

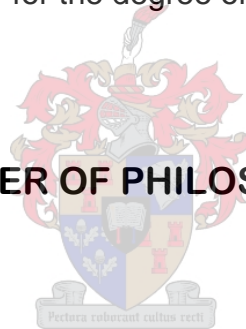
**CORPORATE GOVERNANCE IN
PUBLIC-PRIVATE PARTNERSHIPS:
A PUBLIC SECTOR MANAGEMENT PERSPECTIVE**

by

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Assignment presented in partial fulfilment of the requirements
for the degree of

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Declaration:

I, the undersigned, hereby declare that the work contained in this assignment is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Signature:

Date:.....



This assignment is dedicated to my
late father, **Hendrik Jacobus Brink** (1930-2001)

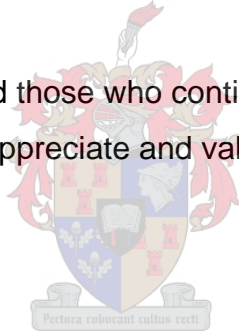
The most ethical person I ever knew

Pectora roborant cultus recti

ACKNOWLEDGEMENTS

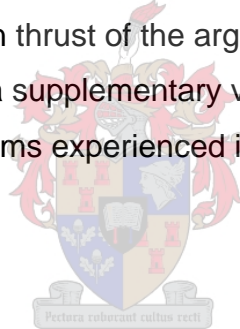
Many individuals have shaped my thinking and development in Ethics and the application of Ethics in the business environment.

To all who had contributed and those who continue to assist me in my growth, I sincerely appreciate and value all inputs.



SUMMARY

This assignment deals with the relevance of Public-Private Partnerships in the South African context and particularly the role it can play in realising the developmental goals of the economic policy. The value of the unique relationship that is possible between the public and the private partner goes beyond the formalised legal agreement as the mix of cultures and different managerial approaches hold benefits for both parties. There are many aspects of the PPP, especially as a management tool, which grow beyond the boundaries of a work of this length and which will hopefully entice the reader to further reading. However, in this work the main thrust of the argument is that the PPP offers an alternative, or maybe rather a supplementary vehicle to address a number of managerial problems experienced in the public sector.



OPSOMMING

Hierdie werkstuk handel met die relevansie van die sogenaamde “Public-Private Partnership” in die Suid-Afrikaanse konteks en meer spesifiek die rol wat dit kan speel om die ontwikkelingsdoelwitte van die ekonomie te bereik. Die waarde van die unieke verhouding wat moontlik is tussen die publieke en die private party venoot verder as die formele regsverhouding aangesien die vermenging van die kulture en verskillende bestuurstyle voordele vir beide partye inhou. Daar is vele aspekte van die PPP, veral as ‘n bestuursmeganisme, wat buite die grense van ‘n werk van hierdie lengte gaan en hopelik word die leser gestimuleer om verder oor die onderwerp op te lees. Die vertrekpunt van hierdie werk egter is dat die PPP ‘n alternatiewe, of selfs ‘n bykomende meganisme om verskeie bestuursprobleme wat in die publieke sektor ervaar word, aan te spreek.



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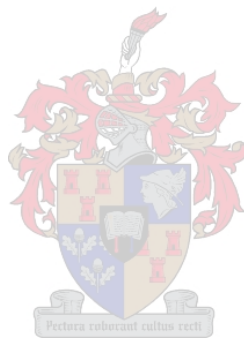
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GLOSSARY

ANC	African National Congress
BAFO	Best and Final Offer
BEE	Black Economic Empowerment
BBBEE Act	Broad-Based Black Economic Empowerment Act, 2003
CEO	Chief Executive Officer
CIPS	Chartered Institute of Purchasing and Supply
CSI	Corporate Social Investment
CSO	Civil Society Organisation
DBSA	Development Bank of South Africa
DAC	Departmental Acquisition Committee
DCA	Department for Constitutional Affairs
DPLG	Department of Provincial and Local Government
DS	Developmental State
GG	Government Garage
GPG-AC	Gauteng Provincial Government Acquisition Council
HDI	Historically Disadvantaged Individual
HoD	Head of Department
IDP	Integrated development plan
JSE	Johannesburg Securities Exchange
MEC	Member of Executive Council
MFMA	Municipal Finance Management Act 56 of 2003
MIIU	Municipal Infrastructure Investment Unit
MIS	Management Information System
MPPP	Municipal Public Private Partnership
MSA	Municipal Systems Act
MSP	Municipal Service Partnership
NAO	National Audit Office
NBI	National Business Initiative
NEF	National Empowerment Fund
NPM	New Public Management
PFI	Public Finance Initiative
PFMA	Public Finance Management Act

POCCA	Prevention and Combating of Corrupt Activities Act
PPPFA	Preferential Procurement Policy Framework Act, 2000
PPP	Public Private Partnership
PPP Unit	PPP Unit appointed by National Treasury
PSP	Private sector participation
PUK	Partnership UK
RFP	Request for Proposal
RFQ	Request for Qualification
SA	South Africa
SCM	Supply Chain Management
SLA	Service Level Agreement
SME	Small and Medium Enterprise
SMS	Senior Management Service
SPV	Special Purpose Vehicle
TA:I	Treasury Approval I
TA:II	Treasury Approval II
TA:III	Treasury Approval III
TCO	Total Cost of Ownership
TI	Transparency International
TISA	Transparency International South Africa
TR	Treasury Regulations
TR16	Treasury Regulation 16
UN	United Nations
UK	United Kingdom
4Ps	Public Private Partnerships Programme

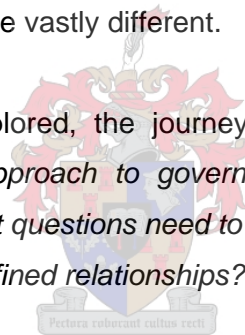
CHAPTER 1

INTRODUCTION

*All philosophy has its origins in wonder
- Plato*

Imagine that the way in which business is conducted, and the role that participants play in the development of our economy, can look totally different. Open your mind to expand your perceptions of what kind of role government can play in business transactions, and by the same token, what the expectations and participative approach should be of the other role-players in the long term. Accept for the moment that there are many new opportunities to be explored and that the state of affairs as regards public-private participation in the economy can be vastly different.

If these avenues are to be explored, the journey should start with a few probing questions: *what philosophical approach to governance would be the most insight-yielding and productive? And what questions need to be asked in order to interrogate the nature of human behaviour in confined relationships?*



The behaviour, and more specifically the moral behaviour and therefore moral choices of the individual, will always elicit endlessly fascinating philosophical discussions – after all, it remains the unanswerable question for the philosopher. Even more fascinating is the subject of morality in business. Whether the morality of choices is discussed in a confined circle of like-minded individuals, or in the classroom, or (as has happened of late) in the boardroom, one of the most central questions remains: what are the moral considerations on which decisions are to be made? In the world of business, the financial implications of these decisions obviously provide strong direction, as justification needs to be found for the implementation of decisions that have financial implications. And the morality of the decision should, for the ethicist, not be solely directed by its anticipated financial implications, but the stark truth is that money matters and that it will always need to be considered.

Long ago Socrates posed the question: “what is the good life? How can we achieve it?” In the world of business, I want to pose the same question: what is the *good life* in business? Should the application of ethical principles and values in business, such as trust, transparency and accountability, not add to the expectation that we all have, which is to experience what the good life is? This is a particularly relevant expectation in view of the government’s objective to “create a better life for all” and public–private partnerships can, and should, play a paramount role in realising this objective. In exploring the interpretation of arguments on what *is* the *good life*, a strong emphasis will be given to the Aristotelian approach, and it will be argued that this approach lays the foundation for applying the principles of virtue ethics.

1.1 Plato and Aristotle

While both Plato and Aristotle agree that the good life is the exhibition of perfect virtue, they disagree on the particular definition of virtue, and its relevance to happiness, and therefore they disagree on the means of attaining happiness.¹ Plato sees the good life as being attained through perfect love and lack of desire, while Aristotle believes that the good life is achieved through a perfect state which causes its citizens to act upon their virtues. Ultimate happiness occurs when a person's actions are all virtuous and when a person has goals that are virtuous. It also implies that, in order to live the good life, there must be no action that is unnecessary, but for the sake of virtue there are three things that make men good and excellent: nature, habit and reason. Therefore the path to happiness is through formation of habit and reason, which create virtuous action, but which should also possess a nature that agrees with these. When the core of a person's nature cannot change,² he is then unable to lead the good life.

Both Plato and Aristotle see the good life as the state in which a person exhibits total virtue, and since each person has different virtues, Aristotle argues that the good life is different for each individual because it comes from living one's life according to one's virtues. The question prompted by Aristotle as to which are the right actions one should

¹ www.philosophypages.com: 1-2

² Ibid

take to live the good life, takes on another character when applied to virtue ethics. Instead of asking “what is the right action?”, one should then ask “how should one live?”;³ in other words, what kind of person should one be to take the right action every time in order to live ethically?

The central questions asked by Plato in *The Republic* to some extent would also need to be considered here: “what is justice in the State or what would an ideal State be like?” and “what is a just individual?” The virtues that would need to be found in the just State would also include the following: courage, wisdom, temperance, and justice. By the same token, Aristotle recognised a plurality of virtues which are good in themselves, such as honour, pleasure and intelligence.⁴ However, he also meant that virtues are not striven for as ends in themselves, but are also aimed at for the sake of happiness. This would mean that in order to be truly happy one should have (and practise) the virtues, but true happiness can only be found in itself. This is probably what we experience as the “meaning” of life.⁵ Similarly, in the endless quest by the individual for these virtues, finding them in the business environment would also ensure that both employee and employer would be “most happy”.

In acknowledging that we are all aspiring to experience the *good life*, we need to consider the question: what is the ultimate action and what is it that our actions finally aim at? How will we ensure that we obtain what we are looking for? In considering this, Aristotle’s *phronesis* is to be referred to when he emphasized the difference between practical and theoretical knowledge. Practical knowledge is concerned with particulars, not with universals, and to possess it is to know what to do here and now. “It is not a matter of appealing to rules and general principles, not a matter of logical argument or intellectual ability. It consists simply in knowing, in a particular situation: this is what I should do.”⁶ This knowledge is acquired both by practical experience and by habit. Therefore, in deciding how to act in a specific situation, for example where one is angered, one’s moral education would direct one how to act. The knowledge that we

³ The Internet Encyclopedia of Philosophy: Virtue Ethics 3

⁴ www.philosophypages.com 2

⁵ Norman *The moral philosophers, an introduction to ethics* 30

⁶ Norman 39

acquire enables us to understand how to act in certain situations – not by learning theoretical examples, but by moral training, as we should have been brought up in a morally civilized society.⁷ It follows, then, that good habits are learnt: that it needs to become habitual to exercise good judgement, and to make decisions based on sound moral values. This will ensure that one develops good character as character is about “doing” and it follows that when one has managed to develop virtuous characteristics one will also then act in accordance with them. Such characteristics are stable, fixed and reliable and a person with a certain character can then be expected and relied on to act consistently.

1.2 Virtue Ethics

In asserting in his *Nicomachean Ethics* that human beings move towards a certain *telos*, Aristotle’s work is regarded as the foundation of virtue ethics.⁸ He also argued that one should habitually make good decisions in order to develop good character, and it then follows that good character develops over a long period of time. This is true both for the individual and the organisation: an organisation which is consistently seen to make ethical decisions in business will be viewed to demonstrate good character and consistency in ethical decision-making. The values on which such decisions are based are also normally well known, as the organisation would normally publicly declare which values it aspires to uphold in its course of business.

Aristotle claimed that character is developed through good actions and habits, which focuses strongly on the moral characteristics of the individual: the assessment would be which moral characteristics the individual managed to develop through consistent good actions and habits. The emphasis on virtue in everything we do can be regarded as one of the cornerstones of virtue ethics. There is a strong emphasis on the person who acts, also referred to as the “agent”, instead of on the moral or immoral act.⁹ In applying virtue ethics, the focus is not on adherence to moral law or optimising wellbeing, but on the rationality of virtue itself. The reason, then, not to act in a certain manner, for example,

⁷ Norman 39

⁸ The Internet Encyclopedia of Philosophy, Virtue Ethics 5

⁹ The Internet Encyclopedia of Philosophy, Virtue Ethics 7

would be found in the quality of the action itself: one does not lie, not because of obligation or consequences, but because it is dishonest. One's action would therefore be viewed within the larger context of life instead of the context in relation to the individual. But the focus in terms of virtue ethics is that if one is to exercise judgment in making decisions, one would need to be informed on the values that need to be maintained and it therefore follows that moral education and development should form part of the development of the virtuous person. This would be particularly relevant where ethics is to be taught and implemented in an organisation. An important distinction, however, needs to be made here: although staff members need to be informed on the values that an organisation strives to adhere to, it is not a subject that can be taught and it cannot be expected that "ethics training" or "creating an ethical culture" would have been successfully implemented just because the staff is then deemed to have been educated on the subject. In this regard there is room for the Aristotelian view that good character is developed by consistently enforcing good habits: in order to instil certain values in an organisation, especially taking into consideration typically African values in the South African context, the issue would need to be approached differently. A noble expression that I heard recently about the implementation of values in the African cultural work environment is that people need to be convinced to want to "come into the house". What was meant by this is that values need to be "negotiated" in order to be accepted. This type and level of negotiation means that staff all need to agree on what values would be considered acceptable and necessary in their work environment: by getting all to accept the identified values, one ensures better commitment to the process and its implementation. This could therefore be viewed as informing or educating staff on what should be done in order to take good decisions, but at the same time also allowing them to demonstrate good habits that will eventually become part of their environment. The good habits should then become entrenched in the environment and hence all those who are part of the particular environment will adapt the "good character" that had been formed. The morality of the community will thus shape the individuals to develop good character.

1.3 Virtue Ethics in the Business World

In applying this principle to the lack of ethics that can be observed in the business world, the clear deduction that can be made is that, maybe without even realising it, we have developed immoral habits: our values generally have become so questionable that it has become socially acceptable to do things that previous generations certainly would have questioned. When allegations of corruption were brought against the former deputy president, Jacob Zuma, many concerned South Africans waited with bated breath to see what the president would do: would he dismiss his deputy or not? How could we have doubted what he was expected to do? How could we anticipate that the criminal charges that were to be laid could possibly be condoned? Many even proclaimed that it was not “wrong” for Zuma to have accepted any money as this is the way that business is done. Similarly, even though Judge Hillary Squires in the Shabir Shaik trial found the Frenchman Alain Thetard to have been an intermediary in the bribe secured for Zuma from the French arms company Thomson-CSF, it seems that to date no steps were taken in his country against him for his involvement in the corrupt dealings. Surely if the values that are to be adhered to in a state that aspires to uphold good governance were applied, Thetard would (should) have been held responsible for his actions – but, again, the values to which his society has grown accustomed do not seem to require such accountability. It seems that it has become the norm not to take a definite stance on what is wrong or right; it seems that we often want to leave room for alternative interpretations of what morality is supposed to be in a given situation.

Could this lack of values be the reason why there is so much fresh interest in re-assessing our values? An interesting point of view is taken by Patricia Aburdene, who is of the view that “the focus on spirituality has become so pervasive . . . that it stands as today’s greatest megatrend”¹⁰ and as such has a huge impact on individuals’ personal lives – and, of course, this is spreading into institutions. This spirituality in businesses, in turn, is fostering a moral transformation in capitalism as it is converging with other socio-economic trends.¹¹ More and more businesses take their responsibility towards communities and shareholders more seriously. Aburdene is of the view that we are at a

¹⁰ Lampman, J. “Trend-watcher sees moral transformation of capitalism” *Christian Science Monitor*, 2005

¹¹ Ibid

point in society where social transformation is brought about because of the combination of economic necessity and new values: at the same time, however, she points out that there should also be a positive sense of new options which should exist in the form of “rising interest in spirituality in business, the dynamic growth of socially responsible investing, shareholder activism, and the power of values-driven consumers in the marketplace.”

Another fairly recent interpretation of the focus on values in business was given by Stephen Covey¹² in a book that has since its publication sold millions of copies. Although Covey he does not specifically argue the Aristotelian point of view that good habits are learnt, the title already indicates that his approach seems very Aristotelian: he called it “the seven habits of highly successful people” and works with a number of identified values that should become habits in order to be successful. His approach entails that, based on the premise that perceptions are deeply imbedded, “... we must look at the lens through which we see the world, as well as at the world we see, and the lens itself shapes how we interpret the world”.¹³ He also identifies what he calls the “character Ethic” “as the foundation of success – things like integrity, humility, fidelity, temperance, courage, justice, patience, industry, simplicity, modesty, and the Golden RuleThe Character Ethic teaches that there are basic principles of effective living, and that people can only experience true success and enduring happiness as they learn and integrate these principles into their basic character.”¹⁴ I am of the view that what he states here could be brought within the argument that the approach of the individual should be based on moral choices in order to experience the good life. The habits he regards as identified principles for success, which are essentially value-based, are described as representing “the internalization of correct principles upon which enduring happiness and success are based.”

Striving to be virtuous is nothing new. Experiencing a lack of ethics in everyday situations is not new either. But for the individual or the manager who strives to maintain a standard of ethical behaviour, finding practical ways to ensure that a climate is cultivated in which it can be implemented will always be important. This is also true for

¹² Covey *The seven habits of highly effective people*

¹³ Covey 17-18

¹⁴ Covey 3

the manager who strives towards ethical dealings between the public and the private sector. I hope to demonstrate that the weaknesses that I identified can be addressed and that solid governance can be achieved, especially in Public–Private Relationships.



CHAPTER 2

GOVERNANCE EXPLAINED

The value of philosophy is, in fact, to be sought largely in its very uncertainty. The (person) who has no tincture of philosophy goes through life imprisoned in the prejudices derived from common sense To such a man the world tends to become definite, finite, obvious; common objects rouse no questions, and unfamiliar possibilities are contemptuously rejected.
- Bertrand Russell

Writing, or philosophising about a subject such as governance could become an exercise which is fenced in with great difficulty. Much literature is available on the subject, especially in view of the identified need in business to develop an approach that would hopefully avert further corporate collapses such as the ones so often quoted in an effort to alert the listener or reader to the ongoing battle against greed. So, applying suggested principles to identified problems in management would not be justified without exploring a few of the myriad interpretations offered, on what the term 'governance' could amount to, which is offered in this chapter.

2.1 Introduction

Any reference to the by now well-known “corporate scandals” (the Enron scandal being probably the most notorious of these) prompts discussion about how the concept “corporate governance” is to be interpreted. Clarke even goes as far as to suggest that the concept itself needs to be re-conceptualized.¹ The author furthermore is of the opinion that although the way that people have always organised themselves could always be called “governance”, the term itself has only recently emerged to describe how the power of an organisation is harnessed for an agreed purpose rather for something else entirely.² This seems to suggest that institutions are to provide a framework within which the social and economic life of countries is to be conducted. Against this backdrop, Clark developed a number of theories³ that can be used for interpreting governance. These will not be discussed in detail, but a brief glance at the

¹ Clarke *Theories of Corporate Governance, the philosophical foundations of Corporate Governance* 1

² Ibid

³ See in general Clarke 2-14

definitions confirms that it does go beyond the “boardroom” description. The first four theories focus on internal monitoring dilemmas and the rest explain the external challenges in terms of building relationships and securing resources in dynamic environments.

2.2 Theories of corporate governance:

2.2.1 Economic foundations: this suggests the economic development of industrial capitalism under which different governance structures evolved with different corporate forms designed to pursue new economic opportunities or resolve new economic problems.

2.2.2 Agency theory: this theory is based on the contractual relationships within a firm between management and stakeholders as well as relations within the firm itself. The governance issues mainly revolve around the constraints on managers that are put on them either by themselves or by investors in order to ensure that funds are not misallocated as well as to induce investors to provide more funds. This means that the shareholders or investors are regarded as the “principals” and the managers as the “agents”.

2.2.3 Managerial hegemony: this description refers to the complete control that the top management team in the organisation has over the Board of Directors. It implies passivity on the part of Boards – that they have little influence on corporate decision-making, insufficient influence over the chief executive, and consequently reduced capacity to represent the interest of shareholders.

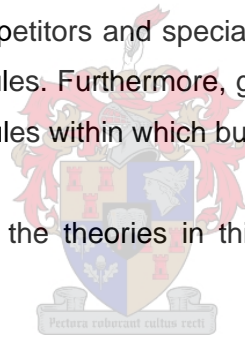
2.2.4 Stewardship theory: conflicts of interest between the manager and owner of the enterprise have been identified and suggestions were made to remedy the situation through incentive schemes based on money and promotions as well as negative sanctions. The stewardship theory disputes this conflict, however, and views the manager as being in a position of stewardship vis-à-vis the enterprise: this entails that the coordination of the enterprise is achieved effectively and that managers are authorised to act not as opportunistic agents but as good stewards who will act in the best interests of the owners. A strong relationship between the

managers' successful pursuit of the objectives of the enterprise exists, not only to the principal's satisfaction, but also to that of other participants in the enterprise's collective reward.

2.2.5 External pressures: these would relate to “the open systems nature of organisations, transacting with environments, and constrained by networks of interdependencies with other organisations, rather than understanding the behaviour of organisations simply in terms of rational, intentional managerial action”. The relationships so established can be referred to as “network governance” which has a social, as opposed to a legal, foundation.

2.2.6 Stakeholder theory: although relationships with employees are both formally and informally arranged to ensure delivery for shareholders, a relationship with stakeholders also exists. This is an external relationship with groups such as customers, suppliers, competitors and special interest groups which also has its own formal and informal rules. Furthermore, governments and local communities also set legal and formal rules within which businesses must function optimally.

2.2.7 Theories of convergence: the theories in this category more often referred to include the following:



- Outsider system of market-based corporate governance, which is characterised by dispersed ownership; the primacy of shareholder value is dominant but principal–agent problems are prevalent;
- The relationship-based system of governance which primarily reflects mutual history and values;
- Insider systems which are dependent on loans from banks and tend to be supported by close business networks;
- Family-based corporate structures which reflect different cultural traditions and aspirations.

An ongoing debate about the development of global convergence towards the “Anglo-Saxon market based outsider model” of corporate governance signals the development of a growing trend and yet another theory. The strongest criticism

against a global theory is that there is no “one-size-fits-all” approach that can work for any type of organisation as it is culturally and economically insensitive.

2.2.8 Critique of shareholder value: long-term shareholder value should be protected by balancing the interests of different stakeholder groups in order to promote better cooperation between them. This would entail not only accounting for business in financial terms, but also giving account of the organisation’s relationship with employees, customers, suppliers and others on whom it is dependent for its success.

2.2.9 Post-Enron theories: corporate failures the size of Enron had some questioning the universality of corporate governance theories and one contention was that these concerns could be based on the challenge of core beliefs and practices “that have underpinned the academic analysis of corporate law and governance”. Clarke goes on to state that: “*we have come to rely on a particular set of assumptions about the connection between stock market prices and the underlying economic realities; the reliability of independent auditors, financial standards, and copious disclosure in protecting the integrity of financial reporting; the efficacy of corporate governance in monitoring financial performance; the utility of stock options in aligning managerial and shareholder interest, and the value of employee ownership as both an incentive device as well as a retirement planning tool*”.⁴ He therefore suggests that weaker market focus must be upgraded in tandem with market developments in order to protect the market from manipulation as well as to distortion by self-interested managers.

The various interpretations of the concept and the need for ongoing development and research to improve governance confirm its continuing relevance in the business sector. However, Björk and Johansson⁵ are of the opinion that because governance theory tends to remain at a pre-theoretical stage of critique, it is actually much clearer what the notion of governance is against than what it is for. They present a framework for governance which focuses on the change of society and argue that since governance

⁴ Clarke 14

⁵ Björk, P.G and Johansson, H.S.H “Towards Governance Theory: in search for common ground” *Public and Private Sector Partnerships, the Enabling Mix* 140-141

is not about values, it cannot be normative: it is regarded as a theory based on empirical observations which does not have a hidden agenda driven by normative beliefs.⁶ The various approaches suggested amount to the following:

2.3 Theories based on the changed society

2.3.1 The minimal state: the argument is that “the socio-economic, political and technical changes that we will meet in the 21st century will make the public bureaucracies of today obsolete”. The reason given is that they have become too large and too expensive and resources should rather be spent on other activities. As public bureaucracies are often inefficient in providing public services, reforms are necessary and this should include conceding that the private sector can provide a higher quality service. Therefore the private market is perceived to be more efficient because competition is created by market mechanisms, a criterion that the public sector does not meet.

2.3.2 Corporate governance: this term can be stated as the common reference to a large number of theories and studies about governing and managing companies, or as stated in the Cadbury report: “the system by which organisations are directed and controlled”.⁷ It can, however, also be discussed in terms of the social responsibility that companies must show for employees and stakeholders and therefore, in general terms, it can be said to be about accountability, supervision, evaluation and control.

2.3.3 New public management: from a different angle, this as yet another form of governance refers to several similarities, which would include the changed view on politicians and problems of accountability. It is increasingly perceived that politicians should not only steer but formulate goals and NPM's focus is on the market, in other words focusing on what the people prefer. A third similarity is the denial of the dichotomy between the public and private sector: the governance perspective is that the two parties must work together while the NPM

⁶ Björk and Johannsson 140-141

⁷ Ibid

states that the government and its bureaucracy has become obsolete and needs to improve efficiency. Yet another similarity is that both emphasize the control of output instead of input and both have governing as a central concept.

2.3.4 'Good Governance': the modern interpretation of governance is that it is about more than efficiency, and that it is about accountability between the state and its citizens. Furthermore, it would include accountability, control, transparency and responsiveness, which are at least as important as economy and efficiency.

2.3.5 Socio-Cybernetic System: because of the growing realisation of the complexity and diversity of the world we live in, the democratic structures that are to deal with this need to be complex, diverse and dynamic. This will entail that the processes will need to include a higher level of interaction between public actors, target groups and individuals. There are three concepts from the theory of socio-political governance: governing, governance and governability and the meaning has therefore changed to coordination, guidance, influence and the balancing of interactions. The result is that the way in which society is to be steered is changing: "Governing in an interactive perspective is directed to 'balancing' social forces and social interests and to 'enabling' social actors and systems to organize themselves"⁸ and it must thus be clear that socio-political governance relies on mutual trust and understanding, accepting common responsibility and some degree of political involvement and support from society. There also needs to be an interdependency between formal and/or relatively autonomous political and societal actors and because no one single actor can create and develop a structure it should be the result of actions of all actors. Therefore, governing and governance interact all the time: those who govern are affected by the pattern and structure but at the same time it changes them. Lastly, governability combines the qualities of governing and governance.

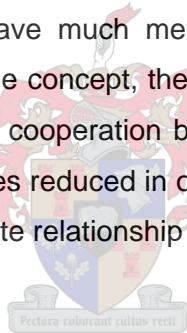
2.3.6 Self-organising networks: governance, where there was a change from governing to governance, can also be said to be about the coordination of self-organising networks which are a complex mix of public, private and voluntary

⁸ Björk and Johannsson 141

organisations. This would mean an erosion of the borders between these sectors and the reason for the emergence of these networks is the need for resources between actors and the exchanges of these resources. Through the exchange of these resources within the networks, participating actors can realise their goals, maximise their influence and be independent from others. The idea of networks has been viewed as an alternative to markets and hierarchies in terms of coordination mechanisms: they are also self-organising and self-governing. The role of government in this approach is that the state should, instead of focusing on the planned governing of the system, instead focus on the mediation role.

2.4 **Conclusion**

The interpretation of and approach to “governance” as suggested by Björk and Johansson is like a fresh breeze in the wake of the need for strong, good governance. Although theoretical approaches have much merit in laying a foundation for further interpretation and development of the concept, the approach by Björk and Johansson is preferred. The suggestions that the cooperation between the public and private sector needs to be improved and boundaries reduced in order to improve service delivery, offer concrete support for the public–private relationship development.



CHAPTER 3

SOUTH AFRICA AS A DEVELOPMENTAL STATE

*The society we have described can never grow into a reality...
Till philosophers become rulers in this world, or till those we now
call kings and rulers really and truly become philosophers...
- Plato*

The aspirations of our country to strengthen the economy and thereby to create a better life for all who live here are meant to be realised in various ways. One of the perspectives to describe this drive is the reference to South Africa as a Developmental State and how we need to transform the economy. The importance of this concept is explored in this chapter, and an elaboration is offered on how Public-Private Partnerships can play an important role in this transition.

3.1 What is a Developmental State?

A Developmental State can be described, with reference to the DS in Japan, as “one that was determined to influence the direction and pace of economic development by directly intervening in the development process, rather than relying on the uncoordinated influence of market forces to allocate economic resources.”¹ As such the DS in Japan took up the task of guiding the processes of development and social mobilisation by establishing “substantive social and economic goals”.²

The success of East Asia after the Second World War offers convincing proof that the DS approach can be highly successful and this may ensure that the DS may still remain an “appropriate element of economic development”.³ Beeson also takes the stance that one of the requirements is that a “pilot agency” needs to drive the process in order to ensure its success, as was done in Japan by the Ministry of International Trade and Industry. This ministry had the task of directing the course of development as well as

¹ Beeson, M “The rise and fall (?) of the developmental state: the vicissitudes and implications of East Asian interventionism” www.eduprint.eq.edu.au/archive 2

² Ibid 3

³ Ibid

employing policy tools to ensure the nurturing and management of indigenous business in the overall “national interest”.⁴

Beeson also emphasises state capacity as a key component: by this he means “the ability to formulate and implement developmental policies”.⁵ He furthermore points out that in order to do this a DS needs more than a competent bureaucracy: it also needs to cultivate an effective relationship with business which will then be at the centre of all successful developmental initiatives.⁶

3.2 South Africa as a Developmental State

The concept of SA as a Developmental State is an important consideration from which to discuss the relevance that PPPs will and should have in realising the objectives set by the government. In this regard the involvement of the private sector in the development of the economy is particularly important. Not only can the economy and specifically the public sector benefit in terms of infrastructural developments through private sector involvement in PPPs, but the private sector can and also should be seen as a partner in the development of the economy. The “partnering” concept is advanced by the Development Bank of SA, as it is stated as one of their primary objectives to fill a vital gap between the private and public sectors.⁷ As such the DBSA has invested substantial amounts in social and infrastructural development, which also to date includes three PPPs, something which is discussed in more detail *infra*.

