

Public Private Partnerships: A Policy Analysis of the Provision of Public Hospitals in South Africa.

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209500628

Submitted in partial fulfillment of the requirement for the degree of Master of Social Science (Policy and Development Studies), in the School of Social Sciences in the College of Humanities at the University of KwaZulu-Natal.

2014

As the candidate's supervisor I have approved this dissertation for submission

Declaration

I, Feruzi Ngwamba, declare that:

1. The research reported in this thesis, except where otherwise indicated, is my original research.
 2. This thesis has not been submitted for any degree or examination at any other university.
 3. This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.
 4. This thesis does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers. Where other written sources have been quoted, then:
 - a. Their words have been re-written but the general information attributed to them has been referenced
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Dedication

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Table 2: Summary of the Universitas and Pelonomi hospitals' objective.

Abstract

The provision of basic public services and infrastructure is considered to be the principal task of government, but a lack of resources and the inability of public institution to meet public policy objectives have made it difficult for government to deliver services and infrastructure to the citizens. In order to solve this problem the New Public Management (NPM) paradigm suggests that the private sector should play a larger role in the provision of public services. One of the strategies suggested by the NPM is Public Private Partnership (PPP). This study identifies and critically analyses the state of PPPs in South African, and the policy and governance issues that have emerged during the implementation of PPPs in the health sector since the end of apartheid. It focuses on PPPs in the public healthcare sector with particular reference to the utilisation of PPPs in the provision of public hospitals in South Africa in three hospitals: Inkosi Albert Luthuli Central Hospital (IALCH), Universitas and Pelonomi Hospitals Co-location and Humansdorp District Hospital.

Acronyms and Abbreviations

ANC	African National Congress
BEE	Black Economic Empowerment
BOO	Build Own Operate
BOOT	Build Own Operate Transfer
BOT	Build Own Transfer
CHM	Community Health Management
DBFO	Design Build Finance-Operate
ECC	Economic Commission for Europe
FSDoH	Free State Department of Health
IALCH	Inkosi Albert Luthuli Central Hospital
IDTT	Inter-Departmental Task Team
IT	Information Technology.
JV	Joint Venture
KZNDoH	KwaZulu Natal of Health
LOO	Lease Own Operate
LED	Local Economic Development
MFMA	Municipality Finance Management Act of 2003
MSA	Municipal Systems Act of 2003
NDP	National Development Plan
NGOs	Non-Government Organisations
NPM	New Public Management
PFMA	Public Finance Management Act
PPPs	Public Private Partnerships
SADC	Southern Africa Development Community
UK	United Kingdom
UNESCAP	United Nations Economic and Social Commission for Asia and Pacific
USA	United States of America
WHO	World Health Organisation

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Abstract

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LOO	Lease Own Operate
LED	Local Economic Development
MFMA	Municipality Finance Management Act of 2003
MSA	Municipal Systems Act of 2003
NDP	National Development Plan
NGOs	Non-Government Organisations
NPM	New Public Management
PFMA	Public Finance Management Act
PPPs	Public Private Partnerships
SADC	Southern Africa Development Community
UK	United Kingdom
UNESCAP	United Nations Economic and Social Commission for Asia and Pacific
USA	United States of America
WHO	World Health Organisation

Chapter 1

INTRODUCTION

1.1 Background

The Republic of South Africa has a total population of 52.98 million people (Statistic South Africa, 2013), living in nine provinces. Since the end of the apartheid in 1994, the South African democratic government's objective has been to transform public institutions into institutions that provide equal services to all its citizens (Special Unit for South-South Cooperation, 2012). In order to materialized its dream of providing equal services to all its citizens, the South African government need to provide more infrastructure in various sector including the health sector (Special Unit for South-Africa Cooperation, 2012). The health service standard provided by the World Health Organization (WHO) stipulates that that one clinic should accommodate only 10,000 patients, but in 2009 the estimated number of patients per clinic was 13,906 and in 2010 it was 13,718 per clinic which is more than what the WHO recommends (Infrastructure Barometer, 2012); this explained by the fact that between 2004 and 2009 alone the South African population growth was more than what the health facilities could accommodate. (South African National Health Strategic Plan 2010/11–2012/13) At the same time the Special Unit for South-South Cooperation (2012) has revealed that more than fifty percent of all the country's medical facilities suffer from lack of maintenance and most of them necessitate significant reorganization in order to serve the needs of South African people.

The government has identified PPPs as a core vehicle for service delivery and infrastructure development in its National Development Plan 2030, but only a few policies have been drafted to guide the creation and management of PPPs. This study will identify and analyse the types of PPPs that have been implemented by the government regarding the provision of public hospital infrastructure in post-Apartheid South Africa in order to reflect on how PPP policy in South Africa has been put into effect, and what some of the implementation challenges have been. It will use the Inkosi Albert Luthuli Central Hospital, Universitas and Pelonomi Hospitals Collocation, and Humansdorp PPP. The Innkosi Albert Luthuli Central hospital is used as case study in this research because it is the first public hospital in South Africa to be constructed under a PPP, where by a number of functions were shifted to the private sector (Leeman, 2002); and the

first South African PPP project to be implemented under the regulation and guidance of the PFMA (National Treasury Case Studies, 2007). Universitas and Pelonomi Hospitals Colocation is used as a case study because it is considered to be the first of its kind in the South African health sector (Shunning and Kabane, 2007). And lastly Humansdrop PPP is used as a case study because it shows how black companies are unable to invest in infrastructure that need massive fund.

