- x. Required maintenance schedule
- xi. Obligation to connect or otherwise service stipulated number of end-users in accordance with stipulated schedule, and procedures to request schedule modification; sanction for non-compliance with maximum allowable schedule may be loss of exclusivity in the operating zone; obligation with respect to connecting additional customers (subject to non-imperiling of financial sustainability)
- xii. Right of access to public roads, networks
- xiii. Right to access above and below private property for the purposes of providing the service, including right of passage for maintenance purposes

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

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

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

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

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

b. Rights and obligations of the public sector party

- i. Any assistance to be provided to the private sector party in terms of obtaining necessary permits
- ii. Monitoring of implementation and performance of the project
- iii. To inform the private sector party of any changes in applicable legal and regulatory regime
- iv. Grounds for cancellation of operator's license to operate (termination of contract, e.g., for failure to comply with stipulated service levels)
- v. Definition and regime governing works and equipment involved in the project (including those which are to be returned to the public sector party and those which are retained by the private sector party at the conclusion of the operational period)
- vi. Stipulation of which party is responsible for investment
- vii. Any guarantee requirements that might be applicable
- viii. Assistance, if any, that is to be provided to the operator as regards access to tools and other equipment that may be needed for implementation
- ix. Any office space or other facilities to be accorded to the operator
- x. Any support to be provided in the form of training and consultancy services for technical aspects
- xi. Steps to be taken to monitor satisfaction levels of end-users

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

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

c. General provisions

- i. Identification of contracting parties

- ii. Contract duration (including the beginning and the expiry points in time, and whether there are any options for extension and the duration of the possible extensions)
- iii. Procedures for dealing with changed economic circumstances, in particular those potentially affecting tariff levels)
- iv. *Force majeure* (obligations of operator, including prompt notification to public sector party)
- v. Procedure for modification of contract
- vi. Dispute resolution procedures, including mechanisms to address emerging problems before they develop into full-blown disputes, and non-judicial mechanisms for settlement of disputes

Box III.13 Settlement of disputes – various possible approaches⁹¹

- **Amicable settlement** by negotiation
- **Mediation** – assistance from a neutral intermediary
- **Dispute Review Expert/Dispute Review Panel:** a variant is the appointment of an **independent engineer** to monitor implementation and decide on technical matters; decisions may be binding or non-binding depending upon how it is set up; for small projects, to keep costs proportional, local experts may be engaged, or expert desk reviews conducted, or consolidated arrangements made for groups of contracts
- **Arbitration** – an adversarial proceeding alternative to judicial settlement of disputes resulting in a binding, enforceable award
- **Judiciary** – default method, if the parties do not stipulate otherwise
- **Hybrid systems** -- with third-parties (e.g., representatives of chambers of commerce) sitting on panels together with magistrates⁹²
- **Regulatory body** -- If existing/applicable, may have a role in settling disputes

In addition to contracts between the public sector parties sponsoring PSP arrangements and SMEs operating infrastructure facilities, other agreements may form part of the overall contractual framework. For example, if a central government is promoting small-scale infrastructure and services PSPs utilizing SMEs, it may enter into agreement with targeted communities concerning their acceptance of such an approach, defining their general responsibilities in such arrangements, and outlining the role of central authorities⁹³.

⁹¹ See *PPP Reference Guide, supra*, note 29, pp. 167-168; see also Delmon, *supra*, note 94, pp. 40-43, including sample contract clauses on dispute settlement.

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

⁹³ As in the Somalia case study, where the community entered into a framework agreement with the central government

6. Other relevant legal instruments

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

C. Institutional framework

1. Role of institutional framework

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

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

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

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

(Benin case study; see note 3)

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

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

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

Various types of approaches are found in practice to allocating SME promotional tasks.

For example, entities taking a lead role on SME issues include the Ministry of Trade in Bosnia, the Ministry of Commerce and the Chamber of Commerce in Afghanistan, the Social Fund in Yemen, and the Social Fund for Development in Egypt.⁹⁵

Box III.15 Institutional Framework:

Example from Somalia (Water)

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

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

Box III.16 Institutional Framework: Example from Mali

AMADER: central agency in charge of (a) promoting electrification in rural and suburban areas, (b) working with all types of operators, (c) providing technical assistance and financial support, and (d) acting as a de facto regulator in rural and suburban areas. In 2016, the Government indicated intent to set up a PPP unit. AMADER serves both as a grant giving agency and a de facto regulator. (See notes 8 and 9)

⁹⁵ See Annex B, Survey Summary.