But apart from the infrastructural development with which the private sector can assist, or rather in addition to that, there is another vital contribution that it can make to the development of SA as a DS: in my experience, and I am convinced that many would share my view, the productivity in the public sector can be greatly improved if a culture change can be effected. In this sense the private sector can assist: it is also discussed as one of the advantages of PPPs, *infra*, that the private sector can bring skills into the

⁴ Beeson 5-6

⁵ Ibid

⁶ Ibid 8

⁷ Coulson, M. “Corporate report: the Development Bank of South Africa: advising partner” *Financial Mail*, 50

public sector and that the public sector therefore can benefit greatly thereby. These skills not only include technical skills, but especially in terms of management and leadership skills, the public–private relationship will allow for and hopefully promote the cultivation of cross-sectoral exchange of these skills, which will include staff management, time management, general project management, to name but an obvious few.

It is quite evident how many advantages the public–private relationship can bring to the success of a DS but the successful execution of any incentive is reliant on the structure and systems within which it is to operate. In the case of a government, and especially one with DS objectives, the importance therefore, as mentioned by Beeson,⁸ of a competent bureaucracy cannot be underestimated. This was also stressed by Esterhuyse⁹ when he stated that the bureaucracy needs to be competent and dedicated and would need to be committed to the importance of economic development in the DS. It would be presumptuous to suggest what the requirements for a competent bureaucracy should be: however, I would like to explore a few ideas that may be of value, or at least of interest, to consider.

3.3 **“Kill the King”**

“Executing the king, piece by piece, entails changing the language that is in the citizen’s head”.¹⁰ The reference to the “king” is the¹¹ “king as president, prime minister, CEO, or administrator”. Furthermore, it is the open-minded thinker who is prepared to contemplate constitutive patterns, “almost like Plato’s philosopher-king”.¹² He argues, in my view very convincingly, that the reason why bureaucracies as a specific form of organisation are by nature inefficient is that the “king”, in other words the authority in power, disallows sufficient participation and free-thinking by other members of the organisation, in other words, the employees. Furthermore, the functions of the king include all coordination, direction and control over the subordinates and there is not

⁸ See discussion *supra*

⁹ Esterhuyse, W “ Where to with the developmental state (DS)? Or: the struggle for the soul of the ANC” *Institute for Futures Research 2*

¹⁰ Farmer *To Kill the King, post-traditional governance and bureaucracy* 184

¹¹ Farmer 18

¹² Farmer 184

sufficient, if any true, collaboration of efforts. The citizens thus are not sufficiently part of the process and it follows therefore that they do not share enough, if any, responsibility for the organisation's success.

He suggests¹³ that his approach is ideological, but that it could assist towards a process of "opening democracy" – by which he indicates that the focus in change should be on the citizen as opposed to the process. Much of this is based on the social contract as argued by Hobbes and Farmer, which emphasises this social contract between every citizen and then the social contract with the king.¹⁴ He points out that, unfortunately, the king then overturned this social contract, took absolute power over subjects who have made a social contract to turn over all liberties to the boss. It follows, then, that the sovereign has absolute power over his subjects as long as he succeeds in keeping them alive.¹⁵ He ascribes this undesirable outcome to the limitations of language: he quotes Wittgenstein as saying that "The limits of my language are the limits of my world", and this is particularly applicable to political theory and more specifically to governance. Our ability, he says, to "kill the king", in other words to think more imaginatively about how we can change our world, is limited by ourselves because we think within the constraints of our language.¹⁶ The language of governance, for example, does not contain "a rich set of symbols, signs and concepts for the varieties and nuances of hierarchy".¹⁷ Because we then talk in hierarchical terms, the shades of meaning can get lost and that is why thinkers should find new words or symbols even though they may have to face an uphill battle against the pressure of current symbolic systems.

A distinction is also made¹⁸ between two perspectives, the institutional and the comprehensive, and it is suggested that governance should primarily be concerned with the comprehensive. The institutional, for example the bureaucracy, is compared to fleas: "it's a chief flea on the back of a deputy chief flea, being on the back of the assistant deputy chief flea, being on another flea's back, and down to the back of the lowest flea in the hierarchy". On the other hand, the comprehensive view recognises the

¹³ Farmer 184

¹⁴ Farmer 185

¹⁵ Ibid

¹⁶ Ibid

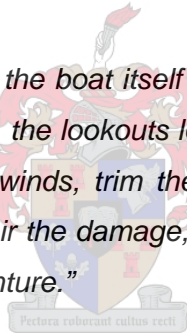
¹⁷ Farmer 186

¹⁸ Farmer 186-187

hierarchy from the perspective of the individual-in-himself in-his-difference in society and as such the focus is on the perspective of an individual who has an array of different characteristics that can contribute to the larger good (of the organisation). The aim is therefore to emphasise the representative hierarchy. In an open democracy this would mean that in both public and private sector governance, the individual plays the type of role that allows him/herself to realise his/her expectations.¹⁹

A similar point of view is taken by Collier and Esteban,²⁰ who discuss the Participative Organisation and argue that organisations, for survival in a turbulent environment, are dependent on the extent to which they allow creativity in purposeful and responsive interaction with the changing environment. What is meant by this is that the focus should move towards the participation of all in the organisation to ensure its success. The governance in the organisation is compared to a boat, while the role players' involvement is described in the following way:²¹

“Governance’ becomes a quality of the boat itself and the shared responsibility of all in it. The steersman keeps the rudder, the lookouts look for obstacles, others measure the depths, read the currents and the winds, trim the sails, balance the ballast, drop the anchor to steady the ship, row, repair the damage, and finally redesign the ship with the lessons learned from their last adventure.”



The view is also taken that organisations fail to be effective in a climate of continual change because they keep on re-engineering existing processes, such as bureaucracy, without allowing for shared responsibility.²² In a climate of participation, the employees would then not only be “part of” the organisation, but would “take part” in every aspect of its existence. Creating a trust relationship will²³ also be facilitated by exploring new boundaries in communication and teamwork. The change in focus would then mean that:²⁴

¹⁹ Farmer 186-187

²⁰ Collier, J Esteban, R “Governance in the Participative Organisation: Freedom, Creativity and Ethics” *Journal of Business Ethics* 173-183

²¹ Collier and Esteban 180

²² Collier and Esteban 176

²³ Farmer 30

²⁴ Collier and Esteban 177

“The dualism of thinking and doing is replaced by a fusion whereby decisions are made by those who implement them. Authoritarianism is replaced by a leadership which facilitates self-management. Control is replaced by trust, privileged information by managerial transparency. Learning is an integral part of organisational processes: people learn together and teach each other, so that knowledge belongs to all. Responsibility and accountability are thus shared by all stakeholders.

From this it is clear that values are an integral part of the success of the participative organisation, especially values such as trust, commitment and communication. Part of the success of the process is communication by participants to always ensure that processes are improved and that all participants remain part of the success of efforts and as such organisational team-working and group decision-taking constitute a relational context. In this type of environment, freedom and creativity would form the basis of the ethical quality of participative governance. It follows that the positive result would be that because the organisation is not driven by hierarchical control but by the freedom of the organisation’s members to participate in autonomous decision-taking, they will constantly pursue and achieve outcomes that are valued both by themselves and others. Alasdair MacIntyre compares this value-based participation to the ethics of virtue, as participation realises the “goods internal to a practice” because “human powers to achieve excellence, and human conceptions to the ends and goods involved”, are systematically extended and it is in this context that “the notion of virtue gains meaning”.²⁵ The relevance to these arguments to the discussion of the Developmental State is that a bureaucracy can be much more effective as a participative organisation in which the employee is valued as an individual who can, and should, play an important role, and take part in the success of the organisation. As stated earlier, a strong and efficient bureaucracy is essential for the success of a Developmental State and these arguments, in my view, constitute a convincing approach to improve the efficiency of the SA bureaucracy in government.

²⁵ Collier and Esteban 182

3.4 The role of Public–Private Partnerships in the Developmental State

The concept of the Developmental State is an important one, especially in the South African context. Prominence was given to it by Minister Trevor Manuel²⁶ during an address at an SMS Conference in Cape Town held on 20 September 2004, when he discussed a number of challenges the Department of Finance is facing in terms of budgeting in the DS. He pointed out that it was of vital interest that the budget of a DS must reflect its endeavours to fight poverty and expand economic opportunities to the poor. In addressing this he emphasised how important it was for the budget to balance two main pillars: firstly, how much the DS spends fighting poverty and deprivation, and secondly, how much of the country's resources are to be spent on expanding the economic opportunities of its citizens.²⁷ It is especially in terms of the second consideration that the PPP can play a vital role.

The prominence given by the government to the importance of a DS was also illuminated by Esterhuysen²⁸ when he discussed it with specific reference to the 2005 ANC congress. The Congress lent particular reference to the role of the DS in the development of the country: "... *what should the role of the state be in development, poverty alleviation, transformation, land reform, labour relations, redistribution of wealth, the creation of wealth, etc?*"²⁹ The important point was made that President Mbeki was very clear about the direction of future events to address these concerns. This is particularly relevant when focusing on the *transformation* of South Africa as a DS: "the main policy objective of a DS is to influence the objectives, direction, pace and 'recipients' of economic development through broad-based consensus-seeking on policy issues, collaboration on projects and negotiated agreements on what the national agenda should be."³⁰

There can thus be no doubt how important realising the development objectives as a DS is for the successful re-engineering of the economy and without a doubt PPPs should

²⁶ Manuel, T "Budgeting challenges in the Developmental State" at *Senior Management Service Conference 1*

²⁷ Ibid

²⁸ Esterhuysen 1-2

²⁹ Ibid

³⁰ Ibid

play their part. Teamwork between the public and private sector in this regard is important, especially if consideration is given to the argument by Greer³¹ that organisations or institutions cannot find and implement solutions to current problems on their own: “organisations and institutions that share objectives must also partly share resources and authority to achieve goals.” It is thus considered necessary that a vehicle such as a PPP be utilised for this purpose, but as Collier and Esteban³² point out, in ensuring good management and corporate competitiveness, responsibility and accountability should be accepted to function both ways, and governance, as “the relationships among various participants in determining the direction and performance of companies”³³ should involve all key stakeholders in this process. The PPP offers a first class means to achieve this, as the partnership relationship that is to be formed between the private and public partners should offer a platform to establish this type of participatory relationship.

Another angle from which to appreciate the benefits of improved cooperation between the public and private sectors is to see that decision-making and implementation capacities should be transferred to lower levels, for example local municipalities and state authorities. It can also be argued that the shift will result in a limitation of scope and can also be seen as a form of public intervention, where civil servants’ discretion is limited and the public sector is fragmented. The end result of all this is that there can be said to have been a move away from government to governance, where the term “governance” is used to reflect the fact that the conditions for governing society have changed.³⁴

The public sector culture will not change overnight, even if the concept of the participatory organisation is favourably accepted, but the PPP offers new possibilities to explore new relationships. In view of future planning and exploring new horizons, it is also important for corporations³⁵ to have a public and private purpose with the decision influenced by “community impact statements”. Interpreting this against the backdrop of

³¹ Greer, J “Partnerships and Public Policy: implications for future governance of Northern Ireland” *Public and Private Sector Partnerships, the Enabling Mix* 259

³² Collier and Esteban 175

³³ Björk and Johannsson 140

³⁴ Farmer 166

³⁵ Collier and Esteban 182

the PPP objectives once again emphasises the importance of the public and private sector identifying, agreeing, and working together towards goals that are not only in their own interest, but also in the interest of the “greater good” for SA as a DS.

3.5 **Conclusion**

In view of the arguments about representation in participatory government and realising the expectations of citizens, the PPP thus can allow for these objectives to be achieved. Certainly the poor have an expectation for development that will benefit them and improve their standard of living, as has been the undertaking of the government since the birth of democracy, and which is enhanced by the slogan “creating a better life for all”. Arguments will be presented on the extent to which PPPs can play a role in what in this sense can be called regeneration.



CHAPTER 4

PUBLIC-PRIVATE PARTNERHIPS IN THE UNITED KINGDOM

*Perhaps the imagination is on the verge of recovering its rights ...
We are still living under the reign of logic, but the social processes of our time
apply only to the solution of problems of secondary interest.
- André Breton*

Given the success of public-private collaboration in many countries, our own country embarked on this venture after first comparing notes with the United Kingdom. A brief look at some of the methods, principles and successes in the UK would therefore provide a sound foundation for the investigation of Public-Private Partnerships locally.

4.1 Introduction

The provision of private activities and the contracting of government with outside agencies for the provision of other services has been a common feature of organisational life for at least two hundred years.¹ It amounts to a combination of two different sets of organisational skills and human capital and has the potential to yield better results than a single set of organisational skills and capital. Linder² even suggests that management reform should include that traditional governance be changed and the basis for this approach is the postwar efforts (in the UK) to reform the public service. In this sense he regards it³ as “the epitome of a new generation of management reforms” because it is suited to the contemporary economic and political imperatives for efficiency and quality.

The emphasis on a mutually beneficial relationship between public and private parties in economic development is welcomed by some as an improvement on the command-and-control style of doing business in the provision of goods and services, and to others it seems to indicate that public decision-makers are displaying more of a business-like

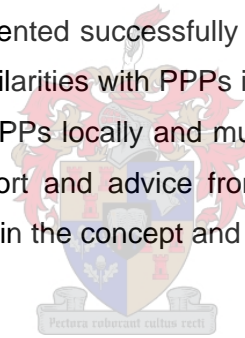
¹ Davies, B and Hentschke, B “Public/private partnerships” *Journal (Education)* 6

² Linder, S. H. “Coming to terms with the Public-Private Partnership: a grammar of multiple meanings” *American Behavioural Scientist* 38

³ Linder 35

tendency in the running of public affairs.⁴ This is confirmed by the fact that both parties tend to work together under free-market conditions in allocating resources. Moreover, indications are that PPPs in the UK will become an even more significant part of economic policy for the 21st century, and this is emphasised by the concept of third-way economics.⁵ The concept refers to a new social, economic and political ways of thinking where economics is primarily based on the idea of economic democracy, which means that democratic control is extended to the economic sphere.⁶ It is a new way of thinking beyond the old binaries of capitalism and socialism, where the economic focus is on the people. This is particularly important in developing countries and in SA as a DS this approach can be very valuable.

Partnerships can also be viewed as a mechanism of governance and as such they redefine the role and domain of political-administrative authorities by allowing private actors to play a role in the delivery of services and community development.⁷ As such, the PPP concept is being implemented successfully in many countries and the concept and policies in SA have many similarities with PPPs in the UK. The UK government also sponsored the establishment of PPPs locally and much information gained and lessons learnt can be attributed to support and advice from the UK. Therefore, it would be valuable to first gain some insight in the concept and development of PPPs in the United Kingdom.



4.2 Public-Private Partnerships in the United Kingdom

The Public Ministry in Britain refers to the partnership concept as central to New Public Management⁸ and, since 2000, the UK government has created more than 300 task forces and similar bodies to advise on public policy.⁹

⁴ Ibid

⁵ Montanheiro, L "The economic aspect within the enabling mix of Public-Private Partnerships" *Public and Private Sector Partnerships, the Enabling Mix* 425

⁶ Mizrach, S "The Third Way" www.fiu.edu/~mizrachs/thirdway.html

⁷ Andersen, O.J "Public-Private Partnerships: Organisational hybrids as channels for local mobilisation and participation?" *Scandinavian Political Studies* 1-2

⁸ Linder 38

⁹ Steele, J *In the Public Interest? Engaging the private sector in government* 5

Joint efforts by governmental and non-governmental actors are often carried out to revitalise stagnating industrial regions¹⁰ and in the UK, for instance, state inducements offered by the Conservative Thatcher government played an important part in launching new local initiatives. In accordance with this liberal ideology, the business community was given a leading role in the restructuring and revitalisation process, and separate bodies were established outside the local government system.

4.3 Historical background

A number of reports and codes were developed in order to guidance, on the one hand, and, on the other, to serve as a regulatory business tool to ensure that companies comply with expected levels of good governance in the way they conduct business. Formalising, or even codifying, corporate governance in the UK started with the commissioning of the Cadbury Report by Sir Adrian Cadbury, in 1982. Incorporated was a Code of Best Practice (the Cadbury Code) which was then used by the London Stock Exchange as part of its Listing Rules. This meant that listing companies had to report in their annual report whether they complied with the Cadbury Code, or not, and simultaneously had to report on any non-compliance – hence the expression “comply” or “explain” which is still used.¹¹

The Greenbury Committee, which followed the Cadbury Report, had to focus and report on directors’ remuneration and their accountability. A Corporate Governance Committee chaired by Sir Ronald Hampel was subsequently established, and this Committee found that the Cadbury Code as well as the recommendations of the Greenbury Committee amounted to a “box ticking” mentality. This meant that the company could not really be measured in terms of its governance if it only had to comply with formal requirements.¹² Based on recommendations by the Hampel Committee, companies now also had to report on how the principles were “applied”. The stock exchange subsequently added this to its listing requirements, which meant that it now had to report on how the principles as recommended were applied and also to state whether it complied. In

¹⁰ Andersen 9

¹¹ See in general Smerdon *A practical guide to Corporate Governance 2*

¹² Ibid

addition, failure to comply still required an explanation. The result was a Combined Code, which was the combination of the principles of the Hampel Committee and the provisions of the Cadbury Code.¹³

4.4 Current relevance

PPPs play a significant developmental role in the economy of the UK and the political will to encourage the public sector to engage in PPP agreements is a strong driving force behind these types of agreements as they are regarded as “central to the Government’s programme of modernizing public services”.¹⁴ Currently, fifteen percent of public expenditure is delivered under PPPs and this contributes to the emphasis on service outputs as sites of transformation rather than as ends in themselves.¹⁵ Therefore, the principles of “value for money” and “good governance” in terms of PPP characteristics can be viewed as an approach that could be followed in various countries at various stages of development.

PPPs in the UK have been a huge success and they are attributed to a number of factors: during the 1980s non-adherence to timelines and budgets was often the consequence of conflict between public sector institutions and contractors.¹⁶ It was also found that public sector services were suffering as a result of poor maintenance of buildings in the education and health sectors in particular. In order to address these shortcomings, some of the measures implemented included the identification of incentives for the private sector to build assets on time and maintain and deliver high standards throughout contracts on projects on which they bore the capital risk. A second measure that was implemented was that the government would have to demonstrate a strong commitment to the PPP process where private sector money and acceptance of risk was to be attracted. This would include the government giving clear indications on project priorities and demonstrating a “deal flow” of projects.

¹³ Smerdon 2-3

¹⁴ “Public-Private Partnerships” www.CIPS.org 1

¹⁵ See in general “How to access UK expertise in Public Private Partnerships, a brief guide from UK Trade and Investment” www.uktradeinvest.gov.uk 1-8

¹⁶ Ibid

4.5 **Successes in Public–Private Partnerships in the United Kingdom**

Setting up an initial high-level taskforce comprising experts from both the private and public sectors to assess critical issues and also to focus on driving the process is regarded as one of the main reasons for the success of UK PPPs.¹⁷ The UK taskforce was disbanded in 2000 and the UK Treasury, as is the case in SA, now takes responsibility for policy issues arising from PPP Procurement. However, part of the taskforce's responsibility was taken over by Partnership UK, which functions as a PPP with 51% of shares owned by the private sector. Although the NBI in SA plays a mentoring role and the PPP Unit drives the PPP process on national and provincial level, a similar initiative such as the taskforce or PUK does not exist.

Success is also attributed to the Public–Private Partnerships Programme (4Ps), which is involved in local authorities' development programmes by providing practical support and guidance particularly for large projects. By November 2003 a total of 617 projects with a capital value of £36 billion were signed off.¹⁸

4.6 **Role-players in the process**

Currently, and to ensure the ongoing success of UK PPPs, a number of role-players are still involved in the process:¹⁹

4.6.1 *Public Finance Initiative (PFI)*: a mechanism developed by the government to raise money to fund new buildings and services. As such it involves the private sector in public sector projects such as PPPs;

4.6.2 *HM Treasury*: this office provides publications and advice for parties involved in PPPs;

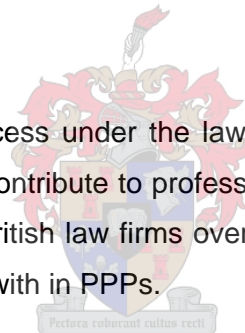
4.6.3 *Partnerships UK (PUK)*: a private sector company in which the government holds a minority stake to take forward and expand the development of PPPs;

¹⁷ Ibid 3

¹⁸ Ibid 4

¹⁹ Ibid 7-9

- 4.6.4 Public Private Partnerships Programme (4Ps): a local government project procurement agency which provides practical support and guidance to local authorities to enable them to improve their procurement capability, particularly for large projects and through partnership structures;
- 4.6.5 National Audit Office: all spending on behalf of the government is scrutinised by this office and it is a totally independent institution. It reports to the government on the economy, efficiency and effectiveness in which government institutions use public money, and its responsibilities include reporting on value for money in PPPs;
- 4.6.6 Department for Constitutional Affairs: this department is responsible for upholding justice, rights and democracy and in terms of the PPP focus this includes seeing that PPP projects and the PFI are supported in the UK legal system;
- 4.6.7 Law Society: ensuring access under the law and professional standards in the legal profession will also contribute to professional legal standards in PPPs. This is especially vital where British law firms oversee government on key aspects of legislation to be complied with in PPPs.



4.7 UK Public–Private Partnerships defined

The definition of a PPP in the UK is not as comprehensive as the definitions in the SA context. The UK Treasury defines PPP as follows:²⁰

“Public private partnerships are defined as bringing the public and private sectors together in long-term partnerships for mutual benefit. The public private partnership label covers a wide range of different partnerships, including:

- The introduction of private sector ownership to state-owned businesses using the full range of possible structures (whether by flotation or by the introduction of a strategic partner) with sales of either a majority or minority stake

²⁰ http://www.hm-treasury.gov.uk/documents/public_private_partnerships/ppp_index.cfm

- The PFI (Private Finance Initiative) and other arrangements whereby the public sector contracts to purchase quality services on a long-term basis so as to take advantage of the private sector management skills incentives by having private sector finance at risk. This includes concessions and franchises, where a private sector partner takes on the responsibility for providing a public service, including maintaining, enhancing and constructing the necessary infrastructure;
- Selling government services into wider markets and other partnership arrangements where private sector finance and expertise are used to exploit the commercial potential of government assets.”

The PFI was established during the early 1990s on the premise that the public sector could learn from successful private sector management and furthermore that public funding might be made available for other uses if there were private sector investment. The UK government’s policy is that all public procurement of goods, services and works is to be based on the principle of value for money and public sector purchasers furthermore need to ensure compliance with the EC procurement rules.²¹

A number of advantages have been identified²² in setting up PPPs:

- It is a disciplined and structured approach to contracting;
- It demands the production of a robust business case;
- It requires a clear definition of the outcome/requirements to be established at the outset;
- It requires a rigorous method of supplier selection and recruitment;
- It facilitates the establishment of long-term relationships on a non-adversarial basis;
- It brings together design and construction and service delivery so that the whole project is seen as an entity;
- It encourages the proper assessment of risk;
- It requires skilled project management techniques;
- It requires benchmarking and revitalisation, which should generate continuous improvement;

²¹ “Ethical Business Practises in Purchasing and Supply Management” www.CIPS.org 1

²² “Public-Private Partnerships” www.CIPS.org 1

- It demands clear change-control procedures and a professional approach to change management;
- It allows for the mutual exchange of valuable skills;
- It requires clear thinking on the exit strategy from the outset.

Although there are a number of clearly distinct advantages in PPPs, a disadvantage that has been identified in local authorities (in the UK) is what is called the “lock-in” problem, which means that local authorities need to set aside a large part of their income to cover payments, which reduces their flexibility elsewhere.²³ This is not a problem experienced in SA, as projects are allocated on fixed budgets.²⁴

4.8 Partnering

Since the members in a Special Purpose Vehicle (SPV) consortium play a crucial part in the successful participation in a PPP, it is vital for them to establish beforehand what their goals are and what they want to achieve from the PPP. At the start of the PPP process this needs to be negotiated and it could have a bearing on the choice of the consortium, as the aims of the buying organisation and the consortium members should be aligned where possible.²⁵ In this sense, a distinction of the concept of “partnering” should be made and one definition of this is:²⁶ *“Partnering is a long-term relationship requiring the development of trust, commitment and free-flowing communication between all parties. It is the sharing of risks and rewards, technology and innovation, with the aim of creating synergy and long term competitive advantage for both the buyer and the supplier”.*

Partnering should be undertaken strategically, professionally and selectively as it could, and should, be an effective and beneficial approach to manage relationships with suppliers.²⁷ A distinction also has to be made between “partnering” and “partnership” as

²³ Ibid

²⁴ Personal interview held with Dr Petra Bouwer Pretoria

²⁵ “Public-Private Partnerships” www.CIPS.org 1

²⁶ Greenwell, Z.I and Shaw, B “Uneasy bedfellows? Public-Private Sector supply chain partnership in the NHS” *Public and Private Sector Partnerships, the Enabling Mix* 245

²⁷ “Partnering” www.CIPS.org 1

the latter has a clearly defined legal basis: partnering relates to the relationship between the different partners and as such has an important bearing on the expectation of the values that the partners should agree to adhere to in the partnership. It can be defined as an approach “*with an attitude, or management ethos of openness, effective communication, close collaboration and cooperation, trust, honesty, transparency, sharing and mutual benefit*”.²⁸ As such the aspiration is that the ethical values in the relationship would form the basis on which the concept of partnering is to be based. The relationship between the business partners can therefore be seen as independent of the legal arrangement, although they are connected by their contractual relationship. In terms of the legal criteria of the relationship, the focus is its legal nature in terms of which two or more parties joint carry out the same business and are jointly liable for the risks and costs of that business. It goes without saying that the legal aspects would be directed by the legal system applicable, and this process could be managed with ease, and without unnecessarily emphasising the ethical principles that are to play a part. In a solid partnership, ethical values are expected to be adhered to for the successful execution of the agreement.

The partnership idea has also been explored by Linder,²⁹ who advocates that the partnership idea should be revitalised in three principal areas:

- 4.8.1 On economic grounds, the traditional binary division between the public and private sector invites new discourse on distinctive institutional concepts;
- 4.8.2 Influence of political values and commitments;
- 4.8.3 On a more pragmatic level, management reform trends are turning away from leadership and behavioural principles and towards more structural emphasis on flexibility and innovation, which reinforce partnership ideals.

It is thus clear that the idea of solid partnerships, beyond the confines of legal

²⁸ Ibid

²⁹ Linder 38-39

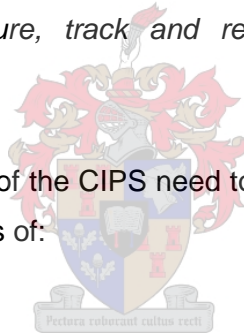
descriptions and boundaries, finds application on the smaller scale between partners reciprocally, as well as partnering between the public and private sectors in their business relationship.

4.9 Ethical Business Practises

Ethical standards can be set by various institutions and role-players in the PPP process. One version occurs in an excerpt from the Institute of Social and Ethical Accountability:³⁰

“The best and most successful organisations recognise that they will only prosper in the long term if they satisfy the aspirations of their stakeholders; including customers, suppliers, employees, local communities, investors, governments, public interest and environment groups. To satisfy this intense scrutiny and the demands for greater accountability in society, businesses and other organisations are increasingly recognising the need to measure, track and report on their social and ethical performance.”

Based on this view, the members of the CIPS need to comply with their Personal Ethical Code, which sets out the principles of:



- Integrity
- Professionalism
- High standards
- Optimal use of resources
- Compliance with legal and other obligations

It also offers guidance in relation to:

- Declaration of interest
- Confidentiality and accuracy of information
- Fair competition

³⁰ See in general “Ethical Business Practises in Purchasing and Supply Management” www.CIPS.org 1-2

- Business gifts and hospitality
- Seeking advice

The Code forms a basis for expected conduct in the purchasing and supply profession and addresses business-to-business ethical issues and social responsibility issues within supply chains. It also takes into account other issues that may arise during business transactions, such as social responsibility, personal accountability and corporate governance. It is therefore expected from purchasing and supply professionals to demonstrate that they take ethical and social responsibility issues into consideration.