1.2 Key questions to be asked

Poor medical infrastructure is one of many challenges facing the South African public healthcare sector. The National Development Plan 2030 advises the government to use PPPs in the provision of public healthcare, including the building of public hospitals. This study seeks to determine the legislative policy framework for PPPs in the public healthcare sector, because in order to create a suitable environment that can facilitate the implementation of PPP projects, the government needs to introduce specific laws that speak to issues related to PPPs (Alfen, Hans Wilhem et al 2009). This study also aimed to establish what types of PPPs have been implemented to assist the government with the provision of public hospitals in a post-Apartheid South Africa; because studies have confirmed that there are different forms of PPPs: some are government -lead partnerships and others are founded on alleged mutual interest and risk sharing; and their organisational forms can be also distinguished in terms of scale, funding and partner relationship (Skelcher, 2005). McQuaid (2000) argues that there are many challenges implementing public policies in partnerships arrangement. This study aims to understand the challenges facing the implementation of PPPs in the provision of public hospitals in a post-Apartheid South Africa.

This research provides an understanding of the origins PPPs, because there are contested views over the origins, definitions and rational for PPPs as a governance approach. Hodge and Greve (2010) see PPPs as an institutionalised cooperative arrangement that involves both public and private actors. As far as the origins of PPP are concerned, certain people use Hodge and Greve (2010) when they argue that PPPs started when governments began to initiate cooperative arrangement with the private sector. And others attached the origins of PPPs to privatisation because of their conviction that PPPs are just a new form of privatisation (McQuaid, 2000).

Concerning the definitions this paper analyses the different definitions presented in diverse sources.

1.3 Research methodology and methods

This project is a qualitative desktop study and does not entail any fieldwork. This research will consist of (i) a literature review of the concept, Public Private Partnerships (PPPs); and (ii) a case study on the provision of public hospitals in a post-Apartheid South Africa. The objective is to identify and analyse the policy and governance issues that have emerged during the implementation of PPPs in this sector.

The case study is also a desktop study and relied on an extensive literature review of secondary and primary sources available from a wide range of sources. Data for the case study was collected predominantly from government reports and policy documents available from The Department of Health, The National Treasury, and The Department of Economic Development. The National Treasury has a dedicated PPP Unit database listing all existing PPPs in South Africa.

The Health System Trust is a not-for-profit organisation in South Africa and provides online access to an extensive database which stores primary and secondary sources pertaining to healthcare policies, programmes and projects that are or have been implemented.

The data sources identified above provide qualitative and quantitative datasets. Both types of data were analysed using a content analysis approach.

1.4 Structure of the study

This study will be structured in five chapters as follow:

- Chapter one: Introduction.

This chapter provides the background on the use of PPPs in the health sector in South Africa, defines research problems and objectives, provide key questions to be asked and broader issues to be investigated. It also explains the principal theories upon which the research project will be constructed, and research methodology and methods.

- Chapter two: Theoretical Perspective of Public Private Partnership

This chapter is an analysis of the literature on PPPs. It explains the origin of PPPs and how the concept has been defined. It explores the difference between PPPs and privatisation, as well as the forms, advantages and disadvantages of PPPs. It describes the phases, management, and types and risk allocation and enabling legislation of PPPs.

- Chapter three: PPPs in South Africa

This chapter is an analysis of PPPs in South Africa. It defines PPPs in the South African context, and explains the rationale for PPPs in South Africa. It describes the types of PPPs, the statutory and regulatory framework for PPPs in South Africa, and the role of PPP Unit in South Africa. It also identifies and analyses current issues around PPPs such as Black Economic Empowerment principles.

- Chapter four: PPPs in the South African health sector: Case Studies

This chapter analyses PPPs in the South African health sector. It examines the rationale behind the use of PPP in the provision of public hospitals. The chapter uses three hospitals as case studies. Namely,, the Inkosi Albert Luthuli Central Hospital, the Universitas and Pelonomi Hospitals Co-location, and the Humansdorp Hospista.

- Chapter five: Conclusion

This chapter concludes the study.