2. Institutional strengthening in FCV contexts

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

While it is generally advisable and desirable to include government institutions in the project process, in the context of weak governments creative solutions may be necessary to achieve that end and also to design and utilize projects with a view to strengthening and legitimizing government institutions. For example, gradual phasing in of

Box III.17 Institutional Framework: Example from Rwanda

Rwanda Development Board leads on PPP promotion and reports directly to the President. Decentralization occurred in 2001 with the establishment of districts who were given contracting authority and the creation of Community Development Committee (CDCs). In 2005, performance contracts were also decentralized, to be conducted between households and district subdivisions rather than between the districts and the President. (See note 14)

involvement of state institutions may in some cases be a suitable approach in the FCV context⁹⁶.

At the same time, fragility-related considerations weigh on the issue of institutional arrangements and linkages in a number of ways. For example, avoidance of creating parallel systems is an important objective. Strengthening state structures is typically a priority objective in fragile contexts. Establishment of parallel institutional arrangements in place of state structures may undermine rather than strengthen state structures. Experience has shown that in FCV contexts, in particular where strengthening of state institutions is an objective, state institutions should be included from the very beginning in planning processes. Experience also shows that reintegration of parallel regulatory mechanisms into state structures can be particularly challenging.⁹⁷

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

3. Central mechanisms

Various countries have established a PPP Unit at the central level. A central PPP coordination office under a competent ministry or in some other location in the

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

⁹⁷ See *Fragile Settings – Lasting Impact*, *supra*, note 28, pp. 36-37.

⁹⁸ *Ibid.*, p. 36, for an example of this from Mali.

government structure (e.g., under the cabinet of ministers or president's office); in some countries, such mechanisms might include also a PPP finance unit in the ministry responsible for finance.

4. Sectorial regulatory bodies

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

The role of sectorial regulatory bodies is not necessarily confined to tariff setting, but may also encompass setting of quality standards and licensing.

Considerations that may be relevant in defining regulatory policy in the context of small-scale operators include the desirability of avoiding unnecessarily burdensome and prohibitively costly quality standards (including for the

Box III.18 Quality standards for small power producers

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

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

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

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

5. Variants of sectorial bodies

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

For example, consideration may be given to a hybrid model in which a body is established specifically to promote the access of underserved population to infrastructure services of a specific sector in particular through the involvement of SMEs, combined with certain

Box III.19 Central sectorial body: Example from Mali (energy) The Malian Agency for the Development of Domestic Energy and Rural Electrification (AMADER) is an example of a central sectorial agency in charge of (a) promoting electrification in rural and suburban areas, (b) working with all types of operators, including SMEs, including by granting authorization to SMEs to operate distribution networks within specified areas, (c) providing technical assistance and financial support (e.g., distribution of subsidies), (d) overseeing and monitoring project implementation, and (e) acting as a de facto regulator in rural and suburban areas. (See notes 8 and 9)

regulatory functions such as tariff setting (see example from Mali in the box).

6. Arrangements at the local and communal levels

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

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

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

Policy-making and project selection processes that engage stakeholders, involving the private sector, including SMEs and civil society, facilitate the development of responsive public policies and socially accountable programs. Modalities for enabling SME and civil society inclusion in policymaking and project selection include meetings and

consultations with stakeholders and development bodies and funds, awareness workshops, advocacy through chambers of commerce and industry, and participation in open dialogues and fora.¹⁰⁰ Also important is a communications strategy with regard to SME/PSP initiatives to build awareness of the PSP initiatives and the opportunities that may be available to SMEs.