As an annexure to the PPP manual,³¹ the PPP Unit of National Treasury has a document available called the “template code of conduct for bid evaluation panel members” which is aimed at evaluating transaction adviser bids and PPP bids. Every member of a bid evaluation bid is expected to sign the Code before receiving bids and as such the process fails to address the specific ethical issues and expectations as this approach does not indicate the extent to which it is expected from those involved, to adhere to a certain ethical standard. Merely having bidders sign a document is not sufficient to ensure their personal commitment to ethical conduct. Neither can it be said to be similar to the CIPS Code applicable to professionals in the UK as its main purpose is to promote transparency in the allocation of bids. As for Municipal PPPs, apart from the Code of Conduct for directors and members of staff of municipal entities which form part of the Municipal Systems Act 32 of 2000, no specific code is prescribed in relation to MPPPs.

In the management of PPPs, ethics relate to a wide range of issues from doubtful suppliers to corruption, and the following concepts are therefore to be considered to ensure ethical business practices:

- Fair trade
- Ethical trading

³¹ "Annexure 6: Template Code of Conduct for Bid evaluation and Panel members" *PPP Unit manual* 85-86

- Ethical sourcing
- Social accountability
- Social auditing
- Corporate social responsibility
- Corporate citizenship
- Codes of conduct
- Reputation assurance

These guidelines can be interpreted in the following way:

Although the ethical guidelines in the CIPS Personal Ethical Code are intended mainly for purchasing and supply professionals, they also apply to anyone responsible for managing the supply of goods or services from an external source and would therefore apply equally to PPPs. This means that any person or business engaged in purchasing and supply management would be expected to have a thorough understanding of the ethical guidelines applicable and to adhere thereto. It is to be noted that the ethical guidelines would apply differently in different conditions and thus would be interpreted in different ways. That implies that the professional facing an ethical dilemma would need to be informed on how the guidelines are to be applied in a given situation and this places a duty on such person or business to familiarise him/herself with the guidelines as they could apply. A duty also rests on such individual or business to engage stakeholders in the process. As regards the (similar) guidelines provided by the PPP Unit, it can be assumed that an equal expectation exists that parties dealing with the PPP Unit would familiarise themselves with, and adhere to, the ethical guidelines applicable. What is of concern, however, is that there does not seem to be sufficient emphasis on the importance of this: in an interview with the business manager of the PPP Unit, he indicated that “service delivery is the first requirement: ethics is important, but secondary”. This for me was a clear indication of a lack of awareness or emphasis on the importance that ethics is to play in good governance in PPPs.

4.10 Best Value

A distinction can be made between the “best value” approach and the “best value for money” approach. An important correlation exists, though, as the PPP option for best value can only be adopted once it has been established that the planned infrastructural development would provide value for money. In the UK context, this would mean that the transaction needs to meet the following criteria:³²

- Good design (incorporating cost, impact, and sustainability);
- Risk allocation and the ensuing benefits and disadvantages of transferring staff;
- Non-market factors, for example environmental impact and strategic risks affordability;
- Protection of staff terms and conditions;
- Range of services included;
- Discount rate;
- Optimism bias;
- Tax;
- Cost and benefits.



Narrowing it down to the test for “best value for money”, the criteria could be:

- Fitness for purpose and other considerations of quality;
- Performance;
- Price;
- Delivery;
- Accessories and consumables;
- Service support;
- Disposal.

This demonstrates that price is just one of seven listed criteria to be judged from a perspective that should encourage a long-term view of a good service to be procured.

³² "The 'best value' approach to PPP & public contracting" www.chapmantripp.co.nz/resource_library/published_article.asp?id=3419 1-6

The benefits in making a proper assessment are clear and therefore a practice of “Best Value” came into force in April 2000 in the UK where it was developed as part of a far-reaching modernisation agenda for the UK government at all levels.³³ The concept involves four “C”s: Consult, Compare, Challenge and Compete. The CIPS provides some guidelines on its interpretation and a few categories are to be distinguished.

4.11 **CIPS Best Value Guidelines**

The following were offered as general “best value” practice guidelines published by the CIPS for its members.

4.11.1 Purchasing and supply management professionals and best value: the focus in this regard is mainly on the Local Authorities. It would include that they undertake a review of their effectiveness of purchasing and supply management and ensure that value for money and high quality services are ensured.

4.11.2 Stakeholders, Suppliers and Partnering: the objectives of the public sector partner need to be clarified in order to ensure that Best Value services are provided. A key goal is to develop marketplaces in order to gain advantage of contemporary advances in relationship thinking and eCommerce. Furthermore, stakeholders such as suppliers and service providers need to embrace issues such as equal opportunities, eCommerce, true partnering as well as economic development. It is also important to balance the strategic importance of a service against the maturity of the market and its ability to deliver the level of service which is required as it is difficult to have a strategic alliance or partnering arrangement with a contractor who does not have sufficient experience in the marketplace.

When a partner is to be selected, a comprehensive, competitive tendering process with outcome-based specifications is necessary. An example would be to stipulate that innovation in providing a service would be required. As it is of vital importance to select the right partner, certain values in the process are

³³ See in general “Ethical Business Practises in Purchasing and Supply Management” www.CIPS.org 1

important such as trust, openness, frankness, common joint objectives and balance of risk. Skills such as project management and cost control are necessary. True partnering and traditional purchasing are vastly different in nature and this also entails that with partnering a change of culture would be necessary.

4.11.3 Local Authorities and Best Value: improved service and repositioning can be attained through organisation-wide purchasing and supply management reviews which will in turn facilitate Business Process Re-engineering and Re-design by encouraging challenge, collaboration and innovation. By following procedures, Local Authorities will be able to expose the hidden costs which are often part of relationships between Local Authorities, their customers and suppliers. The principle is about outcomes and not just outputs and inputs, and the whole cost of the local economy is therefore to be considered. Another aspect which needs to be noted is that there may be conflict between Best Value and PFI: the reason is that PFI facilitates an asset and services as a combined package where Best Value would entail that they are viewed independently. Furthermore, PFI should not be confused with being a means to obtaining Best Value as it is merely an option for funding.

Another feature of Best Value is that it concerns customer needs, which often include sustainable employment. As such it should fit government organisations at every level because it is as much about effectiveness and quality as it is about cost and efficiency. Finally, the public consultation phase envisaged should challenge traditional thinking about how and by whom services are provided.

4.12 Lessons learnt

Important lessons were learnt during the initial PPPs in the 1990s.³⁴ The approach from inception was that policies with practical solutions were to be developed where problems were identified and as a result major cost savings and improved service delivery could

³⁴ "How to access UK expertise in Public Private Partnerships, a brief guide from UK Trade and Investment" www.uktradeinvest.gov.uk 5

be achieved over the life of the project. This also entailed that the right focus was to be maintained on priorities, sufficient competition introduced and the workforce kept involved in the process of change and drawing up of service requirements.

It was recognised early on in the process that primary legislation was to be reviewed and amended where necessary in order to enable PPPs to operate more effectively. Another important lesson learnt was that it was recognised that the base of expertise also lay within the private sector and that innovative developments in PPP solutions were to a large extent driven by private sector advisers, financiers, contractors and operators.

4.13 Significance of Public–Private Partnerships in the South African context

Politicians have often stated why it would be beneficial for the South African economy to privatise state assets. As early as 1999 a Community Private Partnership Programme (CPPP) was launched at Helderfontein, Johannesburg, and in his address the then deputy president Jacob Zuma³⁵ emphasised that the objective of the programme was to “revitalise the rural economy, whilst ensuring empowerment and sustainable resource use”. Furthermore, he stated the following:³⁶

“It is our intention that the political transition that has been achieved be underpinned by an equally challenging economic transition rooted in, and benefiting the African inhabitants. The complexities of globalisation coupled with the dwindling availability of international aid present serious challenges. This is exacerbated further by the recognition that reserves of natural resources such as minerals are finite, forcing Africa to rely on partnerships for self-reliance and sustainability. These partnerships should form part of strategy formulation based on coherent policies. They should also ensure collaboration in the implementation of such programs as these, in addressing the overwhelming socio-economic ills as well as environmental degradation.”

This is an important objective that has been reiterated by the SA government on various occasions. During a previous budget address in parliament, Minister Trevor Manuel

³⁵ Zuma, J “Keynote address by the deputy president at the launch of the Community Partnership Programme, Partnerships for Growth” *Helderfontein*

³⁶ *Ibid*

confirmed specific challenges as the importance of accelerating the pace of economic growth, as well as the importance of investment in the industry and expansion of infrastructure³⁷ The significance of this undertaking was again stated during the 2005 budget address³⁸ when he repeated the importance of growth, development and equity as long-term development goals. These goals cannot be realised by the government single-handedly and the joint responsibility between the government and the private sector was acknowledged in the signing of the Financial Sector Charter, setting out specific transformation commitments. This also included the drafting of a Code of Practice for empowerment in PPPs as well as a Code of Practice in terms of the BBBEE Act. The significance of this step was carried further during the 2005 budget when more specific details on its implementation were spelt out. The realisation of a balanced development between the first and second economies by investing in infrastructure and building programmes that are job-creating are important steps towards meeting the goals of the Charter. This will also include public and private sector funding of infrastructure, housing, empowerment and business development. In part, the development goals of the government are realised through the National Empowerment Fund, which supports and enables small businesses and black-owned or women-owned businesses. The main differences in these types of projects are the means by which they are financed as well as their size: the value of the smallest PPP is R226 million,³⁹ whereas the projects funded by the NEF are significantly smaller. The process in obtaining finance is also different as a feasibility study will determine whether a PPP is to be proceeded with, or not. In the objectives identified during the budget speeches, as mentioned, PPPs will play an important role in realising these and will also contribute to the government's commitment to Batho Pele. In view of these many expectations, arguments will be presented that the value of PPPs goes beyond the PPPs as envisaged in terms of the Treasury Regulations.

³⁷ Manuel, T 2004 "Budget speech"

³⁸ Manuel, T 2005 "Budget speech"

³⁹ Personal interview Kogan Pillay *Pretoria*

4.14 **Conclusion**

The confirmation of successful PPPs as a business development concept to the benefit of the economy in the UK, demonstrates its relevance for the SA economy as well. The private sector seems to be more involved than is the case in SA, and this is probably one of the more obvious differences between the SA and the UK PPP. It must also be clear that PPP's are utilised on a much broader scale than is the case in SA and it would be regrettable if the same measure of success in the SA PPP cannot be achieved.



CHAPTER 5

PUBLIC-PRIVATE PARTNERSHIPS DEFINED

I don't question that social science analyses are important, but still, if you want to get a broad view and a long view you read a novel rather than social science.
- Leo Strauss

Formalising Public-Private Partnerships is necessary to regulate their role in the economy and the industries in which they can be operative, especially as they constitute a specified form of procurement. Sometimes another form of procurement may be more suitable for the needs of the public party, and the distinction emphasises the relevance of always bearing in mind the main objectives of the PPP agreement.

5.1 Introduction

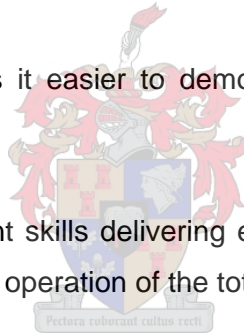
Large-scale political reforms after the 1994 democratic elections brought with them the need for efficient public procurement for the national economy and thus a major public procurement review via a taskforce was established in 1995.¹ This was headed by the State Tender Board under the direction of the Ministry of Finance and the Department of Public Works as well as the World Bank, which provided technical and financial support. The strategy of the taskforce included simplification of the procurement process; they also had to formulate principles and policies for equitable and transparent public procurement. This was especially important in view of the planned merging of the dual economy and one of the goals identified was that previously disadvantaged individuals and groups should be included in public contracts. The policies formulated to ensure realisation of this goal include the Preferential Procurement Policy Framework and Black Economic Empowerment. One of the important vehicles through which this goal can be attained is Public-Private Partnerships.

The term public-private partnership reflects the proposed incentive to engage and sustain a long-term relationship with the external market and at the same time it creates a credible expectation that the public and private sector will be working together for the

¹ Gauteng Provincial Government *Supply Chain Management Manual 12*

management of safe, regular and reliable public service for the community.² These partnerships can also be referred to as private finance initiatives (PFIs),³ build-operate-transfers (BOTs) or contractual agreements and in these types of projects a number of key indicators can be defined:⁴

- 5.1.1 Output-based specifications, where services are specified as outputs and payment is linked to the quality and timing of their delivery;
- 5.1.2 The long-term nature of contracts, which provides scope to recover the initial capital investment, to develop alternative approaches to service delivery and to focus on whole life costing;
- 5.1.3 Performance measurement and incentives, which provide the means of securing the value for money compromised by the original deal;
- 5.1.4 Competition, which makes it easier to demonstrate that value for money has been achieved;
- 5.1.5 Private sector management skills delivering efficiencies and innovation with the financing, construction and operation of the total project.



From these indicators, it is possible to identify five advantages of PPPs:⁵

- 5.1.6 Partnerships as management reform are promoted as an innovative tool that will change the way government functions by largely tapping into the discipline of the market;
- 5.1.7 Partnerships as problem conversion are viewed not as a tool for changing managerial practices, but rather as a universal fix for most problems attendant on

² Kroukamp, H "Public-Private Partnerships: problem solver for improved service delivery?" *Gauteng Management Development Programme Leadership journal* (1) 19

³ Sullivan, H and Skelcher, C "Working across boundaries, collaboration in public services" 80, is of the view that PPPs replaced PFIs

⁴ Kroukamp 1 19

⁵ Ibid

- public service delivery;
- 5.1.8 Perspectives depicting partnerships as a vehicle for bringing government closer to the private sector are relevant, but another more subtle point is that partnerships can be morally regenerative, given the effects that partnerships may have on the people involved;
- 5.1.9 The usage of a partnership as risk-shifting portrays partnering as a means of responding to fiscal stringency on the part of the government;
- 5.1.10 Although privatisation, as an alternative service delivery method, has been promoted as a form of empowerment because it devolves control vertically downwards towards the consumer, partnerships as power-sharing spread control horizontally, especially in regulatory matters where control has been concentrated in the government.

The advantages of closer cooperation between the public and private sector were also emphasised by Steele⁶ when she stated that “government’s purpose in involving business in policy development is to introduce new thinking and relevant experience in the resolution of long-standing policy problems in meeting the innovative challenges of modernising government”. The tangible benefits that are to be gained by the public sector in terms of skills development and new approaches to solving existing problems are more immediate but one of the most important gains in my view is that the combination of the two cultures would in the long run reap equally great benefits when public servants are offered the opportunity to broaden their views and to learn different ways of doing things. Steele made some interesting findings as regards the cooperation and results of this type of culture blend.⁷ These included:

- 5.1.11 The challenge for government is to be open to change: developing policy through partnership means that traditional ways of doing things as well as traditional assumptions of what needs to be done need to be challenged;

⁶ Steele, J *In the Public Interest? Engaging the private sector in government* 5

5.1.12 The different experiences that public sector employees and business people have of their collaboration reflect their different experiences in their respective employment environments;

5.1.13 The success of a process is assessed against different criteria by public servants and business people;

5.1.14 Business people are more likely to encounter difficulties with a process and would make suggestions for changing it, whereas public servants, where they have designed a process, are more likely to accept that it meets their needs and less likely to be critical of it;

5.1.15 Public servants and business people often give priority to different features.

The conclusion can thus be drawn that the merging of the different cultures could highlight differences which, if accepted positively, could offer opportunity for growth. Furthermore, these advantages clearly confirm the notion that public-private participation is a concept that has found favour for obvious reasons. In South Africa in particular, these advantages can play a vital role in the developmental objectives of the government and an open-minded approach could ensure that PPPs realise many of these expectations. Furthermore, as Linder⁸ points out, the hallmark of partnerships is not competition, but cooperation, and the disciplining mechanism is not customer exit or profit margins, but a joint venture where financial risks are spread between both sectors. Other considerations that need to be borne in mind is that arrangements which seek to be termed as PPPs can be measured against different criteria⁹ depending on whether the target is limited, for example building a hospital, or broad, for example a community development. Further considerations may be whether agents are local or international, and whether participating partners are confined to the public sector or span sectors, as

⁷ Steele 35-37

⁸ Linder, S. H "Coming to terms with the Public-Private Partnership: a grammar of multiple meanings" *American Behavioural Scientist* 26

⁹ Andersen, O.J "Public-Private Partnerships: Organisational hybrids as channels for local mobilisation and participation?" *Scandinavian Political Studies* 4

well as the degree of formalisation.

5.2 What is a public-private partnership?

A PPP can be defined as a legal contract and the definition will set the boundaries that would direct the parties on what role they would play in the performance of the contract. As pointed out previously,¹⁰ factors such as the level of trust and commitment, free-flowing communications, sharing of risks and rewards, differing power bases, expectations, motives, culture and the role that individuals play in the process, are vital to a successful partnership as they are interrelated and can make or break a partnership.¹¹

As regards the formal description of a PPP, there is no unique or universally standardised definition of the concept¹² but it could acceptably be described as a “legally constituted relationship between the state or its agencies with private sector firm(s) in which the latter substitutes the former in the provision of public goods and services over a specified or indefinite period, for mutual benefit”. In terms of this definition, the use of the term “mutual benefit” is paramount, as it emphasises the nature of the relationship in terms of which the state essentially transfers a part of its public responsibility to a private organisation. The other side of the coin is the responsibility that the private organisation has to ensure that the public will continue to enjoy the benefits of the services provided and that such supply of services will then hopefully be more cost-effective and provide value-for-money. In the SA context the concept is regulated and is defined in terms of both the Treasury Regulations and the Municipal PPP Regulations. These Regulations are issued in terms of the Public Finance Management Act and the Municipal Finance Management Act respectively.

The definition in terms of the Treasury Regulations is fairly comprehensive, and amounts to the following:¹³

¹⁰ See chapter 4 *supra*

¹¹ Greenwell, Z.I and Shaw, B “Uneasy bedfellows? Public-Private supply chain partnership in the NHS” *Public and Private Sector Partnerships, the Enabling Mix* 244-245

¹² “Public private partnership capacity building programme: phase 1” *Case study: the Maputo development corridor roll road report* 6

¹³ National Treasury: *Public Private Partnership Manual* 4

“public private partnership” or “PPP” means a commercial transaction between an institution and a private party in terms of which the private party –

- (a) performs an institutional function on behalf of the institution; and/or
- (b) acquires the use of state property for its own commercial purposes; and
- (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property; and
- (d) receives a benefit for performing the institutional function or from utilising the state property, either by way of:
 - (i) consideration to be paid by the institution which derives from a revenue fund or, where the institutional is a national government business enterprise of a provincial government business enterprise, from the revenue of such institution; or
 - (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
 - (iii) a combination of such consideration and such charges or fees;

From this it is clear that it would entail a contract between a private party and a public sector institution in terms of which the private party assumes substantial financial, technical, and operational risk in the design, financing, building and operation of a project. Two types are specifically identified: firstly, where an institutional function is performed by the private party, and secondly, where the use of state property is acquired by the private party for its own commercial purposes. Furthermore, a PPP can also be a hybrid of other types of a procurement transaction where payment in any scenario involves one of three mechanisms: firstly, the institution pays the private party for the delivery of the service, or, secondly, the private party collects fees or charges from users of the service, and lastly, it could be a combination of these two.

The Municipal PPP Regulations section 1 defines a PPP as:

“public private partnership” means a commercial transaction between a municipality and a private party in terms of which the private party –

- (a) performs a municipal function for or on behalf of a municipality, or acquires the management or use of municipal property for its own commercial purposes, or both performs a municipal function for or on behalf of a municipality and acquires the management or use of municipal property for its own commercial purposes; and
- (b) assumes substantial financial, technical and operational risks in connection with –
 - (i) the performance of the municipal function;
 - (ii) the management or use of the municipal property; or
 - (iii) both; and
- (c) receives a benefit from performing the municipal function or from utilising the municipal property or from both, by way of -

- (i) consideration to be paid or given by the municipality or a municipal entity under the sole or shared control of the municipality;
- (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
- (iii) a combination of the benefits referred to in subparagraphs (i) and (ii);

The Municipal Regulations therefore also provide for the performance of a function or acquisition of municipal property or a hybrid of the two possibilities, similar to the specifications laid down in the Treasury Regulations. From the wording of the Municipal Regulations, however, it seems that more emphasis is given to the rendering of services to Municipalities, whereas PPPs in terms of the Treasury Regulations, especially considering the examples given on PPPs already completed,¹⁴ seem rather to indicate the need for the establishment and management of infrastructure over the long term.

5.3 What a public-private partnership is not

Not meeting the criteria in terms of the Regulations would obviously result in an agreement not being recognised as a PPP. The PPP Unit at National Treasury has done a feasibility study in order to determine whether a proposed agreement would meet the criteria of a PPP and whether it would be classified as an ordinary procurement deal. According to TR16, an agreement between a public and a private entity will in the following instances not be defined as a PPP:

- it is not a simple outsourcing of functions in the event of substantial financial, technical and operational risk being detained by the institution;
- it is not a donation by the private party for some public benefit;
- neither is it the privatisation or divestiture of state assets and/or liabilities;
- it also does not amount to a commercialisation of a public function through the creation of a state-owned enterprise;
- it does not constitute borrowing by the state.

The assumption of risk seems to be one of the critical areas in meeting the criteria of TR16 and where the private party is not prepared to assume substantial risk it could for instance then be decided to proceed with the transaction as a standard procurement

¹⁴ See page 17 *infra*

transaction and not a PPP.

The definition of a “private party” in terms of the Municipal Regulations needs to be mentioned specifically, as its application has an important influence on the formation of MPPPs. In terms of the Regulations the following are excluded as a private party:

- a municipality;
- a municipal entity;
- an organ of state, including an institution listed in any of the Schedules to the Public Finance Management Act.

Furthermore, municipalities are regulated by both the Municipal Finance Management Act and the Municipal Systems Act. Section 86B provides for three types of service providers, which are defined as:

Kinds of municipal entities.- (1) There are the following kinds of municipal entities:

- (a) a private company –
 - (i) established by one or more municipalities established in terms of Part 2; or
 - (ii) in which one or more municipalities have acquired or hold an interest in terms of Part 2;
- (b) a service utility established by a municipality in terms of Part 3; and
- (c) a multi-jurisdictional service utility established by two or more municipalities in terms of Part 4.

Given the possibility of creating any of these three legal *personae*, municipalities are increasingly entering into service delivery agreements with private parties to outsource their services.¹⁵ An example of this is City Power in Johannesburg. These clearly are not PPPs as they are expressly excluded by the definition of a private party, in terms of the Regulations, and also because there is no risk-sharing. Furthermore, in the long term it would probably happen that the Municipality had not accrued any or sufficient value and that it merely paid the private party for delivering a service. Where there is merely a service provider appointed from the private sector the question of affordability also arises as, apart from the lack of or (probably) insufficient infrastructural gain, the private party (probably) does not provide any substantial infrastructural investment or development –

¹⁵ Personal interview Dr Petra Bouver Pretoria

two things that are the biggest advantages of PPPs.

Determining whether a procurement transaction meets the criteria of a PPP or not by following the prescribed criteria in terms of the Regulations is one way to establish the true nature of the transaction. However, it seems that there are numerous misconceptions both in the public and private sectors about what PPPs are or what they are supposed to be. Room for misinterpretation exists where the private sector confuses the PPP concept with Corporate Social Investment. It seems that where a public sector party is supporting a public sector institution with development in infrastructure or social development, it tends to label the nature of the agreement as a partnership akin to a PPP.¹⁶ This is obviously a huge misconception and regrettable as it leads to an irresponsible use of the term. It is particularly regrettable if the term is used in this manner in instances where parties stand to benefit from the perception created that they are conducting business in line with government's PPP developmental objectives. Taking responsibility for CSI is great and business society should do so, but it cannot wear the cloak of a PPP if it does not meet the legal requirements.

As stated previously, Treasury needs to determine whether a transaction is to be termed a PPP or a procurement transaction. Most transactions between the public and private sector amount to procurement transactions where services and products are purchased against a fixed price. A few differences between the procurement process and the PPP process therefore need to be elaborated on.

5.4 Difference between Public-Private Partnership and Procurement

Are PPPs not just another form of procurement? This is a question which needs to be determined during the feasibility study phase: the objective of the investigation undertaken is to determine whether a specific transaction has the potential and characteristics of a normal procurement agreement or whether it complies with the criteria of a PPP. Obviously, should the PPP criteria not be met, the normal procurement procedures are to be followed and the feasibility study will not pass the initial stage

¹⁶ Workshop attended: Gauteng Management Development Programme Senior Management Service Networking session: "Key-lessons in Public-Private Partnerships"

(Treasury approval I). As for MPPPs, a feasibility study is also to be conducted which must be submitted to the National Treasury PPP Unit for its comments and overview.

The standard procurement process needs to be distinguished on national and provincial level, although section 38 of the PFMA sets out the general responsibilities of accounting officers in the process: they need to ensure that an appropriate procurement and provisioning system that is fair, equitable, transparent, competitive and cost-effective is followed. Insofar as the process goes, a number of key aspects need to be elaborated on.

5.5 The Webb report

During 2000 a study into the procurement process, the Webb report, was published.¹⁷ One of the findings of the report was that government procurement systems are very centralised and process-driven. It was also found that the present public procurement approach at national level broadly exhibits a number of characteristics which will be referred to briefly.

5.5.1 Public Procurement characteristics identified:

- Public procurement is highly prescriptive and is focused on process;
- The principal objective is to achieve “value for money” but this often appears to mean value for money equalling lowest price;
- It is used to provide indirect assistance to SMEs and HDIs;
- In both period contracts and ad hoc contracts the range of commercial activity and industry sectors involved is extensive; therefore the amount of money that the national and provincial governments spend can have a profound economic effect;
- From 1 April to 31 December 1999 total contracts awarded by state and provincial tender boards (but excluding those awarded by individual departments under delegation) amounted to more than R8.710 billion; two-thirds of that

¹⁷ Gauteng Provincial Government *Supply Chain Management Manual* 13

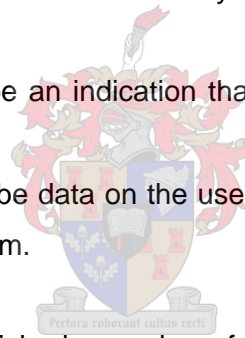
- amount (R5 733 billion) was contracted at national level.

As a result of the Webb report, a number of weaknesses in government procurement were identified that merit discussion.

5.5.2 Government procurement weaknesses identified:

The weaknesses that were described in the report are:

- Procurement has been used to provide indirect assistance in SMEs, although tracking of the impact is inconclusive;
- The procurement system is highly prescriptive and focused on compliance with procedures;
- The objective of achieving “value for money” is often confused with approving a bid with the lowest price;
- There does not seem to be an indication that the procurement process is cost-effective;
- There does not appear to be data on the use made of money saved through the present procurement system.



Although these findings were published a number of years ago, they are still included as part of the current GPG Procurement Manual in order to focus on improving the procurement process and as such are still relevant.

5.3 Overview of the Procurement Process

Although the process is very formalised and prescriptive, “Identified Values” and a Code of Conduct is prescribed to all procurement staff and it is expected of them to maintain high levels of professional ethics and a high standard of personal integrity.¹⁸ The standard of behaviour expected of these officials is based on the following:

- Open, honest and cooperative business relations with colleagues and vendors;

¹⁸ Ibid 25

- Confidentiality of both government and commercial information;
- Avoidance of conflict of interest or a perception of bias;
- Disclosure of possible conflicts of interest, whether real or capable of being perceived, to the delegated authority as soon as they arise;
- Fair dealing and impartiality in the conduct of bid evaluations, recommendations and adjudications;
- The highest possible standard of professional competence and the encouragement of similar standards amongst all GPG staff.

The ethical values prescribed in any workplace to its employees is generally accepted as guidance given by management on how staff is expected to behave and which values the organisation strives to adhere to in conducting its business. As such, it is valuable in setting the tone. However, processes also play an important role and the emphasis on processes in the public sector, as is evident from the discussions on regulatory practices, is probably much stronger than in the private sector.

In order to improve the procurement process in the public sector, strong emphasis on efficient supply chain management is being implemented to develop and set a standard for best practice, particularly in the Gauteng Province. This can be seen as complying with the direction given by National Treasury,¹⁹ and especially to address the weaknesses identified in the Webb report. SCM as an integral part of financial management was formalised in the Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government.

5.4 Phases in the Procurement Process

In broad terms, the procurement process amounts to the following:

- User Requirement definition
- Preparation of Task Directive (specification)
- Evaluation, Recommendation, Allocation

¹⁹ Ibid 27

- Administration of Contract

The phases are discussed briefly and the references to the values in the process are included insofar as they may relate to similarities in the PPP procurement process. In more detail, these steps amount to:

5.4.1 User Requirement definition:²⁰ before any procurement action is to be instituted, user requirements must be justified. The more complex and the higher the value of the procurement, the more likely it is that this will involve a formal process, such as a detailed motivation that must be approved prior to entering into any procurement commitment. The value of the transaction will determine the process: products or services under R500 are bought with petty cash, for purchases of R500 to R30 000 three telephonic quotations (RFQ) and one verbal confirmation are required and from R30 000 to R500 000 a request for proposal (RFP) is required. Above R500 000 a public bid is requested.

5.4.2 Specification:²¹ as it is vital to ensure that the service that is required in a given situation will render value for money, the task directive should define the purpose and extent of the specific task as well as provide the full background in order to provide prospective bidders with the opportunity to understand the requirements of the task. It is also desirable that the result that is to be obtained be described. This can take the form of a project proposal that should set out the roles and responsibilities of the respective parties, as well as the deliverables in terms of the project.