1.5 Conclusion

This chapter has explained the background and broad objectives of the study. It has also provided the main questions that guide the study and the framework upon which the study will be structured. The next chapter focuses on theoretical perspective of PPPs

Chapter Two

THEORETICAL PERSPECTIVE OF PUBLIC PRIVATE PARTNESHIPS

2.1 Background to PPPs

In modern democratic societies the process of making policies uses two very important steps: deciding what to do, and how to do it (Kamarck, 2007). In the past, claims Kamarck (2007) once the decision has been made on what to do, the policy makers did not have to struggle on how to do it; theirs was to just create a new bureaucracy that will implement the new policy or to task the existing bureaucracy to implement it. Lipsky's (1980) observation is similar to Kamarck's claim, in which argued that from the 1960s until early 1970s the government did not have any other strategy of responding to problems affecting the people than tasking an existing bureaucracy's staff to solve it. Bureaucracy is defined by Marx Weber (cited in Meier and Hill, 2005) as an administration system that is characterized by clear hierarchy of authority, inflexible partition of labor, codified and inflexible guidelines, regulations and procedures, and objective relationships. Using Lipsky (1980) and Kamarck (2007) it can be said that, in the past public bureaucracies were the only entities that had the mandate to implement public policies despite the existence of other private institutions that operated outside the public domain.

Since public bureaucracies are the custodian of policy implementation, their main roles is the provision of public services such as roads, hospitals, schools, libraries, universities and social grants (Lipsky, 1980). Kamarck (2007) contends that even though bureaucracies were at the center of public policy implementation and public services delivery in early 1990s, the continuing dissatisfaction of policy implementation, the mismatch between policy objectives and implementation forced citizens to mistrust state bureaucracies (Kamarck, 2007). Citizens were able to conclude that there is an inconsistency between the ambitions of policymakers and the reality of policy implementation (Kamarck, 2007). Various new models of public policy implementation have emerged in response to bureaucratic inadequacy. The focal aim of those new models of public policy implementation was to correct and find solutions to the problems and shortfalls of traditional public bureaucracies which are poor performance, deficit of flexibility and lack of innovation (Kamarck, 2007). This comes to be known referred as New Public Management (NPM) For bureaucracies to satisfy citizens' needs and meet policies'

objectives; the NPM suggests that in the twenty first century policy makers don't need to create bureaucracy once they have decided what to do, they need to be able to choose how to do it (Kamarck, 2007).

As far as the implementation of policies is concerned, Osborne and Gaebler (cited in Hughes, 2010) argue that public bureaucracies are bankrupt tools; they cannot deliver services, and rather than using bureaucracies in services delivery the government should change and become entrepreneurial government. Entrepreneurial government is defined as a government that measures outcomes and encourage competition, and it is guided by markets and customer care principles (Osborne and Gaebler, cited in Hughes, 2010). Entrepreneurial government as suggested by Osborne and Gaebler is supported by NPM paradigm. NPM advocates for the transformation of public bureaucracies into institutions that look and operate more like private institutions. It conceptualizes the use of market principles as a means of enhancing the efficiency and effectiveness of the public institutions (Peters, 2010). NPM is characterized by use of managerial and business values in public institutions and the use of private institutions in the provision of public services (Rhodes 1997 cited McQuaid, 2010). NPM provides for new forms of relationships and interactions between government and its citizens, states and society, and governmental-institutions and non-governmental institution; NPM suggests new modes of governance such as through partnership between the public and private sector (McQuaid, 2010). In trying to show how NPM has transformed the implementation of public policies Kamarck (2007) argues that most advanced democracies did not get rid of the traditional bureaucracy; however but they have reformed their bureaucracy by implement policies in multiple ways for example the utilization of public private partnerships.

2.2 Conceptualising PPPs

Skelcher (2005) argues that before opening a discussion on Public Private Partnerships (PPPs) the clarification of this concept is very essential. The terms public, private and partnership may be defined separately and collectively, and their meaning are mostly contextualized with the condition and context in which they have been used (Linder and Pollitt cited in Skelcher, 2005). As far as the public and private sectors are concerned, Kim (2005) provides a clear distinction between public and private sectors, he argues that the public sector is that segment of the national economy concerned with the provision of basic public services; while the segment of the

economy that functions outside government control for profit or non-profit objectives is the private sector. In suggesting how a partnership that brings together public and private sector should be, the roundtable discussion of the World Economic Forum (2005) explains that a true partnership should be about joining diverse skills, know-how and capital in order to realise a common goal that is unachievable through independent action such partnership has to be signed within a framework of defined responsibilities, transparency and accountability.

Using the above explanation from the World Economic Forum (2005) on how a true partnership should be, it is relevant to reflect on Nishtar's (2004) argument when she posits that when the public sector does not have the capacity to provide efficient and effective public services on their own, lacks of capital and its bureaucratic challenges have resulted in the emergence of public private partnerships (Nishtar, 2004). PPPs provide a vehicle to merge the resources of government (which are called public resources) with those of private institutions (which are from the business or could even be from non-government organizations) in order to deliver services to the people (Skelcher, 2005). In a PPP, the government seeks the cooperation of private institutions among other things to design, fund, build, and operate infrastructure ventures (Osborne and Gaebler cited in Hughes, 2010). The concept of public private partnership does not only have legal significance; it can be used in defining a wide variety of procedures involving public and private institutions working together in some way. Both the Economic Commission for Europe (1998) and the World Economic Forum (2009) agree that the concept of public private partnership do not have a universal definition. At the same time the World Economic Forum (2009) insists that the multitude of definitions on public private partnerships can confuse rather than clarifying the concept of public private partnership.