Box III.20 Lessons learned about stakeholder engagement: Example from [Somalia] case study

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

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

Private sector engagement: Example from Cambodia case study

Private Sector Development Steering Committee (PSDC), chaired by the Ministry of Economy and Finance, was created in 2006 and serves as a sub-steering committee on private participation in infrastructure decisions and policy framework for PPPs. The Electricité du Cambodge (EDC) was the state power company serving the capital and two provincial cities, while other provincial cities were served by local Government or licensed enterprises. (See notes 10 – 13)

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

8. Tariff setting and regulatory aspects

Possible regulatory issues span a broad range, depending upon the nature of the sector. For example, in the water sector, regulatory issues concern water quality, environmental impacts, economic regulation in particular in monopolistic markets, consumer protection, sector monitoring and oversight. At its core, regulatory and tariff issues implicate risk allocation among stakeholders, incentivizing the private sector, while ensuring fairness and balance in tariff-setting and curtailing rent-seeking¹⁰².

¹⁰⁰ See Annex B, survey summary.

¹⁰¹ See *PPP Reference Guide*, *supra*, note 29, pp. 96-100; see also *Seven Approaches to Developing Projects in Fragile Governance Environments*, from the Overseas Private Investment Corporation (OPIC), Office of Accountability (OPIC), pp. 2 and 7-8; available at <https://www.opic.gov/sites/default/files/files/Fragile%20Governance%20Advisory%20Note.pdf>.

¹⁰² OECD, *Managing Water for All*, *supra*, note 2, p. 115.

In setting tariffs, various policy objectives and considerations may be applicable. Possible pricing policy factors, some of which may to one extent or another be countervailing, include¹⁰³:

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

9. Grievance mechanisms

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

“Users’ associations” may play a role in GRMs. In the GRM context, “users’ associations” (a) represent the users’ views and interests in consultations with service providers on service levels, technical standards, quality assurance and quality control, tariffs setting, improved customer service and any other issues of concern that may arise; (b) mediate in conflicts between users and service providers at the lower level; these

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

could be related to illegal connections (damage and interference to infrastructure); (c) participate in identification of priorities for improvement and expansion of the services; (d) participate in monitoring the service delivery at the local level by reviewing the quality of services delivered and holding providers accountable; and, (e) serve as the primary group responsible for communicating information on local issues.

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

10. Transparency

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

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

- project rationale for selection on a PSP basis
- competitive, advertised and documented procedures for award of PSP contracts
- publicizing of PSP projects, contract awards, texts of contracts, and contract modifications
- disclosure of risk allocation
- government asset transfer, payment and/or guarantee commitments
- project summaries
- tariffs and pricing

¹⁰⁴ *Seven Approaches, supra*, note 106, p. 8.

¹⁰⁵ *Disclosure of Project and Contract Information in Public-Private Partnerships*, World Bank Institute (2013), p. 26; available at <https://openknowledge.worldbank.org/handle/10986/16534>; see also *PPP Reference Guide*, *supra*, note 29, pp. 100-101.

- key performance indicators (KPI)
- project performance and audit reports.¹⁰⁶

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

D. Capacity-building programs and resources

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

1. Capacity building of public sector

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

Training programs

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

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

¹⁰⁶ Various types of information the public disclosure of which is germane to transparency in PPP contracting are illustrated in *Disclosure of Project and Contract Information, supra*, note 110.

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

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

Sector-specific capacity building

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

Capacity building at the sub-central level

It is important to note that public sector capacity-building may need to be conducted at more than one level of government. Capacity building of local and communal authorities, who may be on the frontlines of PSP initiatives that involve SMEs, is often necessary as they are prone to lacking technical and monitoring ability as regards PSPs generally, and specifically as regards promoting and facilitating SME participation. They may also be unfamiliar with the details of operation and management of specific sectors. Thus, a PSP initiative targeting the delivery of infrastructure at the community level harnessing SMEs may include training for the involved communities in contract management and quality control, tariff setting, and accountability¹⁰⁸.

Building of capacity for mobilizing communities

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

¹⁰⁸ See Somalia *Final Evaluation Report*, supra, note 5, p. 41.

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

Issuance of guidance material and project templates

As an adjunct to training sessions and other capacity building resources, a practitioner’s manual or similar handbook may be issued to guide officials in establishing PSPs utilizing SMEs. That may be particularly helpful at the local and community levels. Such a publication may include templates for various types of documents that need to be prepared in the course of preparation and implementation, and may be geared to specific sectors¹¹⁰.