Insofar as the RFP process is concerned, a few aspects need to be highlighted: firstly, transparency must be maintained in that all prospective bidders should compete on the same terms and without knowledge of their competitors' bids. This means ensuring that:

- All vendors are given the opportunity to submit a bid on the same terms;

²⁰ Ibid 32-33

²¹ Ibid 55-56

- Information provided to the prospective bidders is not deceptive or misleading;
- The conditions and protocols published in the bid request are adhered to, particularly when evaluating bids.

In order to ensure compliance with these criteria, the staff working with the bids have the duty to ensure that vendors are not allowed to engage in anti-competitive practices, for example collusion, artificial price fixing and/or operation of formal or informal cartels. Careful planning should also ensure favourable outcomes and such planning should include objectives, timelines for delivery, responsibilities of parties, and details of resources which would be required. This should include:²²

- Define needs accurately and in sufficient detail for prospective bidders to understand the requirement and to enable them to submit their best offers;
- Set out the criteria against which all bids will be evaluated;
- Indicate which criteria are mandatory and which are desirable;
- State clearly that failure to respond or to comply with any mandatory criterion will result in the bid being disqualified;
- Provide details of the bid evaluation methodology that will be used, including an indicative evaluation time frame;
- Identify any risks that need to be taken into account;
- Clearly advise bidders of all the information to be provided and undertakings to be given;
- Identify applicable objectives of PPPFA.

A distinction can be made between the RFP process in conventional procurement methods and the best and final offer (BAFO) process in PPPs, which is conducted on a larger scale²³ insofar as the bidder has the opportunity during the BAFO to clarify possible uncertainties, whereas the bidder in the RFP process needs to ensure that he knows, from the outset, what is expected from him in order to ensure that he presents a proper proposal that will address the

²² Ibid 64

²³ This distinction is dealt with more fully in Chapter 5 *infra*

needs as identified.

5.4.3 Evaluation, Recommendation, Allocation of contract:²⁴ during this phase the quotation or bid is evaluated and the offer that is accepted would constitute the formation of the agreement. During this phase, it is important that evaluation criteria be applied fairly and objectively in order to ensure that the process is acceptable both to the public sector as well as the bidders. The evaluation criteria applied should also correlate with the defined scope of work or terms of reference according to which the bid was submitted. In terms of the larger contracts the bids may be evaluated by either the Departmental Acquisition Council (for Departmental procurement) or the GPG Acquisition Council (for Provincial procurement.)

5.4.4 Administration of contract:²⁵ this entails the ongoing process to ensure that all objectives are met. Insofar as the management of risk goes, the GPG Procurement Manual indicates that the responsibility for managing an identified risk should be allocated to the party that can best manage the risk, and where it is clearly not only one party's responsibility it must be shared. Except to indicate that risks need to be identified, evaluated and managed, not much direction is given on how risk management is to be implemented and it does not seem to be negotiated in as much detail as a specific requirement of the agreement as would be the case in a PPP.

Taking a broad view, the standard procurement process and the PPP procurement process are very similar to the extent that there is a need identified, specifications given and proposals obtained, an allocation of a contract made and ongoing contract management. After all, a PPP is a specialised form of procurement with specific requirements that do not form part of the standard procurement process. However, it must be clear that the PPP process is much more comprehensive and approvals are required at specific stages during the process. Furthermore, since the allocation of bids larger than R500 000.00 lies

²⁴ Gauteng Provincial Government *Supply Chain Management Manual* 81-82

²⁵ Ibid 110

with either the DAC or the GPG-AC, the Accounting Officer does have a say in the allocation of the bid. However, since there are fundamental differences, the transaction under consideration would either meet the criteria of a standard procurement agreement or a PPP and a clear distinction should always be maintained.

5.5 Municipal Public–Private Partnerships

According to Plummer,²⁶ “municipal services and the process of their delivery are an integral part of a multifaceted, multifunctional organisation”. For this reason such efforts are not isolated initiatives but form part of a broader municipal effort. The author also calls for changing the approach in service delivery in municipal reforms by involving private sector participation in developing urban infrastructure and services to influence the process of municipal reform. This stance also seems to be supported by Mangosuthu Buthelezi,²⁷ as he has called on the private sector to get more involved in the local government reform. Although his suggestion is for partial privatisation, which is different to PPP objectives, he recognises that the public sector can gain by “bringing in managers, experience and expertise from the private sector.” His argument is based on the premise that the community should become more involved in the process, particularly from the point of view of “self-help and self-reliance”. He also refers to the concept of the “new entrepreneurial state” in which this would be enabled. This seems to support the notion that development in municipalities should allow for more community sector participation, especially in order to advance those who were previously disadvantaged.

Getting back to Plummer,²⁸ she emphasises the necessity to recognise that private sector participation in the service sector, such as water and electricity services or waste removal, are not to be created or implemented in a vacuum and as such that the outcomes are linked to the fulfilment of a number of municipal obligations. It follows that

²⁶ Plummer *Focussing Partnerships: a sourcebook for municipal capacity building in public-private partnerships* 33

²⁷ Buthelezi, M “Let private sector drive reform local government” *Sunday Independent*

²⁸ Plummer 33

MPPPs are more service-delivery orientated and that may be why the Municipal Regulations provide for outsourcing as a PPP, whereas the national and provincial PPPs seem to focus more on infrastructural development of a product, which may or may not include service delivery over the long term. This interpretation may also have been what the authors of the DBSA report²⁹ may have had in mind: in my interpretation the expectations of PPPs were based on the potential of PPPs, on a broad scale, to relieve the plight of the poor by ensuring enhanced service delivery, in other words that the focus was outcome-based and not so much based on the process.

5.6 Is there room for a broader application of the concept?

Given the strict criteria as laid down by the Treasury Regulations, this may be an interesting concept to explore. The more general definition referred to before, that it is a relationship for the provision of goods of services “over a specified or indefinite period, for mutual benefit”, in my view opens the door for a much wider interpretation and application than seems to be the current norm. The view is held that this is desirable, especially in view of the important role that PPPs are to play in the development and growth of SA as a Developmental State. By no means should this indicate that the boundaries as set by the Regulations are to be extended, as this could open the door to abuse. What is meant by this, however, is that the perceived misconceptions about PPPs, insofar as they exist, should be addressed. It seems that currently the most prevalent perception held is that, because the PPP Unit drives PPPs on the bigger scale, that that is what PPPs do and should amount to – and my plea is that this view should be extended. Before suggestions as to how to approach this are offered, the current approach needs to be considered: Currently, most PPPs that are put together and conducted under the guidance of the PPP Unit at National Treasury have a huge cost implication. The average cost to execute a feasibility study amounts to around two million Rand³⁰ and it might not be viable for a smaller project to have the feasibility study performed. To date, twelve PPP agreements had been signed on national level and another fifty are to be approved. The smallest PPP at the moment is valued at RM266³¹

²⁹ Development Bank of South Africa “Impact of PPPs on the poor: the South African experience”

³⁰ Personal interview Kogan Pillay *Pretoria*

and this demonstrates that the size and extent of the transactions facilitated and managed by the PPP Unit are obviously focused on the larger projects, which of course are all in line with the budget and the development of the macro economy. Most of these projects are aimed at infrastructural development; a few examples of successful PPPs completed to date include:

- N4 West Platinum toll road
- Inkosi Albert Luthuli hospital
- DTI campus
- Chapman's Peak Drive toll road
- SANParks concessions

PPPs such as these certainly improve infrastructure and growth and to that extent they do fulfil the vision of PPPs in our economy. However, there may also be many advantages to public-private sector involvement on a smaller scale, especially to meet the objectives of BEE. To this extent the Development Bank of SA is contributing towards the establishment of MPPPs as they aim to "fill the gap" between the public and private sectors.³² They recognise that PPPs can unlock private-sector resources and provide funding in order to facilitate the establishment of PPPs that the private party might otherwise not have considered economical. The DBSA plays the role of financier, partner and adviser, and a few examples of such MPPPs³³ established with their intervention are:

- Franschoek Empowerment and Development Initiative (Fedi): DBSA assisted in mobilising resources to facilitate a land development: initially R20 000 was granted for technical assistance, but later an amount of R60m was provided in grants, bridging finance and loans and DBSA assisted with raising an additional R35m in funding;
- uShaka Marine World project: R107m was contributed in loans and equity to establish a regeneration project, with an association between the eThekweni

³¹ Personal interview Kogan Pillay *Pretoria*

³² Coulson, M "Corporate report: the Development Bank of South Africa Advising Partner" *Financial Mail* 50-52

³³ Ibid

- Metro Council and the private party to restore the decaying Durban seafront;
- My Acre of Africa is a joint venture between Johnnic and SA National Parks to establish a R1bn endowment fund whose income will be spent on conservation and environmental education around Bushbuckridge.

As the municipalities are not subject to National Treasury and the PPP Unit, it seems the DBSA plays a similar role to that of the PPP Unit insofar as they act as advisers to put MPPPs together – even if not officially appointed to do so. However, a huge difference between the PPP Unit and the DBSA interventions is that the PPP Unit does not provide funding and that the transaction advisers’ activities are mainly supervised and advised on. The DBSA plays a much more active role by initiating projects and also providing funding, in addition to its advisory function. Another difference is that the PPP Unit does not regard itself as a “partner”, whereas the DBSA in that sense is more involved in the day-to-day management of the project.

It is the incorporation of procurement transactions on a more general level, and possibly also on a smaller scale, within the framework of the PPP concept, that is advocated. Municipalities and their partners should ensure that PPPs support the fundamental principles of reform in order to support broader governance initiatives seems to support this idea.³⁴ PPPs can also do much more to support and promote PPPF and BEE objectives if a broader view is taken and the involvement of municipalities to promote these objectives is important in this regard. As stated earlier,³⁵ the objectives of SA as a DS to develop the economy could, and should, involve more role-players and if public–private collaboration, and partnering, can be promoted on a more local level, this could do much to advance the DS goals.

The importance of the Regulations is not to be underestimated or disregarded: they are especially important in view of managing risk in PPPs. Both from a regulatory as well as a governance point of view, the Regulations have a vital role to play. It is widely accepted that the holistic approach to risk management includes governance, breaches of corporate and social responsibility and unethical behaviour and that these aspects

³⁴ This suggestion is also advocated by Plummer

³⁵ See chapter three *supra*

must be managed, as failure to do so can result in collateral damage (reputation), financial losses and loss of confidence.³⁶ From a good governance point of view, preventing or reducing unethical behaviour can reduce risk and many of the requirements in the Regulations aim to ensure that this aspect is addressed: Ethical Codes form part of the Regulations and at least create awareness about compliance expectations.

However, the comprehensiveness of the Regulations should also ensure risk management in the broad sense and the strict processes that need to be followed and adhered to aim to achieve this. Many risks are involved, and because these transactions involve millions of rand, the risk of loss is significant. It is only to be expected that all possible measures are to be taken and implemented to reduce the risk of loss. Given the numerous allegations of corruption that have been levelled at the public sector, the risk of corruption is probably one of the biggest risks that need to be managed. However, as is most often the case with bureaucratic organisations and the red tape that goes with them, these stringent procedures at the same time threaten the success of the PPP vision. The reason for this is that it takes so long to get any PPP on national or provincial level to execution phase. Meeting all the criteria and getting approval in terms of all three phases takes months, if not years, to complete. One example of a PPP whose feasibility study has taken several years is the Gautrain: the feasibility study has been going on for quite some time and the project still has not been initiated. One of the delays in finalising the feasibility study was caused by the need to agree on the allocation of risk: as the viability of the project and the expected use of the train are aspects in relation to which the risk is difficult to determine, the parties apparently had difficulty agreeing on this requirement.³⁷ Where such large projects are to be assessed, and Gautrain is a good example in this regard, some aspects of the process will take longer than others where there are more thorny issues to be finalised. At this stage the aim is to have a feasibility study completed in eight months³⁸ as it currently takes much longer: and that is only phase one. Although the PPP Unit is trying to speed up the process, the fact of the matter is that it currently still takes very long. These delays make the private sector

³⁶ Drennan, L.T "Ethics, Governance and Risk Management: lessons from Mirror Group Newspapers and Barings Bank" *Journal of Business Ethics* 258

³⁷ Personal interview Kogan Pillay *Pretoria*

³⁸ *Ibid*

reluctant to enter into PPP agreements. One of the main objectives of the agreement is to make a profit: but if a private party can make a profit elsewhere sooner because there are not such long delays, it may not be that eager to go the PPP route.

Another problem is that many managers in the public sector are reluctant³⁹ to set up PPP agreements: after all, they also have the option to procure the services of the private sector through the normal procurement process and if there is budget available to procure such services, then PPPs probably would not even be considered. An important consideration in this instance would be the funding: PPPs are normally entered into because the private sector puts in the capital and therefore public infrastructure is developed at the cost of the private sector. Given the fact that, for instance, many municipalities have financial problems,⁴⁰ the PPP option may be a more viable option to obtain infrastructural development via PPPs. However, where a lack of infrastructure or funding is to be considered by the private party in terms of the risk criterion, it may become too risky for the private party to get involved. This may be of particular relevance where there are already levels of corruption within a municipality and this may greatly deter the (ethical) private party from becoming involved. The problem is that it could be difficult to determine the risk, especially where the parties are to agree on the risk allocation and the private party may thus be reluctant to enter into the agreement.⁴¹

Another reason why public sector managers may be reluctant is that they would then have to adhere to the oversight and management involvement by National Treasury, whereas the particular manager can remain in complete charge when normal procurement is obtained. Being in charge, given the political climate and most often the political motives of individuals in key positions, has a significant bearing on how business is done in the public sector.⁴² Therefore, it is argued that the PPP option may not be all that attractive to the public sector manager, either, from the manager's personal point of view.

³⁹ Workshop attended "Gauteng Management Development Programme Senior Management Service Networking session: Key-lessons in Public-Private Partnerships" *Johannesburg*

⁴⁰ Paton, C "Rusting Republics. Political domination in municipal councils is destroying administration and infrastructure" *Financial Mail* 20-22

⁴¹ See discussion chapter 8 *infra*

⁴² Paton 20-22

A possible problem that needs to be pointed out is the fact that municipalities are not managed by National Treasury and that Treasury only has an oversight role. National Treasury must be consulted in terms of the Municipal Regulations: its views and considerations on the feasibility study performed must be obtained, but the Municipality is not obliged to follow any direction given by Treasury. Given the many and serious problems that municipalities are known to experience as a result of poor management and corruption, this is cause for concern. It also needs to be emphasised that PPPs are not a solution to poor management.⁴³ They should therefore not be seen as the alternative means to procure services and infrastructure that were to have been delivered by the municipal council itself.

Another point of view⁴⁴ is that a PPP is essentially a form of government procurement, although it obviously still needs to meet stringent requirements as a public decision. When the relevance of taking a public decision on procurement is to be considered, an important issue would be the relevant values that are to be considered, such as transparency and accountability, as these need to ensure that the agreement meets the requirements of a public decision.⁴⁵ Other criteria that will be important will be the success factors against which the agreement will be measured. As value-for-money is an overriding consideration, it will probably be the most important factor to be measured. Furthermore, as PPPs are expected to play an important role in advancing economic objectives, other considerations also come into play: these could include that the PPP makes a contribution to poverty reduction or that it should improve the standards of living of the people or groups that the government needs to serve. Important measures that then need to apply are job creation and the awarding of contracts to local communities and smaller enterprises. This will be an especially important consideration in the SA economic development policies as reducing poverty and creating job opportunities are of crucial importance. It is obvious, then, that the larger PPPs in terms of the TR16 criteria, which are all multi-million rand projects, are less likely to meet these criteria. The reason for this is that these projects take a long time to be initiated and are administered by huge contracting firms: it may be more practical to implement smaller projects on a

⁴³ Personal interview Andre Fourie *Johannesburg*

⁴⁴ "Public private partnership capacity building programme: phase 1" *Case study: the Maputo development corridor roll road report 6*

⁴⁵ *Ibid*

larger scale to both improve service delivery where it is critically needed, and also to allow for smaller enterprises to partake in the PPP concept. It is thus advocated that PPPs be utilised on a broader scale than is currently the case: this could be done by promoting them as an alternative procurement method that is not only viable but more advantageous than traditional approaches. This is particularly necessary in MPPPs, and a broader interpretation would entail that the viability, as well as the desirability, of the concept is to be promoted while the importance of risk management and adherence to the criteria in terms of the Regulations is simultaneously emphasised.

5.7 Privatisation as a Public–Private Partnership prototype

It is interesting to note the differences between a “PPP”, “privatisation” and “outsourcing”. In a PPP the private partner takes a substantial part of the risk for financing the project’s capital and operating costs, designing and building a facility, and managing its operations to specified standards, normally over a significant period of time. The land typically belongs to a government institution, and the fixed assets developed in terms of the PPP become government property. Privatisation, on the other hand, entails the disposal of state property and functions, and thus includes all the assets and liabilities associated with that property and functions. The government has given prominence to this form of procurement by privatising state assets as yet another approach to enhance economic growth. As far back as 1996, former president Nelson Mandela announced this as a fundamental policy of the ANC.

PPPs are not to be seen principally as a means of privatising state assets, as the objectives are different: privatising state assets, for example as was done with Telkom and Iscor, meant that a legal *persona* was created in the form of a private company which, when listing on the JSE, issued shares which created the opportunity for many to share in the benefits. The objectives of a PPP are very different in that, although many stakeholders are to benefit from a specific project, for instance a toll road or a prison, it is in a sense restricted, as the benefits are not valued in terms of monetary benefits to the same degree. Linder⁴⁶ is also of the view that “partnerships have been viewed as a retreat from the hard-line advocacy of privatisation.”

⁴⁶ Linder 41

Schönteich, Minnaar, Mistry & Goyer seem to argue that PPPs are to be viewed as a means to privatise state assets, although they also acknowledge that PPPs are to enhance standards and quality of public service delivery⁴⁷ and a number of benefits or strengths are quoted as such to be more beneficial than standard public service delivery mechanisms.

5.7.1 Advantages of privatisation

The advantages proposed by Schönteich⁴⁸ et al, amount to the following:

5.7.1.1 PPPs require that outputs and service level standards are specified clearly and transparently, together with identification of costs and risks;

5.7.1.2 Efficiencies arise from the integration of the design, building, financing and operation of assets that is intrinsic to a well-structured PPP;

5.7.1.3 The private sector tends to bring a higher level of innovation to planning and project delivery, and has a sharper and more timely engagement with technology, with significant spin-offs for skills transfer in the public sector;

5.7.1.4 The introduction of enhanced management skills into public service delivery through the PPP process is of considerable benefit in service quality and effectiveness;

5.7.1.5 The contractual assurances of specified service standards and affordability of PPP agreements bring about a stricter and more effective management of risk.

These suggestions seem to be very focused on the process and as such the formal partnership arrangement between the parties: as these benefits are intrinsic to the PPP, it is not clear why the authors propose that assets need to be privatised, as the outcome

⁴⁷ Schönteich, M, Minnaar, A, Mistry, D & Goyer, K.C *Private Muscle, outsourcing the provision of criminal justice services* 26

⁴⁸ Schönteich et al 36

of privatisation, as stated, is totally different from that of a PPP. In the event of privatisation, these benefits, as argued by the authors, will not apply as the state assets will then no longer be part of the ongoing relation between the parties as the private party will have taken ownership of them. It is suggested therefore that the argument to use PPPs as a form of privatisation is not well supported.

5.8 Outsourcing as a Public–Private Partnership prototype

Outsourcing can also be viewed as a form of a public–private partnership.⁴⁹ Two of the characteristics of such an agreement are pointed out as:

- Both parties preserve their own individuality and responsibility; and
- This collaboration leads to value being added for both the public and the private partner.

In arguing for outsourcing as a form of PPP, the authors point out that it is to be interpreted against the backdrop of a government evolving from a rule-driven to mission-driven government and once it had decided on the instruments and performances to obtain its goals, a number of possibilities are available. This is of course also true of PPPs in general. They also go on to distinguish between law- or decree-based PPPs and contractual PPPs, which are more commonly. Outsourcing based on decree would imply that the government enters into a strategic alliance with a third party while at the same time ensuring the steering capacity of the public principal. This model is based on the idea that a formalised partnership is created between the (private) provider and the (public) consumer which is to guarantee the public principal insight and control although the private provider will probably have the biggest autonomy. Trust is a necessary ingredient and to create this trust an interface should be created between the public user and the private provider which has a sufficient degree of legitimacy and authority. This is especially so since the contracting out of services within the framework of a PPP results in a situation being created in which the public end-user is to a degree left to the discretion of the private service provider. This would also then emphasise that

⁴⁹ Stienlet, G, Von Sprundel, P & De Ryck, W “Public-Private Partnerships, what about outsourcing?” *Public and Private Partnerships, the Enabling Mix* 577

accountability and control mechanisms will play an important role and are meant to remedy eventual interface deficiencies.

What is important in this approach is the focus on questions such a future outcome, control and accountability.⁵⁰ These values would also be important in the stakeholder approach, which would include that the influence of various interests that would constitute the outsourcing are to be upheld. This obviously is very different from the PPP approach, which is outcome-based and in which inputs are not part of the negotiation criteria. However, one of the advantages pointed out⁵¹ is that the risks involved are minimal and the production of services is mainly under control.

5.9 Outsourcing in Municipal Public–Private Partnerships

A significant distinction is to be made between outsourcing in national or provincial PPPs and outsourcing in MPPPs as the Municipal Regulations specifically provide for outsourcing as a PPP prototype in Municipalities. This is addressed under “additional matters to be addressed in feasibility studies” and section 3(1)(d) states that the feasibility study must:

- (d) recommend an appropriate plan for the procurement of the proposed public-private partnership agreement if outsourcing of the activity is the preferred option.

This clearly provides for an outsourcing which should still meet the requirements of a PPP. However, it seems that the municipalities⁵² are using outsourcing in terms of section 86D, as discussed *supra*, as a hybrid of PPPs.

The Regulations require that the matter of ‘procurement’ in the event of outsourcing is to be addressed and this should ensure that the municipality gains the advantages that are envisaged by the PPP concept. But it seems that the alternative of outsourcing is used as a short-term solution and in the long run the municipality would not have gained in infrastructure, which is one of the main objectives of PPPs – especially given the DS

⁵⁰ Ibid 583

⁵¹ Ibid 586

⁵² Personal interview Dr Petra Bower *Pretoria*

goals to develop the economy.⁵³ Apart from ensuring that the municipality has some gains in terms of infrastructure, it is also important that the private party share risk otherwise it will simply be remunerated for delivering a service and the municipality will have no assurance that the private party will maintain the agreement. One of the risks identified in the Maputo report was the risk of political interference and it must be borne in mind that a private party may want to “walk away” from an agreement where the political climate changes. At least if there is an agreement that ensures risk-sharing, it will not be that easy for the private party to do so.

5.10 **Conclusion**

Apart from the clear distinction in the definitions either in terms of the Treasury Regulations or the Municipal Regulations, the objectives are also dissimilar to the extent that MPPP are to be utilised on a broader scale for improved service delivery. Although the MPPP is not to be regarded as a solution to poor management and although outsourcing seems to be preferred instead of the MPPP, the MPPP can and should play a more important role in addressing economic developmental concerns than currently is the situation.



⁵³ See discussion Chapter 3 *supra*

⁵⁴ "Public private partnership capacity building programme: phase 1" *Case study: the Maputo development corridor roll road report 6*

CHAPTER 6

PARTIES TO A PUBLIC-PRIVATE PARTNERSHIP

“Leaders were afraid to actually lead, reluctant to cost businesses money, break jurisdictional rules or spawn lawsuits. They were afraid, in other words, of ending up in an article just like this one.”
Time Magazine, Sept 12, 2005

The role-players in Public-Private Partnerships are very exposed to public scrutiny as the expectations for success in Public-Private Partnerships are high. Unfortunately, especially in the public sector, criticism comes easily in the wake of constant allegations of irregularities and corruption in management. Therefore, it is imperative for these parties to take to heart the duty that rests on them to ensure that sound ethical values are incorporated throughout the Public-Private Partnership process, from planning, inception, and incorporation right through to final delivery.

6.1 Introduction

The quotation from *Time Magazine* relates to an article about mismanagement in the United States after the first hurricane hit New Orleans in August 2005, which illustrates the point that bureaucracies by nature can be ineffective and that it is not only the SA bureaucratic system that may be open to criticism. However, the size and functioning of this type of system impacts on the delivery aspect of the PPP concept and therefore many aspects need to be considered. Because public sector participants in the PPP are so exposed to criticism, it is also necessary to understand their roles and responsibilities in order to assess what their accountability in terms of good governance would amount to.

Even though there are various definitions on what a PPP is, all are *ad idem* that there are two parties involved, namely the public sector party and the private sector party. In order to assess their roles and responsibilities, a closer look is needed at how they are to be described.

6.2 Public Sector as buyer

Insofar as the Treasury Regulations regulate the public sector subject to the PFMA in PPPs, they also stipulate the levels of government that are subject to Treasury Regulations 16 as follows:

“All references to ‘Institution(s)’ in Treasury Regulation 16 are to these particular institutions of government:

- All national and provincial government departments;
- All constitutional Institutions listed in schedule 1 to the PFMA;
- All national and provincial public entities listed in schedules 3A, 3B, 3C and 3D to the PFMA and any subsidiary of any such public entity.

The major public entities listed in schedule 2 to the PFMA are not subject to Treasury Regulation 16. Municipalities are not subject to the PFMA or to its regulations.”

As for the regulation of PPPs in the Municipalities, Section 5 (1) of the Regulations issued in terms of the Municipal Finance Management Act applies, which determines:

5. (1) A public-partnership agreement between a municipality and a private party must –
 - (a) provide value for money to the municipality;
 - (b) be affordable to the municipality;
 - (c) describe in specific terms the nature of the private party’s role in the public-private partnership;
 - (d) confer effective powers on the municipality-
 - (i) to monitor implementation of, and to assess the private party’s performance under, the agreement;
 - (ii) to manage and enforce the agreement;
 - (e) impose financial management duties on the private party, including transparent processes relating to internal financial control, budgeting, accountability and reporting;
 - (f) provide for the termination of the agreement if the private party-
 - (i) fails to comply with terms or conditions of the agreement; or
 - (ii) deliberately provides incorrect or misleading information to the municipality;
 - (g) restrain the private party, for the full period of the agreement, from offering otherwise than in accordance with the agreement an employment, consultancy or other contract to a person-
 - (i) who is an official of the municipality or a municipal entity under the sole or shared control of the municipality; or

- (ii) who was such an official at any time during a period of one year before the offer is made; and
- (h) restrain the private party, for a period of three years, from offering an employment, consultancy or other contract to an employee of the municipality directly involved in the negotiation of the agreement.

It must be clear by now that different legislation regulates different sectors of the public service. The national and provincial departments are regulated by Treasury Regulation 16 issued in terms of the PFMA, and municipalities are regulated by the MFMA. The legislative framework is there to ensure that procedures are followed and adhered to when certain actions are taken: in this instance it would mean that all actions initiated to create, facilitate or manage a PPP will be regulated. The public sector environment, as a huge bureaucracy, is well known to have miles of “red tape” to adhere to, as is typical of any bureaucracy. The main reason for all the red tape is to ensure that procedures are followed to enhance effectiveness, to manage quality control, human relations, etcetera. The objectives are like those of any large organisation, but because the public sector is such a huge organisation, there are more and more rules and regulations to comply with. All public servants are therefore managed through the use of legislation. Perhaps the most important reason for the numerous rules and regulations is to reduce the risk of fraud and corruption. Unfortunately our public sector is currently perceived to have high levels of fraud and corruption, as is exposed in the press very regularly.

But how effective are all the rules and regulations? Do they ensure an effective bureaucracy? It has been stated that a Developmental State needs a competent bureaucracy¹ and that a committed and competent bureaucracy is needed² to ensure the efficient formulation and implementation of policies which are important for economic development. In this regard, we still have a long road ahead of us, as the governmental bureaucracy is not as efficient as it should be. If it is not efficient and there is the perception that it is fraudulent and corrupt, then it becomes evident that the public sector as buyer has many challenges to overcome. Good governance is essential in ensuring effective PPPs and as such is probably one of the most critical areas to manage in the

¹ See discussion in chapter 3 *supra* Beeson

² See discussion chapter 3 *supra* Esterhuysen

process. The concern raised previously about red tape being a deterring factor emphasises the point that the public sector would need to address this concern in order to make PPPs more attractive.

What makes the public sector party in the PPP unique in SA is the legislation developed to ensure BEE. This means that the BEE PPP participation defines the composition of the public sector party. It is therefore important to consider the implications of BEE legislation.

6.3 Black Economic Empowerment in Public–Private Partnerships

In accordance with the draft Code of Good Practice for BEE in PPPs, South African PPP projects are to be structured in a careful combination of financial, technical and BEE components in order to meet the criterion of value-for-money. This would mean that the BEE component of a PPP should constitute no less than 15 percent and no more than 20 percent of the three bid evaluation components in a PPP. The remaining 80-85 percent will be constituted by the technical components.