Extensive debate remains about conceptualizing the term PPP has been open because few are the people who approve on what exactly a PPP is and what should be its definition (Khanom, 2009). William (Cited in Khanom, 200) contends that there is no need for a debate on the concept of PPP because it is a very transparent concept. Hodge and Greve (Cited in Khanom 2009) argue that the issue is not the multiple meanings and definitions of PPPs, but the different aspects of PPPs and understanding the different contexts in which they are implemented. In trying to show that PPPs can be defined using different points of views, Klijn and Teisman (2000) point out that there are three focuses that scholars use in defining PPPs. They argue that the first focus in

defining PPPs emphasizes on its inter-organizational aspect. The second focus defines PPPs by looking at it as a developmental strategy. The last focus defines PPPs by considering it as a discursive term (Klijn and Teiseman, 2000). Khanom (2009) argues that the most popular way of defining a PPP looks at it as a tool for governance and management of the delivery of public services.

PPPs are there for seen as an institutionalized cooperative arrangement that involves both public and private actors (Hodge and Greve, 2010). Most of literatures agree that risk sharing and cooperation between public and private institutions is at the heart of PPPs, but closely linked to risks sharing (Khanom, 2009). Cooperation is motivated by the fact that both public and private institutions stand to gain from the partnership (Khanom, 2009). In providing a definition that covers the organizational relationship of PPP, Khanom (2009) cites Van Ham and Koppenjan (2001:598) “cooperation of some sort of durability between public and private actors in which they jointly develop products and services as well as share risks, costs, and resources which are connected with these products’ through an institutional lens”. Another definition that reflects cooperation and sharing of risk is provided by Klijn and Teisman (2000: 91). They define as successful PPP as “a sustainable cooperation between public and private entities in which both parties share cost, benefit and risk in providing services to the people”

Western Europe countries consider PPPs to be “ a mechanism for spreading risk, gaining off-balance-sheet financing, and increasing innovation in the design, construction and operation of infrastructure based project” (Commission on Public Private Partnerships 2001 and Reeves cited in Skelcher, 2005: 348). In the United States of America (USA) the phrase public private partnerships is much broader. It covers variable mechanisms through which the government involves business and non-profit organization in the realization of public policy goals (Skelcher, 2005). The Efficiency Unit of the Hong Kong Special Administrative Region Government looks at PPPs as “an arrangement where public and private institutions bring together their complementary skills to a project, with varying levels of involvement and responsibility, with the aim of providing public goods to the people” (Cheung, Chan and Kajewski, 2009: 83). The Ghanaian National Policy on Public Private Partnerships (2011: 2) defines PPP as “a contractual procedure between a public institution and a private entity with well-defined agreement on collective objectives for the delivery of public infrastructure and services conventionally

provided by the public sector”. The above discussion shows that this study will illustrate this has implication for governance, for how governments pursue policy implementation.

2.3 The Distinction between Public Private Partnership and Privatisation

Many people confuse PPP with privatised conclude that PPPs are just a new form of privatization (McQuaid, 2000). Thus it is very important to differentiate between PPPs and privatization as alternatives of public services delivering. Privatization is defined as “the economic process of transferring government properties or institutions that deliver public services from public ownership to private ownership” (Austria, 2013: 3). Both privatisation and PPP became popular governance approaches in the 1980s (Klijn and Teisman, 2010). Governments around the world have been using PPPs in order to reform their public sector and to build relationships with private institutions and to achieve public goals through seeking private capital investment (Osborne, 2010). Privatization is considered to be a shift by government from public to private sector service delivery (Klijn and Teisman, 2010). There has been a conflictual debate around whether PPPs stands for an effective modernisation strategy, or if PPPs are just a new way of encouraging more privatisation (Osborne, 2010). The involvement of the private sector in the delivering of public services forces many people to believe that PPPs are just similar to privatization (Austria, 2013). The early research of Linder (cited in Osborne, 2010) on PPPs shows the possibility that PPP was just a synonymous with privatisation. To contradict Stephan Linder’s observation, Austria (2013) argues that despite the similarity that exists between PPPs and privatization, it should be well understood that both concepts differ in various ways.

In drawing the differences between PPPs and privatisation, both Osborne (2010) and Austria (2013) agree that ownership of public infrastructure or public facilities remains a vital defining characteristic between PPPs and privatisation. They explain that when a public asset or public facility is privatized, the public ownership is permanently transferred to the private institution. The allocation of risk is a second defining distinction between PPPs and privatisation; in a PPP risk is shared by the parties involved according to their exposure rate; while when privatised risk is fully transferred to the private sector (Austria, 2013). Even though PPPs establish cooperation between public institutions partners and private sector partners (Osborne, 2010) the public sector remains the ultimate custodian for the provision of a particular service in a PPP project (Austria,

2013). Privatization is an outright transfer of function and government sells its assets. As a result public accountability ends and is transferred to private institutions but so does risks exposure and it can inject immediate capital into public coffers (Austria, 2013). The Table below provides a summary of the differences between privatisation and PPPs