Enhanced planning and preparation techniques

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

Application of IT

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

Box III.21 Use of social media for civil society engagement: Palestine solid waste management project
The Joint Service Council, representing 33 municipalities utilizing the new common landfill facility set up a Facebook page to communicate with customers (e.g., to alert customers to service disruptions or delays) and receives information about customers’ needs via text messages (e.g., when a dumpster is full and needs to be collected)

¹¹⁰ *Ibid.*, p. 42.

communicating with customers, including for getting feedback (e.g., through a Facebook page, and through text messages)¹¹¹.

Box III. 22 Use of mobile applications: Example from Benin case study

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

Access to equipment

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

2. Capacity building of private sector

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

Training and awareness-raising programs

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

- (a) Introduction to basic PSP concepts and forms, and the opportunities PSPs may offer to SMEs;

¹¹¹ For example, in Palestine, where a World Bank/IFC project helped establish the West Bank's first professionally managed, regionally operated landfill (*Ending the Vicious Cycle of Open Dumps; Improving Waster Pickers' Lives* <http://www.worldbank.org/en/news/feature/2013/11/08/ending-open-waste-dumps-changing-pickers-lives>). Although the project company here was a firm from Greece and not an SME, this project demonstrated a public-private type of involvement empowering economic activity of waste-pickers.

¹¹² See Annex B, survey results.

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

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

Advisory services

Capacity building for SMEs is not necessarily limited to training. In addition to providing capacity-building in the form of training, some countries make consultancy services available to SMEs to help SMEs respond to solicitations of bids and proposals, including for PSP-based projects for delivery of infrastructure services. An example from the FCV context is BSC Monrovia, Liberia's main incubator for SMEs, which provides training plus a number of other services¹¹⁵.

Online information

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

Formation of associations

Yet another avenue for building the capacity of SMEs to participate in PSPs may be through the establishment of, or working with existing, associations of SMEs, or other umbrella organizations representing the private sector. In some cases such associations

¹¹³ See Somalia Final Evaluation Report, *supra*, note 5, p. 41.

¹¹⁴ Wim Naudé, *supra*, note 63, p. 19.

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

¹¹⁶ See Annex B, survey results.

may be sector-specific (see box below for the example from the Benin case study of the establishment of such an association to represent private sector operators in the water sector; the Rwanda case study offers another example of the formation of associations; private operators there established a national association to provide support to its members in financial and commercial management¹¹⁷). Apart from advocacy, such associations can play an important role in capacity building, including by organizing training sessions, facilitating access to mentoring, collaborating with government in establishing and enforcing standards, helping SMEs access financing, lobbying for a favorable duty and tax regime for equipment, facilitating procurement of common-use items, and helping to arrange investments, and other resources¹¹⁸.

Box III.23 Associations of SMEs: Example from Benin case study

The Association des Fermiers du Benin (AFEB) was created to lobby and organize the enterprises in the country. Under donor program PADEAR, a training program Centre de Promotion et d'Encadrement des Petites et Moyennes Entreprises (CePEPE¹¹⁹) was put in place, formed in 1989 with WBG support for SMEs in the management of PWS. It provided training on business management and consultancy services to help private actors respond to requests for tender and guarantees through Fonds National de Garantie et d'Assistance aux Petites et moyennes Enterprises (FONAGA) covering up to 50% of commercial loans. It trained over 60 POs, including those involved in works construction and water services management. (See note 3)

Establishment of special purpose companies

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

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

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

¹¹⁷ *Supra*, note 14.

¹¹⁸ See discussion of the role of such associations, see Baker, *supra*, note 21, p. 3.

¹¹⁹ <http://www.cepepe.org/>

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

Box III.24 “Home Grown Company” creation approach: Example from [Somalia]

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

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

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

Incubators

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

¹²⁰ See Annex B, survey results.

Access to tools and equipment

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

Supporting technical services

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

Collaborative arrangements

In some cases, in particular at the community level, capacitation of SMEs may be promoted by the formation of collaborative arrangements between operating companies. Collaborative arrangements maybe established specifically for the purposes of implementing PSP contracts (see the example from the Somalia case study¹²²).