The bid proposals are to be prepared by Transaction Advisers and the appointment of these advisers is also subject to BEE policy. These advisers need to provide Treasury on the financial, legal and technical support in order to assess and compile a bid. No less than 20 percent of the adviser bid will be constituted by the BEE component. This means that a prospective adviser will not be considered for selection if it does not meet the BEE threshold, even though it may pass the technical criteria. The BEE criteria, therefore, should ensure that there is a broad-based and sustainable BEE outcome in every PPP project undertaken in terms of the Treasury Regulations. The draft proposed code further stipulates the government's policy objectives for BEE in PPPs as:

- To achieve meaningful and beneficial direct ownership of substantial equity interests in the private party to a PPP agreement by black people, black women and black enterprises;
- To achieve effective participation in the management control of the private party and its subcontractors by black people and black women;
- To ensure that a substantive portion of the private party's subcontracting and procurement is to black people, black women and black enterprise;
- To ensure effective employment equity and skills development in the private party and its subcontractors throughout the PPP project;

- To promote positive local socio-economic impact from the project to the benefit of small and medium enterprises, the disabled, the youth, and non-government organisations within a targeted area of project operations;
- To create jobs; and
- For institutions of government to be represented in all PPP transactions by financial, legal and technical advisers who generally reflect South Africa's diverse population, and to build the professional skills and number of black people and black enterprises in these fields.

It is thus clear that the advantages of PPPs for the development of infrastructure and development is not only output-based but also developed in such a way that the process will benefit formerly disadvantaged citizens of the country. Not only do they get the opportunity to benefit from the financial advantages of PPPs, but they get an opportunity to help rebuild the country and to gain experience in their field of expertise. In some instances there is a leniency in allowing BEE compliance over an extended period: this means that if the bidder, for example, is only 10% BEE compliant, they will be allowed to become 40% compliant over an extended period.

6.4 Private Sector as Supplier

The Treasury Regulations define a "private party" in the following way:

"private party" means a party to a PPP agreement, other than –

- (a) an institution to which the Act applies;
- (b) a municipality or a municipal entity under the ownership control of one or more municipalities; or
- (c) the accounting officer, accounting authority or other person or body acting on behalf of an institution, municipality or municipal entity referred to in paragraph (a) or (b);

The Municipal Regulations determine a "private party" in the following way:

"private party" excludes –

- (a) a municipality;
- (b) a municipal entity; or
- (c) an organ of state, including an institution listed in any of the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999);

These would then be the applicable definitions to parties who are to participate in PPPs in terms of the Treasury and Municipal Regulations.

As stated earlier, the concept of public–private participation in the Developmental State is to be promoted on different levels in order to give effect to the development goals of the government. That would mean that a private party could be a small private business and not a member of a bigger conglomerate participating in a multi-million-rand PPP.³

The parties to the PPP can also be described as either buyers or sellers, where the public sector acts as the *buyer* of the development or service, and the private party supplies it as the *seller*. In the event of this description, the private sector buyer is normally a consortium of companies formed as a special purpose vehicle company for the sole purpose of entering into the PPP agreement. This private party SPV then enters into subcontracts, typically with construction and operating companies, in order to effect delivery. The private party supplier in the South African context is undoubtedly different to the rest of the world, as stated, as a result of BEE requirements and BEE promotion in business.

The PPP unit also states as one of its objectives the promotion of BEE. Some of the key features that are advanced by the PPP Unit in order to promote BEE PPPs are the following:⁴

- the long-term nature of PPPs provides an opportune instrument to grow black equity and black management over time;
- risk is clearly identified in PPPs, clearly costed and appropriately allocated, so black participants know in advance what they are committing to;
- the formation of private consortia in the form of special purpose vehicles (SPVs) for many PPPs facilitates long-term beneficial partnerships between new black enterprises and experienced, resourced companies – both as equity partners and in project management, and both at the private party SPV and subcontracting levels;
- where government is the buyer of a service, and insofar as the service is provided to the agreed standards, there is a steady revenue stream to the private party, reducing risk to new black enterprises;

³ See discussion Chapter 5 *supra*

⁴ National Treasury: *Public Private Partnership Manual* Module 2 7-8

- Principal equity sponsors in a PPP are often also first-tier subcontractors, building incentives for optimal risk management;
- PPPs provide significant subcontracting opportunities for black enterprises, where early cash-flow benefits can be derived as delivery commences;
- PPPs have far-reaching broad-based PPP potential: through the subcontracting and procurement mechanisms they can involve a full spectrum of large, medium and small enterprises and bring tangible local economic development benefits to targeted groups of people;
- Return on equity to the private party is competitive where risk is properly assumed;
- There is an increasingly strong demand for black professionals as transaction advisers to both institutions and private parties in PPPs.


These incentives are most attractive to the BEE enterprise meeting the criteria of a PPP. However, the PPP Unit emphasises that the BEE company wanting to participate in a PPP needs to meet certain standards in terms of its representation, etcetera. This is understandable, but it still seems that the bigger companies stand a better chance of getting the opportunity to be selected for PPPs.

To this extent, not only does BEE need to be advanced, but poverty needs to be reduced, efficiency increased, jobs created, and infrastructure developed – to name but a few of the obvious challenges. In this regard, Montanheiro⁵ states that both the public and private sectors need to work together under the conditions of a free-market criterion in the allocation of resources. He points out the danger of political agendas on the side of the public sector which might cause a conflict of personal and political interests and may adversely affect their decisions. This he regards as debilitating and he emphasises the importance of a solid relationship with the business sector to ensure effective public-private participation. It is essential that political and business leaders be brought together to ensure that market-based activities are enhanced and to ensure that the partnerships are successful.

⁵ Montanheiro, L “The economic aspect within the enabling mix of public-private partnerships” *Public and Private sector Partnerships, the Enabling Mix* 425-426

BEE should however also play a bigger role than forming part of a PPP in the bigger multi-million transactions. As one of the goals of government is to promote BEE participation in the economy, there is no doubt that it needs to happen on as wide a scale as feasible. The Treasury Regulations stipulate the criteria to be adhered to in the bigger PPPs. The Municipal Regulations, on the other hand, provide for hybrid forms of PPPs such as outsourcing and it seems that provision is made thereby for an expansion of the concept to include transactions on a broader scale. This is especially important in view of development of infrastructure of local authorities, as it could include more role-players partaking in the development of the economy and would also promote the goal of regeneration where members of the communities are part of the “building” of the economy. If the view that PPPs can play a bigger role on different levels is accepted and if it is accepted that more role-players are to be involved, the needs of the poor can be addressed in line with their expectations, especially if members representing their communities can become more involved.

A report based on research undertaken by the World Development Bank⁶ indicated the following:



“The impact of public-private partnerships on the poor is measured by the contributions of these partnerships in addressing the service needs of the poor. Attention is given to the issues of improved service delivery; the affordability of services provided, the expansion and maintenance of infrastructure to the benefit of all consumers, the promotion of opportunities for local economic development, and the implementation of social responsibility programmes by the private sector”

It seems then that the PPPs envisaged in this context would mainly resort within the municipalities and as such the municipalities would be the public partner. However, as for the private partner, this should then create opportunities for smaller enterprises, specifically BEE enterprises, to participate on a smaller scale in the economy.

⁶ Development Bank of South Africa “Impact of PPPs on the poor, the South African experience” 34

6.5 **Conclusion**

The public sector as buyer of private sector services in the PPP concept is very significant in the bigger scheme of delivery in terms of public-private sector collaboration. The risk that the private sector would be prepared to take on, is also measured in relation to the credibility of the public sector party with whom the private sector party is desirous to contract. This makes it absolutely imperative for the public sector party to maintain credibility. The regulations determine the formalities with which the agreement must be compliant, but the values on which the partnership is to be built, will be determined by the relationship as it is founded between the parties: therefore a solid partnership cannot be founded where there is a lack of values. This is especially important insofar as the realisation of BEE goals is concerned and should not be underestimated.



CHAPTER 7

PROCESS IN FORMING A PUBLIC-PRIVATE PARTNERSHIP

*After all, the cultivated person's first duty
is to be always prepared to re-write the encyclopaedia
- Umberto Eco*

Unlike the traditional procurement process where a short-term contract for a service or delivery of goods is entered into, the Public-Private Partnership needs to focus on the long-term relationship and for obvious reasons the terms of the agreement are much more comprehensive. The process itself is drawn out and can take years to complete, which brings with it a number of complications. Municipal Public-Private Partnerships make provision for hybrid PPPs and the process can take less time to complete, but the oversight and facilitation role is a bigger problem.

7.1 Introduction

Transparency International¹ estimates that approximately 68 percent of central government expenditure is spent on contracts: this is an impressive sum but it immediately raises the concern of abuse both by public officials and private companies for their own private benefit, often at the expense of the public. The risk of corruption is particularly high in the initial stages of the tendering process where offers and bidders are selected. Some projects are initiated with specific contractors already in mind, and too often conflicts of interests are not disclosed. Other opportunities for abuse include under-performance (and still getting paid), contract terms re-negotiation, over-invoicing and non-compliance with procedures.²

A PPP does however remain a useful vehicle and efforts should be made to manage these identified risks. This is particularly so when the values necessary in forming a PPP, as pointed out by Reich,³ are considered:

¹ "Policy and Research" world-wide web transparency.org 1

² Ibid

³ Reich, M, Hershey, J, Hardy, G, Childress, J & Bernheim R "Workshop on Public Health Law and Ethics I & II: The challenge of Public/Private Partnerships (PPPs) *Journal of Law, Medicine and Ethics* 91

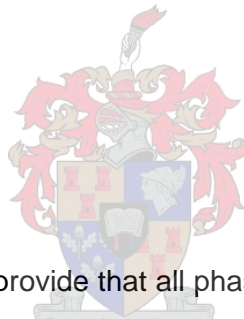
- Creation of something of social value
- A relationship of trust amongst partners
- A commitment to partnership
- The existence of a broader sense of social legitimacy

Before the considerations of values and risk management are discussed (probably with a stronger emphasis on the values in risk management), an outline of the formalities that need to be complied with is necessary.

7.2 Requirements in forming a Public–Private Partnership

The PPP as defined in the Regulations issued in terms of either the PFMA or the MFMA needs to demonstrate adherence to three main principles in all phases of preparing, procuring and managing a PPP. These are:

- Affordability
- Value-for-money
- Risk profile



The criteria determined in the TR provide that all phases of the processes are measured throughout on these three main principles. The three approval phases in terms of TR16, for example, are developed in such a way that the approval of the phases will confirm the following:

- Affordability: approval in terms of Treasury Approval I (TA: I)
- Value-for-money: approval in terms of Treasury Approval II (TA: II)
- Risk profile: approval in terms of Treasury Approval III (TA: III)

In overseeing compliance with these criteria, PPPs are regulated by National Treasury. The compliance procedure for Municipal PPPs is less comprehensive, and although requirements must be met as laid down by section 120 of the MFMA and the Municipal Regulations, the approval phases are not as clearly defined as in the case of PPPs established in terms of the PFMA. The Municipal Regulations stipulate that Treasury approval or recommendations be obtained at different stages of the process, but the

Accounting Officer is not bound by these recommendations. Furthermore, National Treasury only has an oversight role as the PFMA and its regulations do not apply to MPPPs, although the PPP Unit is prepared to provide advice and guidance.

7.3 General Procurement principles

In order to better understand the PPP procedure as well as to distinguish between the traditional procurement process and the PPP transaction, a broader view is to be taken of the general principles. These principles in the procurement process are generic and would normally amount to a number of principal activities, which are:

- Establish what is to be procured
- Decide on the procurement strategy
- Solicit tender offers
- Evaluate tender offers
- Award contract
- Administer contract and confirm compliance with requirements

In the private sector, the process is of course not as regulated as is the case with the public sector: in the event of public spending, the expenses incurred in the agreement involve public money and therefore legislative requirements are comprehensive and many finer points need to be complied with. The discussion on the procurement process therefore will centre on the public sector procurement process in order to provide a broader view against which PPPs can be interpreted.

Procurement in the public sector is done either as a Request for Quotation (RFQ) or a Request for Proposal (RFP). The RFQ process is normally used in the event of transactions of smaller values, where three quotations are obtained and an allocation made to a preferred service provider. The RFP process is much more comprehensive and would be the one where the distinction between the conventional procurement process and the PPP would be considered.

The general procurement principles which are to be followed in all procurement

transactions⁴ are:

- 7.3.1 Value for money: this means that the transaction must be justified against this standard when all the relevant costs and benefits of the cycle are considered. Price alone is not a reliable indicator: the “total cost of ownership” is also to be considered.
- 7.3.2 Open and effective competition: this refers to a framework of procurement laws, policies, practices and procedures that should be transparent and there should be openness throughout the whole process. Effective competition is also to be encouraged through procurement methods suited to the market circumstances.
- 7.3.3 Ethics and fair dealing: this principle stipulates the importance of value-based dealings where there is mutual trust and respect, and business is conducted in a way that is fair, reasonable and based on good values such as integrity.
- 7.3.4 Accountability and reporting: the importance of this principle is that individuals and organisations should be answerable for their plans, actions and outcomes. For accountability to be truly adhered to, it is necessary that there be openness and transparency in administration, and there should also be scrutiny through public reporting.
- 7.3.5 Equity: this means that government policies should be observed insofar as they are designed to advance persons or categories of persons previously disadvantaged by unfair discrimination.

These principles are to be adhered to in all procurement transactions and an important process developed to ensure that this is effectively implemented is the process of Supply Chain Management. Through SCM it is endeavoured to introduce internationally accepted best practice principles whilst simultaneously complying with PFMA requirements. Currently it is followed in all forms of procurement throughout the Gauteng Province, although it is expected that all national and provincial departments are to

⁴ Gauteng Provincial Government *Supply Chain Management Manual 22-24*

follow. One of the main objectives of SCM is to ensure that value is added in every phase of the procurement process and this requires accounting officers to meet specified criteria of management throughout.

As indicated previously, value-for-money is an important criterion in any PPP. As the agreement is also meant to enhance a mutually beneficial relationship between the parties, a number of values need to be adhered to in the process: these include transparency, accountability, capability and capacity to engage in the process. The legislation applicable strives to ensure compliance not only with the rules but also to ensure that the values on which an agreement is to be based are adhered to. This may be one of the reasons why it is such a lengthy and comprehensive process: it is meant to ensure that the risk of non-compliance and unethical conduct is reduced as much as possible. As the public sector is subject to different forms of legislation, it is necessary to take a closer look at what applies to the different components of the public sector and how they are expected to operate within the established framework.

7.4 Legal framework

The Public Finance Management Act, Treasury Regulations and Treasury Practice Notes apply to all national and provincial government departments, as well as to all public entities. This means that any PPP that is to be concluded with any of these bodies or entities needs to follow specified procedures and meet stringent criteria before a PPP will be approved. Legislation regulating PPPs includes the following:

- Public Finance Management Act no 1 of 1999
- Municipal Finance Management Act no 56 of 2003
- Municipal Systems Act no 32 of 2000
- Constitution of South Africa no 108 of 1996
- Promotion of Access to Information Act no 2 of 2000
- Preferential Procurement Policy Framework Act no 5 of 2000
- Promotion of Administrative Justice Act no 3 of 2000
- Prevention and Combating of Corrupt Activities Act no 12 of 2004

In the nature of the PPP agreement, which involves the public sector, the laws and regulations will obviously go beyond the few mentioned Acts, but these are the most prevalent ones which relate to the application of the principles and regulations as they are to ensure the soundness of the PPP agreement, in terms of formalisation, implementation and execution alike.

7.5 Public–Private Partnerships regulated by the Public Finance Management Act

The Treasury Regulations issued in terms of the PFMA set out in detail which steps need to be taken in entering into a PPP, and in which order the steps are to be followed. The basic requirements with which PPPs must comply are also explained. In broad terms, the main goals of a PPP are:

- Targeted public spending, principally on outputs to agreed standards
- Leveraging private sector finance and efficiencies
- Allocating risks to the party best able to manage them

In order to adhere to these goals, a comprehensive process needs to be followed which had been devised in a detailed project cycle. The provisions are prescriptive, and the only instance in which the public party may deviate from them is where this party can satisfy the relevant treasury that alternative provisions will provide better value for money. When following the project cycle, different phases can be identified which, in brief, amount to the following:

1. Registration of project with National Treasury;
2. Appointment of Transaction Adviser by the Institution;
3. Feasibility Study for Treasury Approval I;
4. PPP procurement, including:
 - Bid documentation preparation for Treasury Approval IIA;
 - PPP procurement and value-for-money report on the preferred bid, for Treasury Approval IIB;
 - Negotiations with the preferred bidder;

- Treasury Approval III for the final terms of the PPP agreement and the Institution's Contract Management Plan;
5. Contract management for the term of the PPP agreement.

7.6 **The PPP Procurement Process**

An elaboration of these phases might be useful:

7.6.1 Phase 1: Registration of project with National Treasury:⁵

This is the inception of the PPP process and entails that the project that the public party is to initiate is to be registered with the relevant treasury. At this stage, a project officer and a transaction adviser also need to be appointed.

7.6.2 Phase 2: Appointment of Transaction Adviser:⁶

The transaction adviser will be a consortium of professionals with the skills and experience to assist the public party in preparing and finally concluding the agreement. These professionals are hired through an open bidding process, after the project had been registered. The bidder first gets assessed on its BEE and technical capabilities before the price is considered. As discussed *supra*,⁷ the BEE criteria are strictly adhered to and the transaction adviser will not be appointed if the bidder is not BEE-compliant.

7.6.3 Phase 3: Feasibility Study for Treasury Approval I:⁸

The next phase is the Feasibility Study: the National Treasury PPP Manual gives a step-by-step exposition of how it is to be executed. Some of the criteria that need to be met are:

⁵ National Treasury: *Public Private Partnership Manual* Module 3 2

⁶ Ibid 9-10

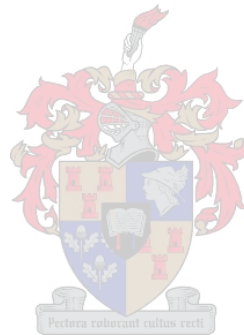
⁷ See chapter 5 *supra*

⁸ See in general National Treasury: *Public Private Partnership Manual* Module 4 1-45

- Output specifications: to clearly identify what the Institution wants to deliver
- Due diligence
- Risk identification
- Value comparison report
- Economic analysis

It is crucial for the Institution to ensure that a proper Feasibility Study is produced: if the targets are identified incorrectly this may impact negatively on the project's affordability, value-for-money as well as the private party's willingness to assume risk, and in the long run it will impact negatively on the sustainability of the agreement. During this phase the transaction adviser prepares a feasibility study which comprises the following:

- Needs analysis
- Options analysis
- Project due diligence
- Value assessment
- Economic valuation
- Procurement plan



These different elements of the feasibility study mean the following: the “needs analysis” entails that it needs to be demonstrated that the project aligns with the institution's strategic objectives. This will include identifying and analysing the available budget(s), specifying outputs and identifying the scope of the project.

The options analysis sets out the range of possible technical, legal and financial options which would be required to deliver the service to the output specifications, thereby allowing the public party to weigh up the options and exercise a choice. It is important to note that during this stage the public party is not yet in a position to decide whether or not a PPP or standard procurement is the best way to choose the preferred solution option. During this phase the public party identifies and evaluates the various potential options which would meet its need, for instance to deliver a service. After the assessment it then recommends one of the options and gives an indication whether it

might be suitable for a PPP. Only after the next phase, which would be the due diligence phase, would the detailed work in terms of value assessment be done in order to decide whether a PPP is to be pursued. The next phase, which is the project due diligence phase, is an extension of the solution options analysis stage and aims to uncover any issues in the preferred solution option that may significantly impact on the proposed project. This would include legal issues, site enablement issues and BEE and socio-economic issues.

Next comes the value assessment, which is the pivotal stage of the feasibility study as it enables the public party to determine whether a PPP would be the best procurement choice for the planned project. In terms of TR16, three tests need to be passed during this phase which means answering the following questions:

- Is it affordable?
- Does it appropriately transfer risk from the institution to the private party?
- Does it provide value for money?

If these questions are answered satisfactorily, the next phase is the economic valuation during which the economic information required to demonstrate that the project would meet the requirements for TA:I is assessed. Meeting these criteria would include that submissions are to be drafted which would address the introduction and valuation approach, the assumptions drawn, and the valuation results. Such valuations would for example have to include addressing issues such as giving a clear economic rationale for the project, detailing the calculations for costs of all inputs and outputs, and identifying economic benefits to BEE. In addition, a breakdown of economic costs and benefits into financial costs and benefits, including externalities, needs to be included.

The final phase of the feasibility study is the procurement plan, which needs to demonstrate that the public party has the necessary capacity and budget to undertake the PPP procurement. This will include a project timetable for project milestones and all approvals which will take the project through phase TA:I to TA:III. The detailed planning needs to include all the aspects that are normally to be included in a detailed project plan and, as with all project phases, guidelines are provided in the PPP Unit manual. If the public party meets all criteria for the feasibility phase, then TA:I will be obtained and

it can proceed to the next phase, which is the procurement phase, for meeting the criteria of TA:II. TA:II is also divided into sub-approval phases, namely TA:IIA and TA:IIB.

7.6.4 Phase 4: PPP Procurement:⁹

During this phase the accounting officer needs to exercise his or her responsibility to design and manage the procurement process in such a way that it will meet the TR16 requirements. This is an important phase as its objective is not to be prescriptive as such, but rather to ensure that best practice is established as has been developed in PPPs to date. For ensuring good corporate governance, this obviously is a critical phase and the stronger the link between the project's feasibility study and its procurement phase, the more likely it is that it will create a true value-for-money PPP.

This process includes a number of stages, and this differentiates it from the conventional tender process where a single stage is undertaken where an offer is made which a public party can accept or not. In this procurement phase, however, the stages that need to be adhered to are:

- Pre-qualification (RFQ)
- Request for proposals (RFP)
- Best and final offer, where appropriate
- Negotiations
- Financial closure

In more detail, compliance with these stages would amount to the following:

It is considered to be best practice for the public party to limit the number of private parties eligible to participate in the PPP procurement by carrying out a pre-qualification exercise (RFQ). This would mean eligibility in terms of technical and financial the process. Another advantage of preparing the RFP is that it can lead to a shorter bidding process and greater bidder confidence. During this process the procurement

⁹ See in general Gauteng Provincial Government *Supply Chain Management Manual*, Module 5 1-64

specifications, as well as BEE. The bidders must also demonstrate sufficient experience and commitment to be able to prepare and execute the planned project. During the second stage, RFP, value can be added to the preparation for the PPP where pre-qualified bidders demonstrate their knowledge and capacity through their participation in plan, as it was communicated to the pre-qualified bidders, must clearly identify the two stages and set out the intention, and the rules of each. The bidder interaction at this stage is less formal and the prepared end-product, which is the incorporation of feedback from all bidders in a single, final RFP, is issued to all pre-qualified bidders.

The bid documentation comprises the following:

- Request for Qualification
- Request for Proposal
- Draft PPP agreement

The Request for Qualification phase is the formal project interaction where the institution communicates with potential bidders what the elements and targets of the bid should be. This will enable potential bidders to form consortia and obtain finance. The RFQ also indicates that potential bidders should submit certain information about their consortia which will enable the institution to select those that will qualify for the bids. BEE compliance will be a key element to qualify for this first selection.

The next phase is the RFP phase during which detailed feedback is established with the pre-qualified parties to establish their feedback on the criteria and bid specifications. Comments received by the institution on draft RFP documents are assessed by the institution and its transaction advisers and a final RFP and draft PPP agreement is drafted and issued. Once the process had come this far, the institution should indicate its intention to enter into an agreement and this will happen through a negotiation phase.

One of the requirements that bidders need to adhere to is good corporate governance, more commitment to the concept of ethics in business if the PPP Unit had provided a Code of Business Ethics for the participants in the process, maybe similar to the CIPS

and the PPP Unit manual suggests that the King Report on Corporate Governance 2002 is to be used as a benchmark. Unfortunately no guidelines are provided insofar as adherence to identified values is concerned: the King Report¹⁰ provides guidelines for the formulation of ethical codes of conduct and to that extent it would have demonstrated Code of Conduct prescribed in the UK.¹¹ The risk of poor adherence to values in the business relationship was also emphasized by Collier and Esteban¹² when they pointed out that it impacts negatively on good governance where the organisation relies too much on the ability to remove the “institutional obstacles to proper accountability”, in other words the organisation should adhere to compliance measures, as suggested in Codes such as the Cadbury or the King Code, but governance should be about the relationship amongst all participants. In my view, this approach is lacking in the mere reference to the King Code as a benchmark for Ethics as it does not pronounce specifically what is expected from participants in terms of ethics and good governance in their dealings with one another.

When the best and final offer is accepted, this means that the preferred bidder is chosen, which is stage three of the process. A number of governance issues are emphasised during this phase: these include that an anti-corruption policy is to be signed off by the accounting officer, with clear requirements and processes for dealing with corrupt activities by project team members or bidders. In addition, safeguards for disclosure, a code of conduct, structured oversight and internal and external audits need to be demonstrated in the procurement plan. Furthermore, any potential conflicts of interest must be disclosed and the accounting officer must evaluate this disclosure and see to it that an appropriate response is formulated and implemented where the conflict could influence a decision. Another aspect of good governance is the expectation that the public party's advisers as well as all members of technical evaluation committees, evaluation coordinating committees and project evaluation committees will sign a code of conduct that requires compliance with a range of ethical requirements that ensure that their actions will be in the best interests of the project. It is also expected of all pre-qualified bidders to sign a similar code of conduct which is to be developed by the public

¹⁰ King, M *King Report on Corporate Governance for South Africa* 101-104

¹¹ See discussion in chapter 4 *supra*

¹² Collier, J and Esteban, R “Governance in the Participative Organisation: Freedom, Creativity and Ethics” *Journal of Business Ethics* 175

party. During this phase, the bids are evaluated, but it may not be clear who is to be chosen as the preferred bidder and the process may have to go into a best and final offer process. Two reasons for this extension of the bidding process are that the bids may be identical or too similar, or that no single bid meets the public party's defined project objectives. A well-structured RFP with proper bidder interaction should prevent such problems and BAFO should not be used to complete incomplete bids. The public party should therefore not plan to use the BAFO process to compensate for weak RFPs. It should thus not be assumed that there will be a BAFO stage as bidders may take advantage of such a situation by "cushioning" their initial bids with allowances which they may anticipate will be reassessed during a BAFO stage. The project officer of the public party has the responsibility of overseeing proper compliance to prevent this situation from occurring.

The next stage is to negotiate the bid in order to have the contract awarded. It may be a difficult part of the process, as the parties have different perspectives: the private party wants to reduce its risk and increase its margins, while the public party would want to reduce its costs and maximise the value of the service which is to be provided. The outcome of the negotiation phase will be a PPP agreement with ancillary agreements containing service level agreements and payment mechanisms. Upon successful conclusion of the negotiations, the public party proceeds to apply for TA: III. Its report will now demonstrate the final negotiated project costs, the value for money, the final terms of the PPP agreement, and the contingent liabilities incurred. In addition, it also provides the PPP agreement management plan and confirms the legal due diligence on the competency of the parties to enter into the proposed agreement.

The final stage of the procurement phase is the close-out report and case study: this requires financial disclosure and the transaction adviser must produce a close-out report for the confidential and complete records of the public party as well as a case study which will become available to the public. Case studies of all finalised PPPs are to be made available on the PPP Unit website, as well as in the Unit library. The purpose of the report is that a comprehensively summarised institutional record is provided which will be a key document for managing the PPP agreement. This report should include all project documentation properly annexed, giving the details of the transaction, and should also include all confidential negotiated, contracted and financing matters. Unfortunately

the database for the case studies has not yet been established and although it is envisaged that it will be done in the near future, the experiences gained in previous PPPs that could have been shared with other PPP partners have, to date, not been made available. This has not only deprived current PPP project managers of insights that may have benefited them, but also constitutes non-compliance with the Treasury Regulations.

7.6.5 Phase 5: Contract Management for term of PPP agreement:¹³

This is the final and ongoing phase of the PPP. Throughout the stages during which a business plan for the long-term management of the PPP is put together, important objectives had to have been borne in mind:

- Managing starts in the inception phase of the project cycle
- It is designed in detail towards the end of the procurement phase
- It is put into practice after signing the PPP agreement, for the development, delivery and exit phases

From now on, the project officer will be responsible for preparing and implementing the PPP management plan. The principles of project management are generic, and each PPP should identify its own features which may require a specific approach but the underlying principles for managing the project are prescribed in the PPP Manual. The general principles are:

- Measure outputs, monitor and regulate performance liaise effectively, and settle disputes
- Report progress in the annual report
- Scrutiny by the auditor general

For the duration of the PPP project, Treasury through the PPP Unit oversees compliance with the Regulations. During the contract phase both parties are to meet their respective obligations and this involves building and sustaining a good working relationship.

¹³ See in general National Treasury: *Public Private Partnership Manual* Module 6 1-31

Proactive management to anticipate future needs and reacting appropriately to unforeseen situations which may arise are also part of the process and this emphasises the importance of a working relationship that is based on strong ethical values and which is maintained through good governance. The objectives of the PPP remain to ensure ongoing affordability, value for money and appropriate risk transfer. In accordance with the PPP Manual, the functions to be exercised in order to meet these objectives are:

- Partnership management: this concerns the structures of accountability and how the public and private parties relate to each other;
- Service delivery management: this entails the systems and procedures designed to manage risk and performance;
- PPP agreement administration: this relates to the administrative processes required to ensure that all procedures and documentation relating thereto are effectively managed.

Although the preceding phases in setting up and forming the PPP are important to ensure that a viable agreement is formed that can indeed be implemented successfully, the contract phase, equally, is a most crucial phase. This is because there needs to be efficient contract management by the public sector party: this concern was acknowledged during an interview with the Director: Business Development of the PPP Unit.