Table 1: Summary of the differences between Privatisation and PPPS

	PRIVATISATION	PUBLIC PRIVATE PARTNERSHIP
Definition	Any process aimed at shifting functions and responsibilities, in whole or in part, from the government to the private sector, almost always involving the irrevocable transfer of public sector assets.	A contractual agreement between the public and private sectors for the financing, developing, operation or managing of a public facility or service.
Ownership	Private	Public
Contract Structure	Contract methods that result in private ownership.	Contract methods that result in varying levels of private participation.
Risk	Private sector has sole responsibility in general. (Except as retained in a regulatory role)	Shared responsibility between partners

Source: Adopted from California Debt and Investment Commission, 2006:21

2.4 Forms of PPPs

There are different forms of PPPs: some are government lead partnerships and others are founded on alleged mutual interest and risk sharing; and their organisational forms can be also distinguished in terms of scale, funding and partner relationship (Skelcher, 2005). Skelcher (2005) classifies PPPs in five categories, (i) Public Leverage, (ii) Contracting-Out and Competitive Tendering, (iii) Franchising, (iv) Joint Ventures and Design-Build-Finance-Operate (DBFO), and (v) Strategic Partnering. These will be discussed below.

(i) Public Leverage

Public Leverage is when a government organises legal and financial resources in order to create an environment that will be favourable in economic activities and allow business growth (Skelcher, 2005). This form of PPP is referred as “Leader-follower” because government encourages private institutions to support public policies by aligning their organisational

strategies behind government initiatives. (Schaeffer and Loveridge cited in Skelcher, 2005:351) Public Leverage also arises when public institutions call on business and non-profit organisation to be the means of achieving goals that traditional supposed to be realised by the states institutions (Skelcher, 2005).

(ii) Contracting-out and Competitive Tendering

Contracting out is based on the idea of separating a buyer of a service or services from the provider or the providers. Here state institutions clarifies which services need to be provided, what the standards are that have to be met and finally contracts a private organisation to supply the services (Skelcher, 2005). Minnie (2011) argues that contracting out is the simplest form of PPP, because a public institution, such as a government department, typically awards to a private sector company, or NGO, a contract giving the rights and obligations to provide a specific service, within a very well-defined timeframe. This form of PPP places the government and the private sector in a position where the government plays the role of principal and the private sector plays the role of agent (Lane cited in Skelcher, 2005). Even though contracting out is considered by Minnie (2011) to be the simplest form of PPP, Van Slyke (2003) argues that for the contracting out to meet its objectives, there is a great need to look at two things: the competition that exists in the market and the capacity of state bureaucracy. Milne (cited in Skelcher, 2005) is convinced that even though it may seems that competition always exists in the market, in the awarding of government contracts competition does not always exist. Since the government retains ownership and control of all facilities and capital assets and properties (Minnie, 2011), the government must be a “smart buyer,” argues Walsh (cited in Skelcher, 2005:354). Walsh maintains that that for a government to be a smart buyer and to meet its goals by contracting out, its procedures, personnel skills, and bureaucratic culture must be transformed into a service design.

Skelcher (2005) argues that the government uses the process of competitive tendering because its potential benefits are to improve service quality. The process of competitive tendering requires the public institution client to clarify the nature and the standard of the service or services they wish to deliver, in order to monitor and evaluate the successful supplier (Skelcher, 2005). Competitive tendering creates a fundamental change in government’s perspective, from the

traditional input orientation that mostly pays more attention on personnel, funds, and other resources, to a focus on outputs and outcomes (Walsh cited in Skelcher, 2005).

(iii) Franchising

Franchising is when a government grants a license to a private organisation to supply a service, and the supplier's income is generated while delivering the services (Sava cited in Skelcher, 2005). The license awarded to the private organisation may require the organisation to initiate infrastructure that may be transferred to the government after a certain period of times. Plummer (cited in Minnie, 2011) argues that under franchise contracts, public institutions such as municipalities, departments and provincial governments may award a private firm a limited right to supply a well specified type of service within a specific area. The process of allocating the right to a private firm may be open to a competition and requires the potential supplier to own a certain amount of money in order to gain the franchise.

With a franchise, as with a contract, the government is the arranger and the private firm is the producer; the difference is observed in the method of payment (Skelcher, 2005). In a contracting-out arrangement, the government considered by Skelcher (2005) to be the "arranger" pays the producer for the supply of services; whereas in a franchise the private firm, considered by Skelcher (2005) to be the "producer," is paid by the direct beneficiaries or consumers of the services supplied by the producer. The government often awards a licence for providing services to a well specified zone for a fixed period of time (Plummer cited in Skelcher, 2005).

(iv) Joint Venture (JV) and Design- Build- Finance- Operate (DBFO) Partnerships

When two or more parties wish to be involved in a collaborative project that does not interfere with the independence of either party, it is called a Joint Venture (Schaeffer and Loveridge cited Skelcher, 2005). In order to maintain the independence of each party, the coordination and management of the project is done by an independent actor through a mutual agreement (Skelcher, 2005). DBFO is an arrangement where the government enters into a long term contract of 25 or 30 years with a private entity to design, build, finance, operate and manage a public project. At the end of that period the project or the property will be owned by the public party (Skelcher, 2005). DBFO is not a traditional capital asset procurement, but a service procurement strategy where the service outcome and performance standards are clearly specified (Alfen, Hans

Wihelm et al, 2009). Skelcher (2005) points out that a DBFO joint venture offers three possible benefits: it does not add to public debt, it encourages innovative solutions, due to the fact that the project is specified in outcomes' terms; and it transfers the risks associated with planning, design, construction, availability and performance.