Box III.25 Value of collaborative arrangements among SMEs: Example from Somalia case study

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

Other forms of capacity-building under the rubric of collaboration may be applied. Those may include, for example:

- Facilitating the participation of SMEs in PSPs by way of entry into consortia or through subcontracting opportunities under PSPs. Such initiatives may entail raising awareness of SMEs about the nature of consortia, and by making

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

¹²² *Supra*, note 5.

opportunities for such modes of participation by means of contracting with PSP operators more visible;

- Facilitating partnering of small-scale operators with larger utility companies as and when such developments may become feasible; cooperation between SMEs and utilities enables synergy in the provision of services and avoids market segmentation¹²³; an example of encouraging such possible cooperation from the water sector includes incentivizing utilities to supply treated water to SSPs distributing water through networks that the SSPs operate.¹²⁴

At the same time, collaboration, including among SMEs may also help to rebuild trust in fractured and fragile communities. That may be the case, for example, when SMEs drawn from different sides in a conflict situation are engaged in a collaborative undertaking, thus supporting the type of intergroup interaction that has been associated with economic progress in FCV contexts. Such a potential role of SMEs in contributing to peacebuilding is in line with the natural interest that SMEs may have in peacebuilding, since SMEs are a primary victim of conflict. By the same token, FCV response strategies that neglect or marginalize SMEs may have the effect of exacerbating underlying causes of fragility.¹²⁵

3. Facilitation of access to finance

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

Facilities that some countries establish to enable SMEs to access financing may be applicable to their participation in public procurement markets, including for the purposes of bidding for and implementing PSP projects. Services offered by such facilities may include in particular access to bid and performance securities, loans and/or loan guarantees to facilitate contract implementation, and factoring (or facilitation of factoring) of receivables.

Another variant is the establishment of sector-specific financial facilities

Box III.26 Establishment of lines of credit at commercial banks: Example from Benin case study

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

¹²³ *Evaluation of Small-scale Providers of Water Supply and Sanitation Services in Peru*, supra, note 58, p. 7.

¹²⁴ *Ibid.*, p. 8.

¹²⁵ This paragraph is a summary of the discussion of the possible FCV-specific benefits of inter-group collaboration among SMEs in Hoffman and Lange, *Growing or Coping*, supra, note 18, pp. 12-13.

to support the provision of infrastructure services. Examples from the case studies include The Fund for Rural Electrification in Mali, which provides subsidies for investment and for construction. That enables such projects, which involve SMEs, to be commercially viable. In FCV contexts, donor institutions may be willing to couple assistance for accessing finance with capacity building programs for SMEs.

4. Subsidization of SME involvement in PSPs

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

Box. III.27 Subsidizing SME participation: Example from Mali case study

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

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

Subsidization in the utilities sectors is not necessarily limited to the to SME (small-scale provider) context. When considering the pluses and minuses of subsidization for small-scale providers, it may be noted that the issue of subsidization may well arise even when

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

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

¹²⁷ *Ibid.*

¹²⁸ For a discussion of the “demonstration effect”, see Energy SMEs in sub-Saharan Africa, *supra*, note 52.

established utilities are the concerned service providers, to the extent that the utilities are financially weak and not in a position to make needed capital investments without financing help.¹²⁹

Box III.28 Subsidized concession approach: Example from Benin

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

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

5. Easing of technical requirements

Easing of technical requirements may be considered in some circumstances, especially in the FCV context, to address certain capacity constraints. In some cases it may be deemed appropriate and feasible for certain technical requirements to be eased in order to facilitate the implementation of infrastructure projects by SMEs in underserved areas¹³⁰.

6. Documentation of project

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

7. Monitoring implementation and measurement of impact

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

¹²⁹ See *Evaluation of Small-scale Providers of Water Supply and Sanitation Services in supra*, note 58, p. 7.

¹³⁰ See the example of the Mali Rural Electrification initiative, which included adaptation of some technical requirements for the rural context in order to facilitate access costs (*supra*, note 8).