Based on the CIPS guidelines for contract management in the UK, a few principles could be quoted that need to be adhered to for successful contract management:¹⁴

- Good contract management promotes good practice and professionalism;
- Practitioners should possess a minimum knowledge and understanding relating to contract management;
- Contract management applies equally to a simple procurement and to a complicated service contract;
- Multi-disciplinary teams with a mix of skills should be established to enable contracts to be managed effectively and risks minimised.

¹⁴ "Contract Management" www.CIPS.org 1

What is also emphasised is the importance of managing the relationships between all parties effectively to ensure that the contract meets the optimum combination of cost, time and quality. In this sense, team management and the setting up of and adherence to SLAs are vital.

7.7 Public–Private Partnerships regulated by the Municipal Finance Management Act

The Municipal PPP Regulations, section 5 (1), determine the requirements that a Municipal PPP must adhere to, which are:

5. (1) A public–partnership agreement between a municipality and a private party must –
 - (a) provide value for money to the municipality;
 - (b) be affordable to the municipality;
 - (c) describe in specific terms the nature of the private party’s role in the public-private partnership;
 - (d) confer effective powers on the municipality-
 - (i) to monitor implementation of, and to assess the private party’s performance under, the agreement;
 - (ii) to manage and enforce the agreement;
 - (e) impose financial management duties on the private party, including transparent processes relating to internal financial control, budgeting, accountability and reporting;
 - (f) provide for the termination of the agreement if the private party-
 - (i) fails to comply with terms or conditions of the agreement; or
 - (ii) deliberately provides incorrect or misleading information to the municipality;
 - (g) restrain the private party, for the full period of the agreement, from offering otherwise than in accordance with the agreement an employment, consultancy or other contract to a person-
 - (i) who is an official of the municipality or a municipal entity under the sole or shared control of the municipality; or
 - (ii) who was such an official at any time during a period of one year before the offer is made; and
 - (h) restrain the private party, for a period of three years, from offering an employment, consultancy or other contract to an employee of the municipality directly involved in the negotiation of the agreement.

The autonomy of the municipality or municipal entity seems clear, in view of the phases during which approval and support by National Treasury, as described in the Treasury

Regulations, are to be obtained. To this extent the Municipal Regulations are less comprehensive than the Treasury Regulations issued by National Treasury and the process seems to be structured to be more in line with the needs of the local and provincial government.

7.8 Oversight and regulation of Municipal Public–Private Partnerships

During 1998 the Municipal Infrastructure Investment Unit was created as a section 21 Company in terms of the Companies Act, (no 61 of 1973) as a five-year intervention to develop a market for technical assistance for project preparation in the sphere of municipal infrastructure and service. Its mandate has since then been extended to 31 March 2006, when it will be wound up. Much of the funding of the MIIU has been granted by US Aid. It was intended to play a similar role in overseeing successful implementation and management of processes in municipal PPPs as National Treasury does in national and provincial PPPs.

To date, the MIIU has recognised the importance of PPPs in municipalities as a means to obtain more sustainable infrastructure and service delivery solutions. It also pointed out that the *“test for municipalities and the extent to which PPPs are going to be able to assist in service delivery, is the time and increased transaction costs imposed on municipalities by the legal framework.”*¹⁵ It has been conceded, though, that a number of problems have been experienced:

- As more than 50% of municipal revenue is local rather than from provincial or national (sources), there is a real need to get better quality service delivery, revenue management and more capital committed to delivery;
- According to the 2003 Fiscal Review, municipalities allocated only 6% of their budgets to capital programmes and there is still under-spending;
- Problems are attributed to poor planning or an inability to turn money into delivery.

¹⁵ "Municipal Infrastructure Investment Unit "The role of private participation in achieving municipal service delivery objectives" www.miiu.org.za 1-3

The MIU also emphasised that, for effectiveness in municipalities, “laws must be enforced” and transparency and accountability is necessary for responsible decision-making. Its objectives could serve to assist municipalities in setting up their PPPs. Unfortunately, there was no indication in the 2005 annual report of successful MPPPs that have been established or even finalised as a result of the MIU’s interventions, and the deduction is made that the Unit’s role has not been as instrumental as it might have intended, especially if a parallel is to be drawn between it and the PPP Unit, where a number of PPPs can at least be claimed to the PPP Unit’s credit.

Another government initiative launched in May 2005 was “Project Consolidate”, the purpose of which was to consolidate local government and address the essence of concerns in municipal municipalities, including private sector development.¹⁶ The purpose of including the private sector was specifically to “find new, creative, practical and impact oriented methods of engaging, supporting and working with local government”. The acknowledged challenge is to ensure that all municipalities develop the required capacity to confront and address the problems of poverty and underdevelopment and it is envisaged that this will be addressed by rendering support to the municipalities, through various means. The focal point is short-term programme interventions “embedded in our long-term policy goal” but it does not seem as if MPPPs are high on the agenda. It does not seem that Project Consolidate has the mandate to oversee or facilitate MPPP implementation, and neither do they have the capacity to do so.¹⁷ The current situation insofar as oversight and guidance in MPPPs goes, therefore, is that there is no single oversight body for this specific function. Although it could be argued that the MIU is still operative, the Unit’s records do not seem to confirm its active involvement and it seems that the municipalities’ accounting officers will take sole responsibility for the process of establishing MPPPs.

7.9 Values in Public–Private Partnerships

The values which the PPP Unit indicates need to be adhered to are those as phrased in the Constitution. More specifically, section 217(1) states:

¹⁶ Peters, D “Keynote address by Premier Dipuo Peters at the launch of Project Consolidate” *Kimberley*

¹⁷ Personal interview Dr Petra Bouwer *Pretoria*

“When an organ of state ... contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”

Furthermore, section 33 (1) confirms all “citizens’ rights to fair administrative action”.

It seems that the regulations are to ensure that compliance promotes adherence to these values. Adherence to such regulations can reduce the risk of unethical conduct but, as Childress¹⁸ points out, “ethics is too important to be left to ethicists” and needs interdisciplinary and practical conversation. His view is that the language of “good and evil” and “right and wrong” would then be only rarely applicable and that it would rather be a matter of what is appropriate or not appropriate, or what is ethically justifiable or unjustifiable. Applying this statement to the workplace, the words of Aristotle again ring true, that good conduct must be learnt by behaviour: “*We are what we repeatedly do. Excellence, then, is not an act, but a habit*”. Therefore, in order to demonstrate the differences or at least to cultivate an environment where ethical conduct would be expected from those within the environment, a good example of ethical conduct must be set. That would create the environment where, in my view, “interdisciplinary and practical conversation” would lay the foundation for ethical conduct. This would entail that good values need to be part of the PPP from the outset: where good values are negotiated and made part of the agreement from the first stages they would (should) also become part of the agreement during the ongoing execution (contract management) phase.

Furthermore, as Hershey points out,¹⁹ “consumers demand accountability” and a number of difficulties may need to be overcome to see to it that these values are applied in the partnership context:

- Congruency of mission and goals – are the missions and goals of the partnership congruent with that of the public partner?
- Conflicts of interest – is there a perceived or real conflict of interest in the partnership?

¹⁸ Reich et al 92

¹⁹ Ibid 91

- Conflicts of obligation / accountability – to whom and to what is the public sector party accountable?
- Balancing Ethical Rules and Values – what ethical rules and values is the public sector balancing? Whose rules and values should they protect? What is the role of the public sector professional?
- Allocation issues – who decides what gets funded?

The parties in the PPP, but especially the public party that might be more subject to public scrutiny, thus need to bear in mind that they always have to adhere to ethical values and prevent giving rise to a situation in which their ethics are open to question. This would mean that in all their dealings and in the way in which the contract is performed they would need to be transparent, honest and prepared to be held accountable for their actions. Hierarchies and bureaucracies are notorious for allowing managers to get away with poor decisions and the true leader in the PPP will bear this in mind and set the value-based example. This point of view also seems to be supported by Greenwell and Shaw²⁰ when they emphasize that because a PPP is not a normal procurement relationship and because it is to be regarded as a partnership, much greater levels of trust and commitment are necessary to make it work. They also point out that a problem may arise over who in each organisation is giving and maintaining the commitment and who is setting the example by trusting the other party. Key individuals could get the process on the go but it is critical that support is to be provided from the top of the organisation and staff should be consistent in their approach where they interact with one another to enable the process to continue successfully.

In the SA context, politics may play a big role in this very important part of the governance process, especially in view of what Andersen²¹ refers to as a “strong symbolic appeal” which should, in forming a PPP, signify a commitment to act for the benefit of the community. He warns that because it could happen that power relationships are neglected when the symbolic and instrumental aspects are emphasised, the power aspect is particularly relevant from a governance perspective.

²⁰ Greenwell, Z.I and Shaw, B “Uneasy bedfellows? Public-Private Sector supply chain partnership in the NHS” *Public and Private Sector Partnerships, the Enabling Mix* 245-246

²¹ Andersen, O.J “Public-Private Partnerships: Organisational hybrids as channels for local mobilisation and participation?” *Scandinavian Political Studies* 5-6

He further states that²² “Power is primarily generative and it pertains to the actors’ capacity to build coalitions and thereby to mobilise the resources that are required to handle collective problems in an efficient and appropriate way”. The importance of refraining from harbouring political agendas is also vital in this regard and the public party especially should be alert to this. Where the PPP is established as a means to meet the needs of the community, the personal interest of the public sector role-player should never be seen to take precedence over the goals and objectives of the PPP.

Another important value to take note of is cultural differences, especially in the diverse context of SA politics and business. Not only does one have to take note of cultural differences within organisations, but the private and public sector also have different cultures and the profit motive may play a role. This may also impact on the trust that individuals hold in the profit motives, objectives and possible hidden agendas of the private sector. There may also be perceived differences and here the essence of partnership is especially important as it will be a value that could assist in overcoming these differences.

In the context of the public and private sector working together in an on-going relationship, Sullivan and Skelcher²³ point out some of the inherent difficulties in these types of relationships because of the following difference: “governmental activity is premised on the value of transparency and service in the wider public interest” whereas the business partner may be more secretive in his orientation towards private benefit and this may create tension between the parties. Furthermore, as they point out,²⁴ a close compatibility of values may easily be assumed, although political tensions, professional perspectives and hierarchical relationships may cause tension. “Partnership can become a virtuous symbol designed to rally otherwise divergent public bodies – or perhaps to conceal significant differences behind the appearance of unity” and these issues are particularly relevant in the PPP unity where questions such as unity, control and authority for action can come to the fore. This again emphasises the importance of parties being sensitive and not taking for granted the values that they expect the others to adhere to in the relationship.

²² Andersen 7

²³ Sullivan & Skelcher *Working across boundaries: collaboration in public services* 80

²⁴ Ibid

7.10 The essence of a partnership

“Partnerships are not easy; they require much greater levels of commitment and trust than any normal buyer/seller relationship”.²⁵ It may be an obvious error to take for granted that two business parties who agree on the performance of a contract will make good business partners. If consideration is given to the fact that PPPs by nature are long-term relationships it soon becomes evident that their relationship needs to be founded on a solid basis to ensure a healthy partnership. It goes without saying that the values which need to form part of such a partnership are absolutely crucial for a successful partnership, particularly because of the importance of the ways in which different values as dynamics in a partnership affect the objectives of the partnership. However, Sullivan and Skelcher²⁶ are of the view that as a result of the commitment of the parties to work together in a long-term relationship, trust and mutuality will replace “the suspicion and divergence of interests” which are often part of short-term contracts. Where there are perceived differences and difficulties, the idea of “partnering” should provide for much more than a product or service. This will be the added value which will determine whether or not a problem can be overcome. This is especially relevant if one takes into consideration that a solid partnership takes a long time to develop and it would obviously be in the interests of both parties to resolve differences.

One of the first and foremost values is trust: a commitment has to be given and maintained by each partner so that they know they can trust each other. An individual can play an important role in starting the process on the right note, but the example needs to be set at the top of the organisation and the process will only be successful if all staff members follow the good example set for them. This makes it of paramount importance that the senior partners in the partnership are committed, as a lack of commitment in such circumstances can lead to many problems in the execution of the partnership objectives. Trust can also contribute significantly to the long-term stability of an organisation and, by the same token, of the partnership: according to Saad²⁷ it can be developed on three levels, which are “mutual”, “competence” and “goodwill”. Trust and

²⁵ Greenwell and Shaw 245

²⁶ Sullivan and Skelcher 83

²⁷ Greenwell and Shaw 245

commitment is especially important in a partnership involving technology and innovation, as the risks may be high and it will be expected from each partner to fulfil his role competently.

Another value that is paramount in a partnership is respect for cultural differences. Himmelman points out²⁸ that cultural differences between public and private sectors have been said to cause huge problems, especially because the profit motive can be a key divide. Unfortunately, where there are perceived differences based on cultural values, this may impact negatively on the trust between the partners. This may be compounded in instances in which where there is a perceived motive for hidden agendas on either side, or a profit motive on the side of the private partner. In the South African context one needs to take note of more than the cultural differences between the public and private sector as we have such a multi-cultural society and this multi-cultural diversity is especially evident in the public sector.

7.11 **Conclusion**

The most critical area of good corporate governance in the sense of adherence to ethical values, is the procurement process in the PPP. The procedures are lengthy and comprehensive in an effort to safeguard the process but if the underlying values such as transparency, accountability and honesty are not adhered to, the procedures will not ensure the type of transaction from which a solid relationship can be expected. All role players need to be alert to, and at the same time committed in their approach to ensure that all who participate in the process maintain a standard: every one person needs to ensure that the other adheres to the standard. If the expectancy of adherence to ethical values is seen to be part of the process, it will be more realistic to expect all players to the party, to adhere thereto.

²⁸ Ibid

CHAPTER 8

CURRENT PROBLEMS

*While the great lord passes the wise peasant bows deeply and silently farts.
- Ethiopian proverb*

Involving the private sector in adding value in terms of contributing towards economic growth and development in South Africa as a Developmental State makes good sense. The benefits are numerous but there are considerable challenges to overcome. However, the frequency and seriousness of problems relating to a lack of trust in the public sector need to be recognised in order to approach the founding of any Public-Private Partnership prudently – if not, the risk may materialise that it will become just another bureaucratic creation that will not deliver to its full potential.

8.1 Background

With losses as a result of corruption estimated at being between R50 and R150 billion per year for both the private and public sectors,¹ it is of national concern that PPPs are formed on a solid foundation. This is especially so in view of the finding that the most money is lost to corruption in procurement transactions. Another recent fraud survey performed by KPMG found that 76% of respondents from SA indicated that employees were the main source of fraud in an organisation.² However, with such high losses to corruption there also is a general lack of values on both sides.

Most of all, there is a lack of trust. This is regrettable because it is an essential ingredient for a successful partnership, and therefore the focus should be to try to restore this trust. Apart from the almost daily allegations in the press of fraud and corruption in the public service, our country suffered a huge embarrassment when our deputy president was relieved of his duties as a result of allegations of corruption. Not only was he a high profile politician, but he was also one of the first advocates of the advantages of PPPs to alleviate poverty³ and he was the chairman of the Moral Regeneration Committee. By

¹ “Transparency International Country Study report South Africa” Institute for Security Studies report 8

² Morris, R “Employees the major source of fraud, KPMG survey finds” *Business Report*

³ Zuma, J “Keynote address by deputy president Jacob Zuma at the launch of the Community Public Private Partnership Program (CPP) Partnership for Growth” *Helderfontein* 99

the same token, it was equally embarrassing when a number of parliamentarians were found guilty of defrauding the government in the so-called parliamentary voucher scandal in which an amount of R17m was lost to fraud. This makes it a challenging task to again create and gain trust in any public sector dealings as they are easily perceived to be tainted.

8.2 Lack of trust

If the poor rating by TI of SA's anti-corruption efforts is to be based on a lack of trust, then one needs to consider what "trust" is. One view is offered by Jane Flax⁴ as: "Constructive debate about moral principles and standards of judgment requires the prior development of trust. Trust cannot develop unless each participant gives as full an account as possible of her particular commitments and acknowledges their potential for partiality, error, or harm." This certainly applies to trust in PPPs, as both parties need to disclose as much as possible and it is on this that the envisaged agreement is based. Thus, where either or both parties are untrustworthy, the relationship and the agreement will develop tainted outcomes: the corrupt official who sets out to gain privately from a PPP will then just contribute to the perception of corruption in the public sector.

The Corruption Index 2005 issued by Transparency International⁵ again pointed out that corruption continues to remain a threat globally and that it not only causes poverty, but remains a barrier to overcome it. The relationship between corruption and poverty is so strong that these are in fact viewed as two sides of the same coin and to that extent they not only feed off each other but are barriers to overcome each other.⁶ Moreover, apart from the fact that SA slipped down two places from the 44th to 46th least corrupt country in the world, we are also on a continent that is regarded as the most corrupt in the world.

Shortly after its release the TI report was criticised by President Mbeki⁷ and the Public Service Commission pointed out that its methods are not reliable,⁸ but the perception

⁴ Sample, Mills & Sterba *Philosophy, the big questions* 476

⁵ "Corruption still rampant in 70 countries, says corruption perceptions index 2005" *Transparency International press release* 1

⁶ Editorial "The Corruption Fight" *Business Day*

⁷ Rose, R "SA slips on graft index despite axing of Zuma" *Business Day*

⁸ *Ibid*

remains that business leaders and analysts still regard corruption as a significant problem. The fact remains that perceptions are important, as corruption is regarded as one of the key risk factors that investors will take into consideration when deciding where their money is to be invested. For that reason SA is still regarded as vulnerable to corruption and, depending on how strong the perception persists, it will continue to affect investment opportunities. Neither is it something that can be addressed overnight but is clearly a long-term process. The fact that SA slid down two places, even though it may seem like a minor change in the overall assessment, was a disappointment, as the expectation was probably that the perception about corruption in the country would have been different because Zuma had to step down. Although Transparency International conceded that the incident improved foreign impressions on how serious the country is on fighting corruption, it is still an indication that a single event is not sufficient to contain the problem. It also confirms that business leaders and analysts remain unconvinced that we have the situation under control. This is so despite the fact that a number of top officials were prosecuted in the past year and that Mbeki also indicated that he would be prepared to remove corrupt municipal officials even if it means that the district would temporarily be destabilised. He also denounced those in the ANC who were using the ruling party to enrich themselves rather than serving the poor.⁹

This again is a strong stance on fighting corruption: but the fact remains that the results are outstanding and that is where the big challenge still lies. Implementing anti-corruption legislation and dealing decisively with corrupt officials is a big and important step in the right direction, but the consistency of the implementation is absolutely crucial. Should some officials be allowed to get away with allegations of corruption, this would seriously undermine the good efforts. TI also reiterated that to fight corruption it is important to prosecute offenders and they should also be debarred from public bidding.

Unfortunately, despite the positive inroads made since the Zuma debacle, our slate is not clean: the fact that some politicians are perceived to get away with dishonesty is still a serious concern and will impact negatively on the successful establishment of PPPs. Not only may private parties be distrusted by the public sector as business partners, but some may even enter into public sector agreements anticipating to benefit through

⁹ "A titan that serves the people of South Africa!" *ANC Today*

corrupt dealings with the officials involved.

On a smaller scale but equally important, officials are perceived to get away with corruption and dishonest acts in the public sector because the criminal prosecution system is not always effective. It is so that there is regular exposure of dishonest officials being dismissed, but taking a strong public stance against corruption is just one of the ways of dealing with the issue. If poverty and corruption are interlinked as closely as the Transparency International and similar surveys suggest, then government will have to back its corruption-busting activities with an equally aggressive plan to implement its new economic growth initiative, and involving the private sector in this effort will both enhance and improve such efforts.

The lack of trust also creates a huge barrier to successful partnerships when the public and private parties do not trust each other. This is a problem recognised both by the treasury's PPP Unit Head, William Dachs,¹⁰ and a spokesperson for the health sector, Sibani Mngadi. This may explain why fewer PPPs are established – particularly in the health sector despite its mention in the health-care charter.

8.3 Lack of foreign investment

A country which is perceived to be corrupt will fail to draw foreign investment. Not only is the ethical or unethical conduct of officials, particularly prominent individuals, in the country important, but so are the ways and means by which a country deals with corruption. Because it is a global problem, all countries belonging to the UN need to develop and implement anti-corruption measures, especially anti-corruption legislation. Although the latest TI report indicates differently, SA is regarded by Garratt¹¹ as one of the countries who set a world standard in terms of our corporate governance code, namely the King Report especially as it also covers important aspects such a diversity, racial integration and nation-building.

¹⁰ Pile, J "A faltering pulse, State hospitals are dying: Could private-sector partnerships help save them?" *Financial Mail*

¹¹ Garratt *The fish rots from the head, the crisis in our boardrooms: developing the crucial skills of the competent director* 185

Therefore, in order to obtain a balanced view, the criticism of the TI report also needs to be considered: as indicated, TI's chairman Peter Eigen¹² conceded that there were shortcomings in the organisation's methodology, for instance the fact that only perceptions were measured and not actual improvements. He furthermore pointed out that Mbeki's axing of Zuma had internationally been seen as "a very encouraging sign", which underlined the fact that SA was "perceived as strong". In addition, the Centre for Public Integrity, a US-based research organisation, also groups SA among the top third of "strongest countries" on tackling corruption¹³ and Claudia Fenor, head of the public sector research body "Research Surveys", said that "generally, public opinion from a variety of sources showed an improvement in perceptions over the South African government's efforts to combat corruption".¹⁴

Unfortunately the whole picture does not always seem to be considered: the credibility of the TI Index is high and even though other organisations may voice positive opinions about the efforts in SA, it remains the case that the general perception always needs to be addressed. As stated previously, developing and implementing legislation in itself is not sufficient to ensure good governance – neither in the public nor the private sector. Governance is not ensured by making rules but by ensuring that the role-players, especially the key role-players, are committed to its success. In a sense, it then is true to say that ethical conduct starts with the individual, and, in our case, it starts at the top with the government, which represents the people of the country. To that extent the government has made great strides towards fulfilling the responsibility of developing and implementing anti-corruption legislation, but we need to see better examples of exemplary and ethical conduct by politicians in this country. There needs to be no doubt about the personal commitment of role-players towards the undertakings given by government. Stating that measures are being implemented to reduce corruption is one thing; living it personally is another – and it is much more difficult as it is something that should go much further than the spoken word and impressive speeches from the podiums. The efforts by government to send out a message to other countries, especially to tourists, that the government realises the need to balance developmental objectives between direct income support, improved public service delivery and

¹² Rose, R "SA slips on graft index despite axing of Zuma" *Business Day*

¹³ Ibid

¹⁴ Ibid

investment in social infrastructure¹⁵ needs not only be sustained in the word but needs to be seen in deeds: therefore the government cannot fail in its objectives and especially not in delivery on infrastructural developments and service delivery.

8.4 Bureaucratic Red Tape

It can safely be stated that any dealings with the public sector are wrapped in red tape and thus that the process usually takes much longer than in private-private party dealings. There may be parties from the private sector who are deterred from doing business with the public sector¹⁶ because there are alternative means to make a quick profit. Not only are the long processes before the PPP inception phase a deterring factor, but the perception also exists that public sector payments may be delayed as a result of red tape.

A report published in June 2005¹⁷ found that regulatory compliance cost SA business R79 billion in 2004, which is equivalent to 6,5 percent of GDP. Obviously this figure does not indicate what amount would relate to public-private dealings, and therefore it should simply be regarded as an indication of the bigger picture. However, although complying with red tape is a frustration for most individuals and businesses, it is necessary for instance to ensure the safety of food products, standards of products and of course, in public spending and particularly in PPPs, to ensure value for money in terms of public spending. But it comes at a cost and is regarded as creating significant efficiency costs in the economy and as such it discourages business growth and job-creation in the formal economy.¹⁸

The key elements of the labour regulatory framework were pointed out¹⁹ as the following legislation:

- Broad-Based Black Economic Empowerment Act 2003, which is to advance the

¹⁵ Wadula, P "The state of the South African economy" *Savubona* 62-64

¹⁶ Workshop attended: "Key-lessons in Public-Private Partnerships" *Gauteng Management Development Programme Senior Management Service Networking session*

¹⁷ "Counting the cost of red tape for business in South Africa" *Strategic partnerships for business growth in Africa* report 5-6

¹⁸ *Ibid* 89

¹⁹ *Ibid* 7

- economic interests of all black people, including women, workers, youth, people with disabilities, and people living in rural areas;
- Black Economic Empowerment charters, which are an ongoing process where charters are developed for the different industries, and in terms of which a target of 25% black ownership is to be attained over the next 10 years;
- Employment Equity Act 1998, which is to promote the constitutional right of equity, the exercise of true democracy and the elimination of unfair discrimination in employment whilst ensuring the implementation of employment equity to redress the effects of discrimination and achieve a diverse and broadly representative workforce.

These regulations are particularly relevant when read with the strict BEE criteria which are to be complied with during the feasibility phase of the PPP process.

8.5 Fraud and corruption

In addition to the findings on perceptions of corruption as discussed above, the 2005 TISA report²⁰ placed a different emphasis on the issue of fraud and corruption. It found that the results of poor public sector ethics are not only measured in arrests for transgressions but also in terms of money lost to fraud and corruption. For example, in the Eastern Cape a total of R110 billion was found to have gone “missing” over a period of six years and only 12% of the Eastern Cape’s provincial budget had thus been adequately accounted for between 1997 and 2003. Another finding was that corruption in the wealthier provinces such as Gauteng and the Western Cape may be more “sophisticated” and could in fact involve larger sums of money. It was for instance found that Gauteng had lost R400 million to an unscrupulous housing developer who managed to manipulate the subsidy system. It also found that local and provincial government, which is a critical area for service delivery, also suffers from corruption – especially in the general mismanagement of funds and the awarding of tenders.

It goes without saying that the government needs to be seen to take the necessary steps to address the situation and two of the more prominent examples include, firstly, the

²⁰ Institute for Security Studies report 21-22

investigation of 37 000 public servants for social grant fraud. To date, 160 have been arrested and more arrests are expected.²¹ Another example which made headlines was the dismissal of 68 officials in the Department of Internal Affairs for corruption.²²

The high levels of corrupt conduct in the public sector can be attributed to a number of factors, but the main reasons are a lack of leadership and a lack of ethics. The damaging results of these two problems normally become evident over a period of time. Unfortunately, a culture in an organisation can become so unethical that, over time, it becomes acceptable conduct to act unethically, and wrongful behaviour is no longer questioned or reprimanded. An example would be the misconception that many public officials have on the use of government garage vehicles: they sometimes find it incomprehensible why such vehicles cannot be utilised to transport family and friends. Often the abuse of public property is not questioned and this type of behaviour then becomes entrenched in the culture of the organisation. Therefore, if it is not questioned, for example, that a government vehicle is used to transport friends and family or to run personal errands, and management does not take any steps to address the situation, it becomes standard practice. Once it is standard practice, it will be very difficult to change the perception that it is wrong, and that things are to be done differently. It follows that if the manager in a section then allows for an unethical culture in his/her section or department to develop, it becomes a huge challenge to turn things around. Unethical cultures and unethical behaviour in the organisation therefore can be created through ongoing conduct.

8.6 Political Dominance

The previous examples of current problems leading to poor corporate governance in PPPs could be termed as the most obvious ones. However, another very important risk in the successful execution of PPPs is the risk of political interference, as was raised in

²¹ "Police swoop on 160 fraudsters" *Business Report*

²² Monare, M "Cracking the whip on corrupt officials: Home Affairs Minister says zero tolerance policy has seen 66 arrests in a year" *The Star*

the Maputo case study²³ and also exposed by the press.²⁴ The role of the politician versus the businessman adds a totally different dimension to the partnership. Should the politician abuse his powers, it unfortunately adds a nasty flavour as it could change the rules unfairly against the private partner and if he is already committed to a PPP he will not have much leverage to address his situation. This will not only impact negatively on the spirit of the agreement, but on other aspects of execution and service delivery as well, such as staff morale, integrity, project plan deviations and ultimately corruption either by management and/or staff.

Of particular concern is political interference in the municipalities. A number of examples confirm this²⁵ where much money is spent to get rid of officials who do not “play along” and then substituting them with ANC lackeys who allow councillors to do as they wish. And too often the “replacements” do not have the skills to do the job. “The result is rampant corruption, mismanagement of funds, the removal of skilled managers and abuse of power”.²⁶ The disastrous consequences include power black-outs, clinics without sewerage, and the extremely slow processing of permits and documents. Not only does this result in the community being denied essential service delivery but it impedes negatively on BEE as it hinders growth and development. The adoption of the executive mayoral system in 2000 in terms of which executive mayors were granted absolute power over policy matters created a possible conflict situation between mayors and municipal managers. The conflict can arise where the municipal manager needs to manage people brought on board by the councilor, who may not be properly qualified and/or may act under political influence of the councilor. Another problem that can be created by this scenario is that there may be lack of clarity as to the divide between political and managerial accountability, especially for the municipal manager who is prepared to take responsibility for his task. Says Paton,²⁷ “Where political accountability and managerial accountability are confused, the result is that there is no-one telling politicians what they can and can’t do”.

²³ "Public private partnership capacity building programme: phase 1" *Case study: the Maputo development corridor roll road report* 11

²⁴ Paton, C “Rusting Republics. Political domination in municipal councils is destroying administration and infrastructure” *Financial Mail* 20-22

²⁵ Ibid

²⁶ Ibid 20

²⁷ Ibid 23

The extent to which political and personal interests play a role in decisions tends to obscure the business inclination of public sector leaders and to business leaders this could mean that the public sector *per se* is not sufficiently capable of bringing about programmes for economic growth.