(v) Strategic Partnering

Strategic partnering between a public institution and a private entity occurs when there are no boundaries between the public institution and the private organisation in the provision of services, or in a projects (Ashkenas cited in Skelcher, 2005), and when there is a relationship between the two with the intention of sharing the beneficial mutual outcomes of the project (Grimshaw et al. cited in Skelcher, 2005). Schaeffer and Loveridge (cited in Skelcher, 2005) argues that strategic partnering is characterised by an open-ended partnership, with full sharing of the risks and benefits evolving substantive content of the action that arises. Lane (2001, in Skelcher, 2005) maintains that theoretically speaking, strategic partnerships are tools for minimising the transaction costs of services' specifications, supplier procurement and regulations that can emerge under contracting-out. But Klijin and Teisman (2000) suggest that strategic partnering can flounder and regress to contracting-out. They justify this view by arguing that the institutional regulations of government are not adequately adapted to the way strategic partnerships are intended to work.

Apart from the above five forms of PPPs, as they were classified by Skelcher (2005), there are other forms of PPPs, Maluleka (2008) identifies other four forms of PPP, (i) Build Operate-Transfer (BOT), (ii) Build-Operate-Own (BOO), and (iii) Design- Build- Operate (DBO).

(i) Build- Operate- Transfer (BOT)

The concept of BOT was developed in Turkey (Yescombe, cited in Maluleka, 2008) and is considered to be the most well-known model of PPP (Maluleka, 2008). BOT is an arrangement where a public entity gives the responsibility of constructing, financing and operating a facility or a project, to a private sector partner for a fixed period of time. At the end of that period, the responsibility and the ownership of the facility is transferred back to the public party (Maluleka, 2008 and Alfen, Hans Wihelm et al, 2009).

(ii) Build-Operate-Own (BOO)

BOO allows the private sector to finance, build, operate and own the entire facility for an infinity period (Haarhoff, 2008). BOO does not involve the transfer of the project to any public entity (Maluleka, 2008), and the control and ownership of the project remains in the private sector's hands (Haarhoff, 2008). The World Bank (1997) argues that due to the fact that the ownership of the project remains in the private sector's hands, the investors will feel more protected and may be motivated to inject more funds into the project.

(iii) Build -Operate- Own- Transfer (BOOT)

Sader (cited Maluleka, 2008) explains that in the BOOT model a private entity finances and builds a complete facility and operates it for a specified period of time. After the specified period has expired, the ownership of the facility is transferred back to the host public entity.

(iv) Build Design Operate (BDO)

BDO is based on the conventional public sector's procurement model (Haarhoff, 2008). BDO uses one contract that allows a private company to design, construct and to subsequently provide maintenance services for a project. The public sector will then buy the infrastructure and retain ownership (Maluleka, 2008).

2.5 Phases of a PPP Project

Alfen, Hans Wilhem et al, (2009) argue that a PPP project has five phases: (i) needs assessment and option appraisal; (ii) preparation and conception; (iii) tendering process and contract award; (iv) implementation and contract management; (v) and contract termination.

Phase One: Needs assessment and option appraisal

This is the starting point of the project where normally the public sector, or more often a project executing organisation, identifies the need for a particular service or infrastructure (Alfen, Hans Wilhem et al, 2009). In order to identify the availability of funds and affordability, a cost benefit analysis is done during this phase (Alfen, Hans Wilhem et al, 2009). This phase facilitates the decision as to whether the public and private institutions should or should not initiate a PPP.

Phase Two: Preparation and Conception

Once the need assessment and option appraisal proves that there is a great need for a PPP, the preparation works starts (Alfen, Hans Wilhem et al, 2009). At this stage the government designs the concept of a PPP using greater efficiency that will be presented by the private entity, this phase allows the government to evaluate the traditional public sector procurement (Alfen, Hans Wilhem et al, 2009).

Phase Three: Tendering Process and Contract Award

After the government has decided to use a PPP, it will then choose which procurement procedure to use that responds to the applicable laws of the land (Alfen, Hans Wilhem et al. 2009). Alfen, Hans Wilhem et al (2009) argues that in this phase the government decides who to award the project to by using competitive tendering, and clarifies all the terms and conditions that will be applied in the awarding of the tender. Government is also obliged to provide output specifications, duration, and terms of the PPP contract in the invitation to tender (Alfen, Hans Wilhem et al (2009). When the government has received receives the tender applications, it will then award the contract to the company that best conforms to the defined awarding criteria (Alfen, Hans Wilhem et al, 2009). When the government has received the tender applications, it will then award the contract to the company that best conforms to the defined awarding criteria (Alfen, Hans Wilhem et al, 2009).