8.7 Lack of Leadership

As no existing database is available from which to gain insight into previous corporate governance problems experienced in PPPs, the discussion of these problems, relating to leadership and management, will be of a more general nature insofar as they can impact on procurement transactions and particularly on PPPs.

South Africa has good instruments in place to promote service delivery in the public sector. Two pieces of legislation that stand out are the Constitution and the PFMA. But why, then, is our service delivery not up to standard? Why are there so many problems emanating from poor service delivery and corruption at senior levels?

The reason, as stated previously, is that there is a serious lack of leadership in the public sector and stronger leadership is needed: having solid structures in place and sending managers on management and leadership training courses lays a solid foundation and it also addresses the “perception” of corruption that is to be addressed in global terms. However, in my view, it may be insufficient to address the problem. From my perspective and the experience that I have gained in the past few years, the lack of leadership transpired in terms of the following:

8.7.1 When senior managers do not take responsibility for their actions, the perception will be enforced that there is a lack of accountability, especially where senior managers tend to protect one another. The exposure of the corruption scandal at the Gauteng Shared Service Centre during 2004 proves this point: many managers at senior level were aware of nepotism by the CEO, Mike Roussos, but nobody was prepared to stand out and they all protected one another. When the investigations exposed him, a number of senior managers had their contracts terminated but only because an external investigation exposed them and only

because the MEC, Jabu Moleketi, implemented the necessary measures which included dismissing Roussos.

8.7.2 Too often, managers are seen to abuse power especially where no disciplinary steps are taken against them: this is particularly true of the abuse of state assets such as government garage vehicles, as well as non-disclosure of private interests, especially in private companies where there could be a conflict of interest. When staff sees conduct such as this, they would not necessarily question it, not only because a senior person is implicated, but what is worse, they may even accept it as acceptable conduct and over time such conduct becomes entrenched in the work environment. Setting such a poor example certainly does not instill a culture of strong leadership: on the contrary, staff will not regard such a manager as a leader because he cannot possibly be perceived as ethical. What is worse is that the unethical nature of the conduct may not even be questioned.

8.7.3 Managers at senior levels often are late for appointments or do not attend meetings. This may amount to wasteful expenditure of state resources, and it sets a poor example. Unfortunately this has become so entrenched in government culture that very few even question it anymore and the fact that no steps are taken against such conduct only serves to reinforce it.

8.7.4 One of the biggest problems is a lack of communication. The true leader ensures that his team members are always informed, as opposed to the poor manager who informs his staff on a “need to know” basis. The role that the public sector is to play in the concept of SA as a DS is a good example: I have never heard this terminology being used in the work environment. The government, at the most senior levels, has regular training sessions and briefings at great cost to its senior managers in order to inform them on what their roles are in achieving the goals of government. This information, however, does not seem to be sufficiently communicated to staff and therefore not only is the objective defeated, but staff may be denied important guidance. In my experience, insufficient feedback is given to staff and too often they remain excluded. Not only does this compound the communication problem, but it contributes to low staff morale – and as is so

well known, low staff morale leads to a myriad of other problems including an increase in fraud and corruption.

8.7.5 Unfortunately, too often managers do not contribute sufficiently to ensure strong teamwork. The result of this may be poor communication, insufficient teamwork and poor or no feedback. Too often information is requested on an ad hoc basis, for example to give feedback during meetings or to compile reports. This could mean that essential information is never shared or may even get lost. An example is the feedback on exit interviews of staff, which does not seem to be properly disseminated back to the manager of the department from which a staff member had resigned. If no feedback is given to the manager, he does not have sufficient information to address the problem.

8.7.6 If a manager has been properly trained in the skills of leadership, he would know how to motivate staff. In my experience, this is often neglected as staff is not treated as individuals who contribute towards the goals of a team, but as subordinates who need to execute orders. Authority is often exercised in a manner that demotivates staff and the only recourse staff normally has is to seek protection from the workers' unions. This results in an ongoing power-struggle that too often is counter-productive. Perhaps, as in the private sector, if managers had to take more responsibility for occurrences in their sections, such as high staff turnover or exposure of fraud and corruption, they would be more careful.

8.8 Poor Management

An article in the *Financial Mail* on the poor state of government hospitals,²⁸ may create the impression that PPPs will come to the rescue of the health sector because they are in such a state as a result of poor management. In the plea for PPPs in the hospitals, the author recognises a number of managerial problems, such as a lack of autonomy of managers to dismiss staff for misconduct and poor performance, and a lack of accountability. A specific example was given of 26 babies who died in the Mahatma

²⁸ Pile 20-22

Gahndi Hospital in Durban and the incident successfully being covered up for months.²⁹ Then, despite the exposure, no one was held responsible for the deaths. Similarly, despite 76 children dying at Natalspruit hospital, the hospital denied any wrongdoing and only when an audit was conducted was negligence exposed. Again, no steps seemed to have been taken against the staff who were responsible for preventing this from happening.

The objectives in terms of the regulations are firm on how the need for a PPPs is to be established; and, on a broader interpretation, the government as a DS needs to both establish and improve initiatives – for instance on infrastructural development, in order to meet its objectives. Could it be that the public has an expectation that is somewhere in between? As is often the case with pressure groups in instances of unethical conduct where an organisation is forced to take note and finally adhere to external pressure to reform its conduct, could the public play a role in expecting, and ultimately demanding, the same from the government? These questions are not easy to answer and one cannot afford to move away too far from the established structures within which solid measures are to be implemented. However, cognisance is to be taken in view of meeting the voters' and communities' needs and expectations. Neither can the increasingly frequent exposure of poor management in the public sector be ignored.

8.9 Challenges identified in Municipal Public-Private Partnerships

In 1999 the MIIU identified³⁰ a number of problems envisaged to be overcome in MPPP. They recognised that the existing infrastructure, because of years of neglect as a result of insufficient funding for maintenance, was a huge problem in which PPPs were to play a definitive role. Other problems relating to limited institutional capacity were identified as:

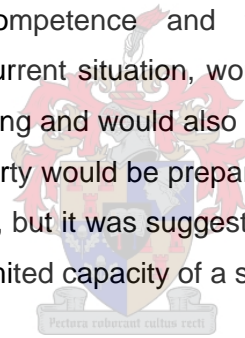
- Experienced staff members took early retirement;
- Staff and systems from separate administrations were not always combined successfully;

²⁹ Ibid

³⁰ Jackson, B.M and Hlahla, M "South Africa's infrastructure delivery needs: the role and challenge for public-private partnerships" *Development Southern Africa* 1-13

- A lack of trust between new councillors and officials who had been working in the environment for many years caused extensive problems;
- Many new councillors did not understand their roles and through their interference in the professional duties and responsibilities of other professional officials, caused officials and staff to become demotivated;
- These problems resulted in reduced productivity both amongst management and staff.

Another obstacle identified was the problem of raising capital and it was suggested that it would be essential to borrow from the private sector.³¹ This problem could of course directly be resolved by creating PPPs, as infrastructural development, where the private party raises the capital, is one of the main advantages of a PPP. However, this soon proved to be problematic as the municipality for which capital was to be raised needed to demonstrate “a degree of competence and financial soundness”. As many municipalities, especially in the current situation, would have difficulty in meeting these criteria, this proves quite challenging and would also impact on the risk identification and the degree to which the private party would be prepared to assume risk. Similarly, banks are then reluctant to extend credit, but it was suggested that banks might be prepared to provide limited resources in the limited capacity of a special purpose vehicle.



8.10 **Conclusion**

As stated in the beginning, the public sector party has many problems to overcome in order to win the trust of those that it wishes to conduct business with. The government has made great strides in addressing many of these concerns but it needs to be done consistently and on as wide as possible a scale in order to sustain credibility. The seriousness of corruption that need to be rooted out on all levels cannot be underestimated, and especially not so in a concept as vital as the PPP.

³¹ Ibid

CHAPTER 9

EVALUATION

*Information is endlessly available to us;
where shall wisdom be found?
- Harold Bloom*

There are a number of reasons why Public-Private Partnerships do not deliver optimally: some of these relate to the process, but most relate to the way in which the process is driven, in other words they relate to people; there also are specific concerns relating to municipal Public-Private Partnerships. The reasons are explored in order to suggest how the shortcomings are to be addressed so that Public-Private Partnerships can make a bigger contribution to relieve some of the pressing needs in the economy.

9.1 Introduction

The value of virtue ethics and the relevance of creating a culture in which moral conduct is to be promoted generate the expectation that morality in business is a realistic goal. Even though general business publications focus the attention, perhaps in much simpler language, on the benefits of value-based decisions, the foundation for this was laid long ago by Aristotle when he said that we need to act in accordance with our virtues. Therefore I believe that value-based PPPs can be created where solid foundations in terms of leadership and good values are laid. Global awareness of the need for morality in business affirms this need, and in SA in particular, the PPP can do much to restore the trust lost as a result of the perception of corruption in the government.

9.2 Towards greater efficiency

Björk and Johansson suggest¹ that public bureaucracies have become too large to be truly effective and therefore that the private market should play a bigger role in realising government objectives, especially in view of the expectation of politicians' accountability.

Closer cooperation between the public and private sector, as the authors point out, is

¹ See chapter 2: 4

necessary to improve efficiency.² If public servants are to open their minds to be receptive to learn new things, they could not only learn new skills in the process but eventually this could positively influence the culture. If the culture could be influenced positively, it could enhance productivity and quality in service. This is where PPPs can play a significant role: bringing about a culture change in the public service is a huge task and if it could be done on a smaller scale in more PPPs it could ultimately influence the public sector service on a broader scale and contribute towards creating a healthier public sector service culture.

9.3 Key role-players in the Public–Private Partnership process

The importance of more efficiency, especially in the bureaucracy, is emphasised as one of the requirements for a successful Developmental State³ and the PPP as a special form of partnership can be a valuable vehicle to realise these goals: the inefficiencies of a bureaucracy are not addressed and resolved overnight but creating successful partnerships can play a fundamental role in addressing specific identified needs, and can make positive inroads towards achieving the developmental goals – especially in terms of infrastructural development. Other advantages of utilising more PPPs would include increased efficiency, job creation and poverty reduction.

Moreover, an argument by Beeson⁴ that the success of a DS is dependent on the functionality of a pilot agency deserves closer consideration. In my view there is no SA governmental body that fits the description of a pilot agency: the PPP Unit plays an important part in the whole PPP process for national and provincial PPPs and although the MIIU was to have played a similar role in the MPPPs, the results seem to indicate that its participation was limited. Apart from that, the MIIU is to be wound up and I could not find any indication that another similar body is to take over its functions. Even if that were the case, neither the PPP Unit nor the MIIU could be described as a pilot agency because neither is completely independent. Furthermore, Beeson indicated that the

² See chapter 2: 5

³ See chapter 3

⁴ See chapter 3: 1

proposed pilot agency would be more involved with business partners in order to oversee the implementation of PPPs in the national interest. The facilitation role played by the PPP Unit, in my view, does not fall within this description. Other parties that deserve mention here, but that also do not fit the description, are the National Business Initiative and the Development Bank of SA. Both play an important role in terms of support, advice and facilitation and to that extent they enhance the objectives of the government in establishing PPPs, but neither was specifically appointed to further mainly PPP goals.

Two PPP role-players in the UK that need specific mention are Partnerships UK and the Public Private Partnerships Programme (4Ps). PUK as a private company in which the private party holds a 51 percent share plays an important independent role in advancing the PPP concept in the UK governmental objectives. Similarly, 4Ps promote PPPs in the local authorities. The independence of these role-players, in my view, is probably one of the reasons why PPPs are so successful in the UK when compared with PPPs in SA.

9.4 The resistance to Public-Private Partnerships

Apart from the lack of an independent body to promote PPPs and ensure their creation and development, a number of other problems were identified as reasons for the poor progress of PPPs:

9.4.1 The bureaucratic red tape not only prolongs the process but is a deterrent to private parties;⁵

9.4.2 Public sector managers are reluctant to enter into PPPs because they may not understand or are not informed on the benefits,⁶ or because they may be reluctant to share their power-base;⁷

⁵ See chapter 8: 7

⁶ Workshop attended: "Key-lessons in Public-Private Partnerships" *Gauteng Management Development Programme Senior Management Service Networking session*

⁷ Paton, C "Rusting Republics. Political domination in municipal councils is destroying administration and infrastructure" *Financial Mail* 20-23

9.4.3 Because PPPs are regarded as an alternative procurement method⁸ as opposed to a means to promote development in the economy, many are not aware of the advantages that PPPs can offer. In addition, the procurement processes are centralised⁹ and there does not seem to be much initiative to implement the PPP concept.

Unfortunately, one of the main PPP “deterrents” is ignorance: because the role of the public sector in the economy as a DS is not communicated sufficiently,¹⁰ in my view, the value of PPPs in playing a role in this regard is not appreciated. If better communication in the public sector had promoted the concept of the DS goals as well as PPP goals, PPPs may by now have been implemented on a broader scale. This view is taken especially in relation to the Webb report finding¹¹ that both period and *ad hoc* contracts have extensive commercial involvement and activity and could therefore have a “profound economic effect”: PPPs can play a vital role in this regard, both in terms of long-term risk-sharing and economic gain by the public sector. The mere fact that traditional procurement methods still seem to be the only consideration for such huge contracts seems to confirm the view that insufficient note is taken of the benefits of PPPs.

Note also need to be taken of the weaknesses identified in the procurement process¹² that can be addressed by PPPs:

9.4.4 In advancing the interests in SMEs, progress is not measurable whereas, in smaller PPPs, the degree to which compliance of BEE objectives had been met would be known.

9.4.5 Because the procurement is so process-focused, there is less focus on people development, which is one of the great benefits of PPPs.

⁸ Gauteng Provincial Government *Procurement Manual* 33 refers to PPPs as other types of “commercial arrangements” which need to be approached differently

⁹ See chapter 5: 9

¹⁰ See chapter 8: 11

¹¹ See chapter 5: 9

¹² Ibid

9.4.6 Where the cost-effectiveness of traditional procurement is not readily measurable, the PPP management process allows for the assessment of effectiveness throughout, especially as the terms of the agreement need to be adhered to. In the traditional procurement transaction, by contrast, the performance of the contract may take place under circumstances where the contract is interdependent of other processes. The PPP is specifically entered into to promote an objective as part of a larger development – for example a hospital would enhance improved health services, which forms part of the governmental service delivery objectives.

9.4.7 Unfortunately data that can be shared for the benefit of future procurement transactions does not seem to be readily available, and in this regard the PPP process similarly does not have this benefit. The database which is to be established in terms of the TR would hopefully at least partially address this situation when information is to be made available. My concern is that the information, which would be supplied by a government body, would need to be “politically correct” and my experience in the public sector is that vital business information often is withheld in order to prevent embarrassment. Again, if an independent body, in my view, had to exchange information with parties in order to learn from PPP experiences, it would increase the probability that the information would be unbiased. In addition to the database that the PPP Unit is to establish, the NBI already shares experiences in its newsletters with clients and as such makes the information available that it has gained on previous PPP experiences with others who may benefit. Unfortunately no similar, independent, initiative exists for MPPPs.

9.5 The advantages of Public–Private Partnerships

The many advantages to be gained by the PPP relationship are elaborated on extensively in Chapter Five. In summarising these, I would like to make a distinction between advantages in terms of *process* and *people*. The PPP process, in which there is collaboration and true teamwork between the public and the private sector, offers the opportunity for the sharing and development of skills and true partnership in working

towards a common goal. This should contribute towards more efficiency where there is a value-based partnership. Obviously, where for instance there is general lack of trust and resultant poor cooperation, it would be to the disadvantage of the PPP but that could be accepted as a general poor result in any partnership relationship. That is why values are so important in a partnership: the ethical values should go beyond the legalised foundation of the agreement and the partnering concept should be the “glue” that holds it all together.¹³

Where partners truly trust each other, the planning, execution and management of the partnership is ultimately much more successful than a relationship that relies on formalised structures where compliance is only measured in terms of the adherence to rules and regulations. In the partnership where there is trust, the partners are more likely to share ideas and, because they trust each other, they would be more inclined to be creative to ensure that the end product is as successful as possible. This could only be to the benefit of both parties, as the benefits are numerous.

The second distinction made relating to the advantages for those that are part of the partnership, the “people”, is made on the premise that the individual, the team and the manager who is part of the successful partnership can gain greatly thereby. The individual who is keen to improve on his skills will have the opportunity to do so; equally, the team that is prepared to learn can improve its teamwork. The concept of transitional leadership is elaborated on more in the next chapter, but the collaborative nature of the PPP also offers the manager the opportunity to enhance his management and leadership skills. To this extent, the regenerative nature of the PPP works in favour of all who play their part to ensure that a successful partnership is established, nurtured and maintained.

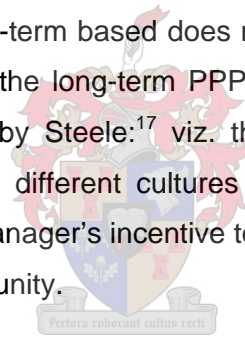
As argued previously,¹⁴ there should be a stronger focus on the individual who is part of (and responsible for!) the process, than on the process itself. Farmer¹⁵ argues that as one of the challenges of governance, there should be a stronger emphasis on developing the individual, as we tend to label people without developing their potential.

¹³ See discussion of values and partnering in the partnership as discussed in Chapter 7

¹⁴ See chapter 3: 4

¹⁵ Farmer *To Kill the King, post-traditional governance and bureaucracy* 39-40

He uses as an example a description of Locke that failed to give any indication of the great philosopher that he proved to be and the contributions that he made to the thinking world. The narrow description merely stated: “Locke was the son of a country lawyer”. As such, Farmer argues¹⁶ that we should rather be directed towards what that person can become instead of judging him on what we think he is. He also illustrates this with a reference to Aristotle, who said that “the quality of a life cannot properly be assessed until the person is dead. The person just does not know how her life will turn out.” Therefore if we are prepared to accept that there should be a stronger focus on the development of the individual as a person and not just a named staff member, the person whose potential is developed will make a much better contribution in his working environment and towards the success of his work objectives. Therefore, in the PPP where there is a strong focus on people because of the advantage of realising their personal potential to enhance the project potential, there is bound to be more success than one in which there is a mere focus on compliance and procedures. The ordinary procurement contract that is short-term based does not offer this potential and it should be recognised and developed in the long-term PPP. An approach like this would also reap the benefits as suggested by Steele:¹⁷ viz. that the blending of cultures offers opportunities for development as different cultures influence each other. However, it would of course depend on the manager’s incentive to develop his team members where the culture blend offers the opportunity.



9.6 What are the expectations?

The PPP can be a valuable vehicle in realising the objectives of SA as Developmental State in order to address a number of critical areas: we need infrastructural development, we need to alleviate property, we need to create jobs – to name but the most obvious. The PPP as a means to establish the relationships and create the avenues through which these objectives can be realised should not be underestimated. Unfortunately it seems that, often, because of misinterpretations and ignorance about the importance of PPPs, PPPs are not taken seriously enough. On provincial and national level the PPP Unit is working towards establishing a number of PPPs but on

¹⁶ Farmer 40

¹⁷ See chapter 5: 3

municipal level the commitment does not seem to exist to the same degree.

PPPs also need to play an important role in service delivery, especially in local government. As stated before, this does not seem to be the case and direct outsourcing could threaten the PPP objective because legislation allows for direct outsourcing even though the option of an outsourcing PPP was created. The expectation by the public is clear, as mentioned in various newspaper and magazine articles that were quoted and although PPPs are not the solution to poor management,¹⁸ MPPPs can play a much bigger role in improving service delivery. It thus is regrettable that the PPP route does not seem to be followed in the municipalities.

As for assessing the success of PPPs in SA to date, mention needs to be made of a report compiled and published in 2000 by ENS Consulting where the DBSA conducted research on the impact of PPPs on the poor.¹⁹ By measuring the contributions of partnerships in addressing their service needs, particular attention was given to issues of improved service delivery, the affordability of services provided, the expansion and maintenance of infrastructure to the benefit of all consumers, the promotion of opportunities for local economic development and the implementation of social responsibility programmes by the private sector. It was found that PPPs are to play a bigger role but the impression the report created was that PPPs were confused with ordinary procurement and to that extent the findings of the report are questionable. However, the approach that PPPs are to play an important role in alleviating poverty in SA as a DS needs to be taken note of insofar as development of infrastructure and rendering of essential services are relevant.

In assessing the success of PPPs, a number of guidelines offered by various authors can be considered.

9.7 Role of Public–Private Partnerships in management

In order to assess the aspect of management in PPPs, a theoretical foundation is laid

¹⁸ See chapter 5: 19

¹⁹ "Public private partnership capacity building programme: phase 1" *Case study: the Maputo development corridor roll road report 24*

and the concept then applied to facts as they have been stated *supra*. As an introduction, Linder²⁰ proposes six uses of the PPP term:

9.7.1 *PPP as management reform*: is promoted as an innovate tool that will change the way that government functions, mainly by tapping into the discipline of the market. Public sector managers must therefore obtain the collaboration of profit-seeking firms who already enjoy the benefits of the discipline. There may however, be a closer resemblance in this collaboration to mentoring rather than a joint undertaking as the focus is on the development of the individual manager. The initiative for this approach may develop from the perception which may exist, whether rightly so or not, that public sector managers, without the competitive pressures that are experienced in the private sector, may have grown less efficient in their bureaucratic organisation: the presumption thus is that new skills from markets are needed to enhance productivity to improve the way government works, and partnerships are viewed as the way to accomplish this. But in developing the public sector manager's business skills he will become more entrepreneurial and flexible, wanting to enter into new transactions and attract capital rather than be pre-occupied with administrative procedures.

9.7.2 *PPP as problem conversion*: from this perspective it is not to be viewed as a management solution but rather as a universal solution for most public service delivery problems. This changes the scope for the public sector manager from not reforming himself but to induce others to perform government's tasks for less money, and thereby shifting his task from aligning his own practices with entrepreneurial thinking to reframing problems in a way that will attract profit-seeking collaborations. The public sector manager will thus approach problems from the point of view of the commercial businessman and not only as the public sector employee, especially in terms of financial decisions.

9.7.3 *PPP as moral regeneration*: the effects that PPPs have on the people involved also need to be considered: the expected work ethic includes values such as

²⁰ See in general Linder, S. H "Coming to terms with the Public-Private Partnership: a grammar of multiple meanings" *American Behavioural Scientist* 42-47

self-reliance, initiative, hard work, integrity and prudence, and direct privatisation would not create the expectancy that these would be adhered to. Furthermore, because public sector managers are drawn into entrepreneurial activities via partnerships which strengthen their characters and stimulate their creative problem-solving skills, they also have the opportunity for personal growth.

9.7.4 *PPP as risk-shifting*: partnering can be viewed as a means of responding to fiscal stringency on the part of the public sector. Capital spending in the public sector needs to be used for infrastructure and other capital-intensive projects and getting a private party involved offers the potential for creating value in this means of development. So, the public sector party needs to obtain private interests and in return promises potential profit to the interested party. The end result, where the private party would in turn be sharing risk, is that the load is shared, but not in terms of privatisation and the public sector party is in a position to do “more with less”. The concept also ensures financial viability because the result should be to restrain public spending. The perception may also be created that risk-shifting is meant to transform a public problem wholly into a private one or that the commercial activity and market discipline place the public sector party in a subordinate role. However, by sharing the risk, a supporting role is assigned, not to the public sector party, but to commercial interests. And, furthermore, the private sector party is meant to join in a cooperative venture to leverage the public sector party’s resources, not to displace them: although the resources are eventually mixed, the purposes remain public.

9.7.5 *PPP as power-sharing*: where privatisation tends to devolve control vertically downward towards the consumer, the PPP spreads control horizontally, especially in the regulatory environment where control has always been centralised in government. What happens now is that an ethos of cooperation and trust has the potential to replace the adversarial relations endemic to command-and-control situations. Furthermore, the relationship is to promote a mutually beneficial sharing of responsibilities, knowledge and risk and both parties bring something of value to be invested in or exchanged. Another benefit is that an expectation is created of give-and-take between the partners, and a negotiation of differences which formerly were litigated.

It is suggested that these arguments are particularly relevant if the view as held by Farmer, is considered:²¹ the PPP for instance as management reform will provide the opportunity for the public sector manager to develop his entrepreneurial skills to the extent that he could focus more on the development of his staff as individuals, as opposed to treating them merely as subordinates carrying out orders. The argument presented earlier²² that the individual should play a bigger role in the success of the bureaucratic organisation then finds application here.

Secondly, the PPP as problem conversion could be valuable given the suggestion by Björk and Johansson²³ that bureaucracies have become “obsolete” and that the “new public management” approach should focus more on a combined solution towards problem-solving. By shifting the focus from the lonely manager who needs to be held accountable for a big problem, combined efforts could not only relieve the burden of the individual, but in the long run are to the benefit of all parties involved in the process. Focusing on an efficiency-based outcome with governing as the central issue instead of an input-based outcome where the manager, for instance, is measured on his SLA, would in my view be more in line with the potential of PPPs as it would focus more on the team effort of the parties than the accountability of the individual.

The third argument for PPPs as moral regeneration could include the distinction between the PPP and the normal privatisation or outsourcing agreement, where the relationship will be arranged by contract and there would be less focus on the benefits of partnering. In a partnership, both manager and staff have the potential for personal growth and the cultivation of values that are needed to sustain the agreement over the long term.

The risk-sharing characteristic of the PPP agreement is probably one of the main reasons and one of the greatest incentives for the public sector to enter into PPPs with the private sector. The PPP Unit plays a pivotal role in ensuring that this term of the agreement is properly negotiated, but unfortunately the option to outsource services in the municipalities instead of establishing PPPs does not bring about the same benefit.

²¹ See chapter 2: 3

²² See chapter 3

²³ See chapter 2: 5

As stated previously,²⁴ it is a concern that outsourcing where risk-sharing would form part of the agreement seems not to be in favour and ordinary outsourcing for the provision of services seems to be preferred. An explanation for this may also be the difficulty with which risk is to be determined where the municipality in question does not demonstrate the required degree of competence and financial stability that would be required by the private party²⁵ and for that reason that the private party may be deterred from entering into a PPP. However, the possibility that the private party can create an SPV in order to obtain limited financing from the banks²⁶ does not seem to have been implemented. This is regrettable and the conclusion is still drawn that the easiest option is chosen (direct outsourcing) even though the PPP route may still be a viable alternative.

Finally, the PPP as power-sharing is probably one of the best advantages as its role in the Developmental State. By creating PPPs where BEE objectives form part of the developmental criteria to promote the social-economic interests of the community, the outcome can serve the public so much more. By involving both the public and private sectors in the developmental goals, the strong relationship from which the positive outcomes would develop could also promote nation-building as public and private parties take hands to work together.

9.8 Lessons learnt from previous PPPs

In respect of this argument, a study in the education sector conducted by Davies and Hentschke,²⁷ which found that PPPs were successful in various ways, offered some valuable insights:

9.8.1 Increased focus on core tasks: this was the result of the nature of the activities being defined precisely and the partner being assessed on the execution of these activities;

²⁴ See chapter 5: 22

²⁵ See chapter 8: 13

²⁶ Ibid

²⁷ Davies, B and Hentschke, B "Public/private partnerships" *Journal (Education)* 6

- 9.8.2 Enhanced service quality through enhanced human capital: by changing the work force and attracting high quality people, human capital was enhanced and was seen as a response to new leadership and greater involvement and commitment by existing staff to a new sense of purpose and focus;
- 9.8.3 Improved performance on outcomes, both processes and products;
- 9.8.4 Proactive leadership style: because the organisation was willing and able to take on large, complex problems, there was a shift towards a more proactive leadership style;
- 9.8.5 Increasingly entrepreneurial culture and attitude reflected in behaviour: the previous points will combine to create a new culture in the involved parties, and this provides a greater sense of empowerment and fosters a more entrepreneurial culture. The partners will be encouraged to be creative in the way they approach contractual and other possibilities for work.

The advantages²⁸ of PPPs, and especially their role in management, must thus be clear and it is to be hoped that the concept will gain more momentum. It is regrettable that there is still ignorance and a low level of knowledge about the advantages of the PPP. If they are promoted more broadly, the country can share in their many benefits.

9.9 Role of business in Public-Private Partnerships

Ethical management in business has particular point when one accepts that business could contribute to the fulfilment of the goal of becoming part of both the problem as well as the solution:²⁹ the contribution can take the form of innovations in technology and process, as well as through the different approaches to conducting its activities. This results in a situation in which boundaries of responsibility are redefined for business in some areas of social development and human rights. Corporate responsibilities are then merged with those of governments and this requires that business addresses social

²⁸ See chapter 8: 13

²⁹ Warhurst, A "Future roles of business in society: the expanding boundaries of corporate responsibility and a compelling case for partnership" *Futures* 37 155

development goals, thereby increasing partnership with other societal actors.³⁰ The importance of the role that business can play in developing public sector goals is strongly emphasised in the UK through the adoption of a policy that stipulates that it uses “the advice of business more proactively and more deeply in developing policy across a much wider range of policy areas than before”.³¹ The purpose is to introduce new thinking and relevant experience in resolving long-existing policy problems as well as meeting innovative challenges to modernise government. The UK is also of the view that it could meet their objectives better if they draw on private sector knowledge, disciplines, incentives, skills and experience.³²

Apart from the obvious differences in the way business is conducted in the private sector the difference in culture should always be borne in mind. In this regard, a number of interesting findings were made in a research project on the engagement of the private sector in government service delivery.³³ One of the findings was that business people are not used to a culture that involves long meetings with large groups of representatives. Another finding was that there was little pooling of experience amongst individuals to develop and improve the process even though they learnt from it, with the result that knowledge is not carried over to the next group. Practical lessons are therefore not learnt. Simultaneously, participating in and leading such groups involve a range of skills that people cannot be expected to have as a matter of course.

It is important to bear these difficulties in mind when approaching such a situation, as the benefits of involving the business sector are too many to ignore. The public sector also has an obligation to enhance effectiveness in this manner: there is an expectation by society that global business will work with others to provide solutions to humanitarian crises and endemic problems facing the world and in this sense businesses are encouraged “to re-invent themselves as a force for positive good in society”.³⁴ What also emanates from this is that stakeholder demands are growing from “do no harm” to the responsibility of being “a positive force” in contributing to worldwide social development

³⁰ Ibid

³¹ Steele, J *In the Public Interest? Engaging the private sector in government* 5

³² Ibid

³³ See in general Steele 45

³⁴ Warhurst 151-152

goals.”³⁵ Warhurst³⁶ argues that social development is the government’s responsibility, and not the responsibility of business; another, opposing perspective, is based on the moral imperative or social legitimacy in terms of which businesses are to play a bigger role in society. This is particularly relevant for governments in developing countries, as they are often found to be weak both in terms of democracy and financial stability as well as drawing up and enforcing relevant regulation. The result is that the benefits of globalisation are not available for large parts of their populations. This clearly is a socio-economic inequity and therefore society expects business to contribute more directly to development goals and poverty alleviation. The evolution of partnerships between businesses and NGOs or local community groups to address these social challenges is therefore becoming increasingly apparent. A significant driver of this process is the emergent role of stakeholders in defining the roles and responsibilities of business in society: the role that municipalities play as service delivery, where their outputs are measured in terms of delivery as separate, accountable entities, can be regarded as similar to this development. Therefore, the values of transparency and accountability as applied in triple bottom-line thinking would also apply. This would entail³⁷ the focus on economic prosperity, environmental quality and social justice. In the PPP concept this is particularly relevant as the development of human capital will require the public-private sector collaboration especially in emerging economies and developing countries.³⁸ This becomes even more apparent when the positive role that stakeholders expect from companies to play in society as corporate citizens is considered.³⁹ This means being responsible in the way they work, in other words, social justice in the workplace, as well as being responsive to stakeholder concerns – not just giving charitable donations when times are good. “⁴⁰

9.10 Some weaknesses identified

In addition to the comments offered on a number of aspects, in the bigger scheme of

³⁵ Warhurst 152

³⁶ See in general Warhurst: 152-154

³⁷ Elkington *Cannibals with forks* 70

³⁸ Elkington 85

³⁹ Warhurst 165

⁴⁰ Ibid

things there are specific weaknesses that cannot be ignored. These relate to aspects in the procurement process as well as previous views held by the MIU of MPPPs to date – which may, in my opinion, be a significant cause of the poor progress of MPPPs.

Firstly, there are a few weaknesses that were identified in the procurement process.⁴¹

These amount to the following:

- 9.9.1 Fronting in BEE happens on a big scale: the registration procedures at the Companies Office unfortunately are open for abuse by many who “front” BEE companies in order to obtain procurement transactions with the public sector. In the eagerness to promote BEE in commercial activity, this is a very real risk which is not easily identified and can seriously prejudice the soundness of the procurement transaction, including the PPP.
- 9.9.2 Too often the procurement process amounts to a “paper exercise” and the result is that the institution does not secure the best procurement deal. The reasons for this are manifold and include the fact that the process is often too complicated for those working with it and officials do not understand all aspects. The result is that there is insufficient communication and that the objectives of the transaction may be defeated if there is no proper compliance to secure the best deal in the circumstances.
- 9.9.3 Too often officials only do the minimum in order to meet the procurement requirements: in order to ensure that the best value and best results are obtained, it is often necessary to go further than just following procedures. This could for instance be the case where a public tender is advertised in the government gazette, but in addition to that, officials should ensure that the best firms for the specific procurement transaction are indeed notified in order to promote their participation in the bidding process. This should ensure that the best service providers are chosen from for a specific type of transaction, as opposed to just relying on public information.

⁴¹ For the sake of confidentiality, I would prefer not to identify each statement in relation to the comments that I received from a specific interview

- 9.9.4 Similar to fronting in companies, a consortium can also be “dressed up” in order to be called a consortium so that it meets the requirements of the process. In order to prevent this from happening, officials dealing with the consortium or SPV should ask the right questions: they should determine beforehand what the intention of the consortium is and how applicable it is to the situation in order to ensure that it was not created merely to meet the requirements for a specific proposal, for example in terms of BEE.
- 9.9.5 The bidding committee must ensure that they ask the right questions and that they are properly trained in order to be able to do so. Too often it amounts to a rushed process just to get it finalised. Furthermore, it is preferable that not only one person is responsible for recording the events, as this may be abused and is insufficient to ensure transparency of the meeting procedures. It should also be ensured that the minutes are signed off.
- 9.9.6 Too often a procurement committee is guided by what is presented to them instead of ensuring that the process is correctly and properly scoped from the start. Proper planning of the project from the outset is thus absolutely critical. It may also happen that a project may only be allocated within the planned budget but that it may not necessarily be the best deal – this may also happen because the officials involved failed to ask the right questions at the right time.

“Good business floats on a sea of ethics.”⁴² This saying suggests that even if the noblest of efforts are made to ensure proper compliance, adherence to ethical values is necessary to ensure that the best transaction is concluded. Where there is a deficiency in the system that may open the door for abuse, the morality of the official in the situation is what is important: Farmer⁴³ compares a situation like this with the executioner who claims not to have the right to make moral judgments because he is obligated to follow the system. This simply means that the person hiding behind the system is failing

⁴² Author unknown

⁴³ Farmer 138

himself because, as Farmer suggests,⁴⁴ he is not prepared to take “unlimited responsibility on your own personal shoulders for each and every aspect of your official acts”. It is conceded that some officials may not realise that their conduct may be prejudicial to the system, for example where they are not properly trained to exercise better judgment. But for the official making the unethical choice, there is no excuse.

The second discussion relates to what I regard as weaknesses identified in the MPPP process, and is based on the article by Jackson and Hlahla.⁴⁵ In 1999, when the article was published, they were the policy coordinator and CEO respectively of the MIIU, and some of the aspects they raised include the following:

9.9.7 It was suggested that the participation of the private sector involvement in service delivery in municipalities was *optional* where the investment of capital was *necessary*. This led me to conclude that one of the main advantages of PPPs was overlooked, and this is the long-term benefits of a specific partnership as opposed to the immediate benefits of a procurement contract. This approach indicates that the risk-sharing, infrastructural development and people development as a result of a PPP seem not to have received sufficient, if any, consideration.

9.9.8 The lengthy procedures and comprehensive nature of the PPP transaction seemed to be a discouraging factor, as no preference was given to PPPs and service delivery agreements seemed to be preferred. Again, it is regrettable that the value of the PPP concept seemed to have been underestimated and/or under-appreciated.

It was indicated that competition is the primary mechanism for securing the best price for PPP service delivery, which is in contradiction with Linder⁴⁶ who argues that PPPs are not about competition but cooperation.

⁴⁴ Farmer 138

⁴⁵ Jackson, B.M and Hlahla, M “South Africa’s infrastructure delivery needs: the role and challenge for public-private partnerships” *Development Southern Africa* 3-6

⁴⁶ Linder: 26, mentioned in Chapter 5: 4

I cannot agree with these arguments, as they amount to non-recognition of the developmental advantages of PPPs insofar as they can positively influence the public sector culture, as well as develop both staff and management. It is an open question whether this may be the reason why so few, if any, PPPs were facilitated by MIIU. Perhaps the Unit's focus determined its planning and the reluctance of the private sector may have delayed the process if private sector investment was what MIIU was mainly looking for.

9.11 Conclusion

The expectation of PPPs to deliver in terms of the DS objectives is realistic if the information that is available is utilised to address the weaknesses so that the process can be made more efficient. In this process there are a number of key role-players who need to become more involved in the process; these include the private sector as a business partner in developing the economy of the country. After all, public intervention – as opposed to leaving economic development to business – is what the DS concept is built on. There are too many advantages to be discounted and too much to be gained to leave the process as it is. I hoped to demonstrate that the PPP concept is not delivering optimally but that there are several options to address the situation. Some more specific recommendations in this regard are offered in the final chapter.



CHAPTER 10

RECOMMENDATIONS

Ballpoint pens will not work in 0 percent gravity. NASA scientists unhesitatingly spent a decade and \$12 billion developing a pen that writes in zero gravity, upside down, underwater, on almost any surface including glass and at temperatures ranging from below freezing to over 300 degrees centigrade. The Russians used a pencil.

There is a saying that sometimes one is so close to the trees that one cannot see the wood for the trees – that the solution to the problem may be so close and yet not be recognised.

I do not propose that the recommendations that I wish to put forward had never been recognised before, but what I do want to suggest is that the information has always been there and that all we need to do is best utilise what we already have.

10.1 Introduction

In the previous nine chapters I laid the foundation for the recommendations which I believe will address the problems and weaknesses that I identified and discussed. These I would like to categorise under the following sub-headings:

- Improved risk management: the manager's responsibility
- Innovation and entrepreneurial thinking in the development of the public sector culture
- Involvement of civil society in the broader PPP scenario
- The public sector manager must be accountable!
- The quest for stronger leadership

In the introduction I invited the reader to be receptive to new ideas: this is the arena in which I would like to play out this invitation. Einstein said that one cannot not solve a problem on the same level that it was created, and throughout this study a number of authors were quoted who are visionary about the PPP concept and about people development. In this chapter I would like to explore some of these ideas, and even add a few more.

10.2 Recommendation number 1: Improved risk management – the manager’s responsibility

Poor corporate governance in any organisation creates risk and, apart from the many expected advantages identified with good governance, one of the most important risks that is to be managed is the risk of fraud and corruption. The realisation of this risk brings with it many repercussions including reputational risk, high staff turnover, low staff morale, poor management, and low productivity, to name but the obvious few. Given the problems relating to a lack of trust in the public sector in SA, it goes without saying that good corporate governance in Public–Private Partnerships is absolutely essential.

Risk management in the public sector is a high priority and all government departments are expected to conduct regular identification of risks with subsequent risk-management strategies and fraud-prevention strategies. Therefore, the information necessary to identify the risks that would impact on agreements to be concluded on behalf of a department or institution should be available and thus must form part of the considerations that are relevant in the process. Where specific risks are uncertain, such as is typical of an envisaged PPP, it may not be that straightforward and therefore the parties need to bear the unrealised risks in mind in their detailed project planning, and ultimately, execution. The focus throughout should be to bear in mind how a specific transaction is exposed to risk and how it can impact on the effectiveness of the project management and ultimately the project goals. It follows that management plays a critical role in the risk management process and it should not be left to those individuals or the section in the department that normally takes responsibility for risk identification, analysis and descriptions. This may be a problem in larger organisations, where the left hand too often does not know what the right hand is doing, and specifically for that reason the vigilant manager must take note that he is to make first-hand knowledge his priority. He will also have to ensure that procedures are followed, that his staff is trained and that all know what is expected from them: assumptions can be embarrassingly exposing where they were made on the wrong facts and the skilful manager should not walk into this trap.

10.3 Recommendation number 2: Innovation and entrepreneurial thinking in the development of the public sector culture

Linder¹ argues that public officials and actors need to develop entrepreneurial thinking and private actors need to embrace public interest considerations and expect greater public accountability. This is very much in line with previous arguments discussing the advantages of the public–private culture mix and how it could impact positively on the public sector culture. This suggestion is supported, especially in view of the impact that successful PPPs can have on the broader public sector culture, as argued previously.²

The suggestion was made to the UK Labour government³ that outdated approaches in the public sector should be eliminated as they “prevent public servants from experimenting, innovating and delivering a better product”. The PPP offers virgin soil to implement this suggestion: not only is there a lot of work to be done in terms of informing prospective parties about the advantages that are to be gained from the collaborative nature of the PPP agreement, but the advantages of mixing cultures, as argued previously, surely should be explored. I am convinced that the average public sector employee would gladly accept the hand extended to him to improve his skills and explore new ground: in our young democracy we have made great progress in adapting to a multi-cultural, diverse society. We can do even more in developing our employees as individuals in their own right. As Farmer also points out,⁴ employees have to rely on external market forces to protect their rights as they have no say in corporate governance: the king owns the people. By developing the individual in the greater purpose of the organisation, by making him feel valued and appreciated, these artificial barriers will be crossed and the results can be astounding.

If this approach is to be adopted, another barrier would hopefully be broken down: too often training sessions and workshops are conducted for the benefit of public sector

¹ Linder, S. H “Coming to terms with the Public-Private Partnership: a grammar of multiple meanings” *American Behavioural Scientist* 36-37

² See chapter 9

³ Greenwell, Z.I and Shaw, B “Uneasy bedfellows? Public-Private Sector supply chain partnership in the NHS” *Public and Private Sector Partnerships, the Enabling Mix* 245-246

⁴ Farmer *To Kill the King, post-traditional governance and bureaucracy* 164

employees to develop their skills and they are invited to think “out of the box”. However, I believe that these sessions, insofar as they are to influence the culture positively, have little impact because the approach is what I would call “culture-resistant”. The reason for this can be explained with reference to a case study conducted at NASA after the Columbia disaster:⁵ it was found that poor management decisions were made because the values in the organisation had changed to the extent that time and production became more important than the consideration for, ultimately, human lives. The term “culture” can be described in the following way:

- Culture is the values, norms, beliefs and practices that govern how an organisation functions and it thus is a crucial determinant of human behaviour;
- Culture is learnt and leaders play a major role in establishing an organisation’s culture;
- A significant portion of the organisation’s culture lies beyond the level of consciousness and as such is tacit, not tangible: the layers comprise technology, infrastructure, and how people and technology react. Deep down is the emotional level which can largely drive the organisation’s behaviour.

If the tacit, emotional culture of the organisation, in this discussion the public sector organisation, is one that is resistant to change, then a “think-out-of-the-box” invitation will not be enough. What is then needed is to engage with staff on a level that they feel comfortable with and this is the type of environment that can be created where the leaders of the project have “people development” prioritised sufficiently high on the agenda. It can be cultivated in an environment where staff members feel comfortable knowing that their leaders believe in them and where the development of their potential is important, not just a coincidental by-product of a successful project. Where the leaders of the project accept and appreciate this, they can create a situation in which a culture-change can be effected and where, consequently, barriers can be broken down. That is what needs to be done: it is necessary to go beyond the external party’s invitation to think differently – it is necessary to take ownership of the situation and to create the sort of environment in which the individual will flourish.

⁵ O Mason, R “Lessons in Organisational Ethics from the Columbia Disaster: can a culture be lethal?” *Organisational Dynamics* 131

10.4 Recommendation number 3: Involvement of civil society in the broader PPP scenario

The suggestion made in this recommendation is mainly based on an argument by Greer⁶ as well as previous discussions on the benefits of partnering.⁷ He suggests that civil society can be enriched by involving voluntary or community representatives and encouraging the development of participatory democracy. Their participation in governance will encourage local communities to express their concerns, to find out about the activities of government, and to hold officials accountable. If voluntary and community groups act together as a representative body for the disadvantaged and excluded sections of the society it will give them a voice to protect their own interests. In addition, collective action will entrench the social values of trust amongst the citizens and will facilitate the development of a pluralist political democracy. The lack of trust and the expectation of accountability by the community have been particularly prevalent in the numerous incidents of citizen unrest in the municipal areas where the communities demanded greater accountability and improved service delivery by the municipal councils. Offering them an opportunity to help rebuild their communities by joining hands with the government in PPP agreements can address this situation to a significant degree.

As Greer explains,⁸ *“Being part of a partnership board has helped the voluntary sector to be reconciled into the mainstream. Together the private, voluntary and community sectors, councillors and the statutory bodies are making decisions together daily. They have begun to realise the importance of helping communities who have lost hope to regain hope and build on their self respect again, helping marginalised groups in society to take the first steps to reintegration into the mainstream.”*

This concept has been applied successfully in Northern Ireland, where a programme has made a contribution to peace and reconciliation. The process helped to set up structures that ensure the nurturing of cherished traditions on an equal basis by representatives of

⁶ Greer, J “Partnerships and Public Policy: implications for the future governance of Northern Ireland” *Public and Private Sector Partnerships, the Enabling Mix* 267-268


⁷ See chapters 4 and 5

⁸ Greer 267-268

traditions within the partnering setting. The value of seeking justice from tradition is also argued by Farmer,⁹ who points out that justice cannot be found in an intellectual vacuum because the insights that are to be found must be open-ended. Justice is to be found in the tradition of the individual and his or her relations with others around him.

10.5 Recommendation number 4: The public sector manager must be accountable!

The PFMA is a great piece of legislation, if only it were enforced. Much training is conducted in the public sector, particularly with managers, about their obligations in terms of the PFMA, and, more recently, also in terms of the Prevention and Combating of Corrupt Activities Act. However, very seldom is legislation really effectively enforced and too often threats of accountability are but idle words. Someone who feels equally strong about this is Public Service Commissioner Ms P.M. Tengeni, who published an article (in her personal capacity) on the subject.¹⁰ A few relevant suggestions she made would be valuable to consider:

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- The solutions to the more complex demands for accountability lie beyond the borders of institutions and governmental borders and therefore the notions of accountability must be reconceptualised to accommodate emerging relationships.
 - Responsibilities are obscured in partnerships and networks between government and civil society, where such relationships fall outside of government: the hierarchical model of accountability fails to cater for these new relationships in new service delivery approaches.
 - Independent bodies enhance good governance through their oversight functions.¹¹
 - There is “both need and potential” for increased involvement by the civil society in governance, especially as modern governments grapple with excessive

⁹ Farmer 113

¹⁰ Tengeni, P.M “Promoting accountability as a tool of making government stronger and building partnerships and networks”

¹¹ There is no independent body to oversee good governance in PPPs and the arguments raised in relation to the PUK and 4Ps might be considered here

- demands and complex challenges. Civil Society Organisations can play a vital role in this regard as they could engage as credible partners in governance and alter perceptions of lack of accountability and legitimacy.
- The public must be encouraged to participate in policy-making as this will ensure that the process is accountable and transparent.
- The perception and application of the principle of accountability is narrow and fails to capture the essence of relationships on a broader scale. There are numerous actors in governance and service delivery, and this makes it more vital that the flow of accountability be multi-directional and cascade down to all levels of government. It should extend to intergovernmental relations and also reach groups as well as individuals in civil society, and again flow back to the formal government structure.

These suggestions in my view are very much in line with what is demanded of the government, given the expectations that the community has. There is also adequate focus on the responsibility of managers to take a broader view of their situation and not to remain simply within the comforts of current applications. The accountability of the accounting officer or the public sector manager in the PPP is thus of paramount relevance in the corporate governance of PPPs.

10.6 Recommendation number 5: The quest for stronger leadership

“We don’t question our leaders”. These words, which I heard during an interview,¹² rang true for me in the interesting times that we find ourselves in. By this I do not want to propose disagreement for its own sake, but it is one of the strongest foundations for accountability. The strong leader is prepared to be held accountable for his or her actions and this is one of the valuable characteristics that we need to promote and, where necessary, cultivate in our society.

In my view, the foundation for sound leadership lies in ethical, value-based

¹² Interview Robert Cameron-Ellis *Johannesburg*

decision-making. Thus, I will begin with a discussion of some more ideas by Farmer¹³ on the approach to ethics in the organisation.

Where does unethical, dishonest behaviour originate? Farmer¹⁴ is of the view that our self-interest is embraced by the capitalist society in which we all function: "Capitalism did not invent self-interest". Capitalism "is a principal component of civic religion. It brings to the mix faith and ethical commitment, and a vast population of believers. It possesses the equivalent of cathedrals in corporate office buildings and of churches in malls. CEOs are given adulation that saints would envy. Free market economics is a kind of theology." Are we not then creating the self-interested, greedy manager? If capitalism can be viewed as a replacement of the faith that many had always based their morality on, is that not the reason why we have so much difficulty rooting it out? But then, for the preacher in the capitalist congregation, for the ethicist who would like to reinforce the belief that there are advantages in choosing the narrow path of morality, there is justice to be found. Justice is what is right, good and fair: and therefore the pursuit for ethics should be for what is just. Justice is about the minimum that each person should consider he owes to another, "not as a matter of law, love, politeness, or prudence but of what morally ought to be the case."¹⁵ This, then, should be the foundation for our approach in decisions – especially in management.

However, taking it a few steps back, Farmer warns that we may overlook changes in our culture over time as well as the changes in sub-cultures within our culture¹⁶ because of our rationalisation of cultural core values, which is particularly true of bureaucracies. This happens because we tend to hold on to well-known interpretations of what we are comfortable with. Instead, we should be alert to an approach of ongoing searching for new interpretations of existing values. By way of example he reminds the reader of the biblical belief in slavery, which has changed over the years and has today become a belief that there is no justification for it. This ongoing search for values should start with the individual, which is the search within, the search with the self: "I want to suggest that searching within the self is a critical part of justice-seeking for individuals and even for

¹³ Farmer 80-96

¹⁴ Farmer 81-82

¹⁵ Farmer 87

¹⁶ Farmer 90

bureaucracies.”¹⁷ This search should be undertaken in order to identify what should motivate one’s whole being¹⁸ and, as Aristotle believed, it should be to fulfill one’s full potential. This search for the wholeness of being of the individual is what Farmer terms a form of spirituality,¹⁹ and he also relates it to the spirituality of the bureaucratic organisation. As such, the bureaucracy should substitute the motivation toward spirituality for a “motivation towards mere efficiency”. On a similar level but from a different perspective, this may be interpreted to tie in with the view by Aburdene²⁰ that corporations are moving towards greater spirituality, in other words that there is a general search for wholeness that is found in some form of spirituality, which again can be found in sound values.

If the foundation for good management by the ethical leader is to be the value-based decisions that the individual is prepared to make, then how would he be guided to exercise his choices in a manner that would ultimately be acceptable in his environment? It is true that the ethical, consistent leader has his own credibility but he still needs a number of skills to successfully implement what he believes in. That is why guidance in leadership is not only invaluable, but essential in preparing our leaders for what is expected from them. A few guidelines, as taken from Gandossy and Sonnenfeld, will thus be suggested:

- “through the scandals of the last three decades, there was no absence of regulation with clear purpose, no lack of accounting rules with overintentions, no lack of corporate codes of conduct, no lack of board member financial literacy, and no shortage of many of the other governance remedies that abound as panaceas.”²¹ In other words, having rules and regulations is not enough;
- Employees may become apathetic in an environment where they feel that they are alone and this may be exacerbated when they observe a diffusion of responsibility by managers. This is especially so where there is misconduct²² by

¹⁷ Farmer 84

¹⁸ Ibid

¹⁹ Farmer 96-97

²⁰ See chapter 1: 6-7

²¹ Gandossy and Sonnenfeld *Leadership and governance from the inside out* xviii

²² Gandossy and Sonnenfeld 7

- top management which seem to gain an aura of legitimacy wrongly conferred;
- Too often it is assumed that “someone else will act”. In addition, it may happen that information is fragmented and there is a reliance on “specialists” who also may only have limited information, and often these specialists do not know enough about the big picture to ask the right questions. Furthermore, it may not be in their best interests to speak up or act on observed illegal activities: it may reflect poorly on them as they may create the impression that they may have been wrong in the past;²³
 - Upward challenging of the system should be encouraged in order to maintain corporate integrity even though it may be difficult.²⁴ This implies that employees must be informed about and trained in maintaining ethical standards both for themselves and for their managers;
 - It sends out the wrong message if small violations of ethics are tolerated as these infractions begin to escalate and employees are more likely to break the law on major violations;²⁵
 - Managers should proactively ask for suggestions on how to improve the organisation rather than passively wait for employees to express concerns, as this will create an environment for open communication. If employees are encouraged to participate in business concerns they are more likely to express themselves on unethical concerns;²⁶
 - Greed, dishonesty and corporate misconduct are the reasons why the credibility of corporate leadership is so poor and, in addition, what makes corporate leadership vulnerable is the “failure to create a culture of candor It is not easy to welcome criticism, however honest and tactful. But the willingness to do so is one of the indispensable qualities of authentic leaders.”²⁷

These suggestions address the concerns that I had raised in previous chapters relating to poor management, unethical organisational culture and unethical behaviour both by managers and employees. In improving corporate governance in any environment, it will

²³ Ibid 8-9

²⁴ Ibid 83

²⁵ Ibid 86

²⁶ Ibid 85

²⁷ Ibid 91

be inadequate to follow one or two suggestions for some time: the leader implements all that are necessary and makes them part of the culture in order to sustain a healthy organisational culture. This is particularly relevant for the huge bureaucracy as too often decision-making and management styles are fragmented and ultimately ineffective. However, the public sector manager is very reliant on and to an extent comfortable in the regulated environment in which he/she functions. The question then is, how is the transition to be made? Trofino²⁸ made a few suggestions based on previous successes in PPPs. Transformational leadership can be described as a process that is to motivate followers by appealing to higher ideals and moral values.²⁹ This means that the approach should articulate a vision, foster the acceptance of group goals, provide individualised support, and explain that effective leaders are able to change basic values, beliefs and attitudes of followers so that they are willing to perform beyond the minimum levels specified by the organisation. An approach such as this comprises four dimensions:³⁰

- Charisma or idealised influence as leader behaviour that results in follower admiration, respect and trust. This requires that leaders should share risks as followers regard this as a consideration more important than needs, and ethical and moral conduct by leaders;
- Inspirational motivation, which should be done in a way that offers meaning and challenge to the followers' work: what needs to be articulated are clear expectations, a demonstration of commitment to organisational goals and arousing team spirit through enthusiasm and optimism;
- Intellectual stimulation, by soliciting new ideas and encouraging problem-solving from followers, as well as supporting new and inventive approaches to performing tasks;
- Individualised consideration requires that the leader listen attentively and pay special attention to followers' growth needs as well as to their achievements, by providing strategies for recognition and praise.

The focus is therefore very much on the relationship that the leader is prepared to

²⁸ See in general Torifino, A.J "Transformational leadership: moving total quality management to world-class organisations" *International Nursing Review* 232-241

²⁹ Trofino 233

³⁰ Ibid

cultivate with his team members. The focus is not only on the expectations that would otherwise be communicated in terms of policy descriptions, but rather on developing the potential of the individual and inspiring the individual to grow beyond, possibly, self-imposed limitations.

Strong leadership is not only essential in addressing the corporate governance problems in PPPs: it is also being demanded by the public! In an article published in the *Sunday Times*,³¹ it was indicated that up to 43 percent of South Africans do not trust politicians and that they need to restore the perception of integrity. Reference is also made to the TI index and the requirements of the person in public office as well as the need for transparency. This would require from both the leader and his organisation to be transparent in respect of procedures both internal and external to the operations of the organisation in all aspects of reporting and operating activities.³²

10.7 Conclusion

In the end, when it becomes necessary to assess the effectiveness of any process, one needs to revisit the original planning against the outputs. Insofar as public sector management goes, there is no need to reinvent the wheel, but one of the main causes of ineffectiveness in my opinion is that the information available is not being used optimally. There are so many procedures that provide for the assimilation of information, but there is no point in making good decisions if they are not implemented. The recommendations made in this chapter, I hope, are practical insofar as they should address needs that I believe have been identified by many who would like to see the management process improved.

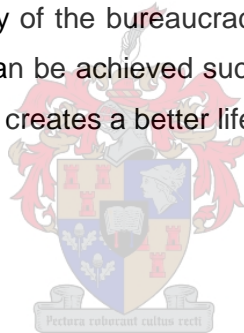
³¹ Oliver, W "SA needs moral leadership to retain legitimacy" *Sunday Times*

³² Oliver *What is Transparency?* 74

CHAPTER 11

CONCLUSION

“Society increasingly expects global business to work with others to provide solutions to humanitarian crises and endemic problems facing the world....the (sic) challenges of these expanding boundaries of responsibilities are best addressed through strategic partnerships”.¹ The PPP, it has been argued, could be the vehicle to create these partnerships and it should be playing a much more significant role in the development of the economy than is the situation currently. It would be most regrettable if the PPP concept and the expectations that exist in terms of its delivery prospects indeed becomes just another bureaucratic initiative viewed from a limited scope. PPPs can, and should, play an instrumental role in the realization of the Developmental State goals such as improving the functionality of the bureaucracy, and fostering solid relationships with the business sector. If this can be achieved successfully, then we can truly ensure that the South African government creates a better life for al.



¹ Warhurst, A “Future roles of business in society: the expanding boundaries of corporate responsibility and a compelling case for partnership” *Futures* 37(2005) 151

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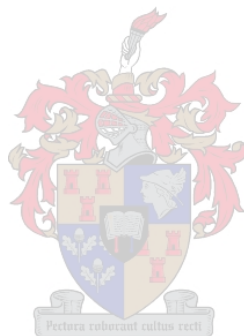
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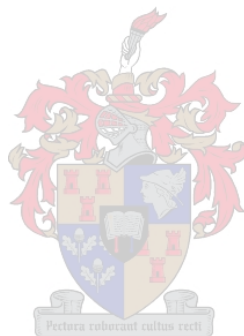
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