Phase Four: Implementation and Contract Management

The construction of the project's facilities is the first step of the implementation. After constructing the facility the government together with the private entity involves in the project will proceed with the completion tests (Alfen, Hans Wilhem et al, 2009). After the test, and if the government agrees with the completion tests results, the facility will be accepted by government and the operations can start immediately.

Phase Five: Contract Termination

Once the contract terminates the project facilities will be transferred to the public specified in the PPP.

2.6 Management of PPP

PPP projects are very complex programs compared to other programs initiated by the public sector. Because of their complexity the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) argues that there is a great need for the creation of a management structure that will run a PPP project, starting at the beginning of the project and running until the end of the program (UNESCAP, 2011). The UNESCAP (2011) explains that during the initiation, procurement and implementation phases of a PPP project, both public and private sectors may need to address multiple issues related to output, input and other critical challenges. The only way of addressing the concerns that may affect the smooth implementation of any PPP project program, is the creation of a management structure. In explaining the role of the management structure the UNESCAP (2011) maintains that the management structure's main responsibilities should be the implementation of the project and addressing all the critical issues that may arise during the whole period of project development and procurement.

Because of the long term characteristic of PPP projects, the UNESCAP (2011: 24) recommends that the project management structure to have a Project Steering Committee, a Project Team headed by a Project Director/Manager and Project sub-teams if necessary. In classifying the roles and the composition of these three entities that will constitutes the management structure of a long-term PPP project, the UNESCAP (2011) proposes that the Project Steering Committee should provide overall direction and general guidance in all phases of implementation of the project. In addition it should be accountable to anything related to the project. In terms of who should have seats on the Steering Committee, the UNESCAP (2011) advises that the Steering Committee should consist of key players in the program and senior managers, and it should also have permanent secretaries that should be constituted by director generals and high profile executive members from public and private institutions. Concerning the Project Team, UNESCAP (2011) argues that it should consist of a project director or manager and internal personnel supported by an external group of specialists from technical, financial and legal

aspects. UNESCOP (2011) understands the importance of maintaining the core staff members during and throughout the project development, assessment and implementation stages; but it suggests that the composition of the project team should be changed in order to meet specific expertise needs throughout the implementation of the project.

Most of the literatures which focuses on the inter-organisational features of a PPP agree that sharing risks and cooperation between actors are the most important aspects of PPPs (Khanom, 2009). Alfen, Hans Wilhem et al (2009) and UNESCOP (2011) both agreed with Khanom (2009) that the risk sharing is at the heart of PPPs projects. As various scholars (Khanom, 2009; Alfen, Hans Wilhem et al, 2009 and UNESCOP, 2011) regard risk sharing to be the most important feature of a PPP, there is a great need to know how risk is managed in a PPP project. But Haarhoff (2008) argues that in the study of PPP's service delivery management, it is very important to study risk management as well as performance management. Haarhoff (2008) divides service delivery management into two parts, risk management and performance management. Haarhoff (2008: 22) is convinced that "Risk management involves keeping exposure of the project to any potential threats to an acceptable level by taking appropriate action; and performance management plays a pivotal role in PPP procurement because it must ensure that, for the government department, the project remains affordable, with service delivery specifications, and value for money and performance improvement being met." Therefore, using Haarhoff's (2008) conviction, it is very important to look at both risk management and performance management.

2.6.1 Risks Management

Before looking at risk management it is important to understand the meaning of risk. The Partnerships British Columbia (2005) defines risk as "the chance of something happening that will have an impact upon the achievement of objectives". Risk is also defined by the HM Treasury (2004) as the uncertainty of the outcome that may be positive or negative to the action or events. The international Federation of Accountants (1999 in Harvey, 2008) defines risk as unpredictable events which could influence the achievement of the organization's strategic, operational and financial objectives. On the other hand, Chris Furnell (2000) in Department of Infrastructure and Planning (2008:8) defines risk as "the chance of an event occurring which would cause actual project circumstances to differ from those assumed when forecasting project

benefit and costs". The unpredictable nature of risk raises the importance of the management of all types of risk analysis. Abd-Karim (2011) argues that risk analysis and management are important parts of the decision making process in a PPP project, and he advises public and private companies to draw an effective strategy for risk allocation in order to control any risk that may occur.

The Queensland Government's (2011) financial management framework defines risk management as the process of identifying, examining and responding to risks, and reporting the outcomes of the processes to the appropriate stakeholders in a timely way. At the United Kingdom's HM Treasury (2004) in its orange book titled "Management of Risk-Principles and Concepts," risk is defined as mores, procedures and structures that focus on the efficient management of possible opportunities and threats facing an organization determined to meet its objectives. These two definitions correspond with the way the Partnerships British Columbia (2006) portrays risk management. The Partnerships British Columbia (2006) looks at risk management as a continuous process of identifying, evaluating and responding to major risks. Since risk management is considered to be a continuous process, in order to effectively manage risk, its identification must be the first step for an organization to start with. This first step compels an organization to find out what the risks are that it is facing, and to examine them (HM Treasury, 2004). In clarifying how an organization can identify risk, HM Treasury (2004) divides the identification of risks into two phases: initial risk identification and continuous risk identification. The HM Treasury (2004) explains that the initial risk identification is a process of identifying risks for a new project, activity or company, meaning that in this phase, the risks has not previously been identified. And for the continuous risk identification, the HM Treasury (2004) argues that this is a very important tool that can facilitate the identification of new risks which had not previously emerged, it can also allow the discovery of changes in existing risks, or risks that existed but stopped being a significant threat to the organization.

On the other hand, Collier and Agyei-Ampomah (cited in Harvey 2008) argue that it is impossible to always look at risks in the same way; they argue that there are two factors that must be considered when looking at risk, risk appetite and risk culture. These two factors are considered to be important and relevant tools for simplifying the identification of risk and the risk management process. Collier and Agyei-Ampomah (cited in Harvey 2008) define risk

appetite as the total sum of risk that an organisation is prepared to accept in its quest for value. Risk appetite relates directly to the organisation's strategy and may be articulated as the adequate balance between growth, risk and return. Risk culture is considered to be the set of common attitudes, values and norms that characterised how a party views risk in its everyday activities. Risk culture has its roots organisational practices such as rewards or sanctions that motivate risk-rating or risk-avoiding behaviour (Collier and Agyei-Ampomah, 2006 in Harvey 2008).

2.6.1.1 Types of Risk

Even though there are different types of risks the HM Treasury (2004) suggests that individual risks that are identified by organisations during the identification phase, should not be treated as interdependent from each other because those risks will typically form natural groupings on their own being; risks related to resources, environment and organisations. The Australian Government (2008) agrees with the three groupings suggested by HM Treasury (2004) but adds more precision as far as PPPs are concerned. The Australian National PPP Guidelines (2008) classifies the key risks that may arise in a PPP project into twelve groups. Table two below presents the twelve risks as they are described by the Australian National Public- Private Partnership Guidelines (2008). Some of these risks were also classified by Haarhoff (2008), however, Haarhoff (2008) adds other risks, such as technological risks which occurs because of innovation in IT (Information Technology); market or demand risks which may occurs because of a lack of, or increase in the cost of raw materials in the market; residual value risk which occurs because of changes in the price of an asset, political risk which occurs because of instability in the local market; and foreign exchange risk which is associated with the money market.

2.6.1.2 Risk Allocation

As far as PPPs are concerned, Abd-Karim (2011) argues that it is very important for public and private organisations to set up suitable risk allocation strategies for PPP projects. The Partnership British Colombia (2005) and the Australia Government (2008) maintain that there are multiple strategies for allocating risks, and they are convinced that risks can be allocated in three ways. These are transferring them to another party or contracting party, retaining them by government, or sharing them between two parties such as a public and private agency. In discussing who is

supposed to bear the risks, Abd-Karim (2011) argues that in a PPP project, the target of government is predominantly motivated by the idea of transferring risks to the private sector, and that is the main aim of the majority of PPPs. However in their research titled “Risk Allocation in Public Private Partnership Projects: Comparative Study”, Ke, Wang and Chan (2010) compared PPPs in mainland China, Hong Kong, Greece and the UK. The results of their research contradicts Abd-Karim’s (2011)’s view on risk allocation, as Ke et al (2010) found that the public sector does not transfer all the risks associated with a project to the private sector. Instead, the government tends to choose certain risks and leave what they cannot afford to manage to the private sector (Ke, Wang and Chan, 2010). Ke, Wang and Chan’s (2010) research revealed that the government prefers to retain most political, legal and social risks, and share macro level risks and force majeure risks, while the majority of meso-level risks were allocated to the private sector.

2.6.2 Performance Management

Haarhoff (2008) argues that performance management is one of the very important factors at the heart of any successful PPP project. Performance management is defined by Aguinis (2009:3) as a “continuous process of identifying, measuring, and developing the performance of individuals and teams, and aligning performance with the strategic goals of the organization”. For Bititci, Carrie and McDevitt (1997) performance management is a continuous process by which an organisation manages its performance in line with its corporate and functional strategies and objectives. Performance management has progressively become very important because of the great desire for more efficient and effective PPP projects’ management (Yuan, Skibniewski, Li and Zheng, 2010).

After analysing previous research on PPP, Yuan et al, (2010) discovered that multiple failures of PPP projects were not caused by one single factor, but by the interaction of different factors such as cost, quality, schedules, management ability and many others during the lifecycle of the project. To find a solution to the failure of PPP projects, Zheng et al. (2010) suggest the introduction of performance management methods into the management of PPP projects. The objective of this method would be to provide a practical closed- loop control system, where the organisation and functional strategies are deployed in all procedures, activities and tasks (Bititci, et al., 1997). It can be said that the deployment of the organisational and functional strategies in

all procedures, activities and tasks as Bititci et al (1999) pointed out is very important because it provides a feedback on the project's daily activities.

According to Aguinis (2009:6) performance management has six key purposes: strategic; administrative; communication; development; organisational maintenance; and documentation. The strategic purpose reinforces behaviour that can lead the organisation to reach its goals. In doing so it plays the role of linking the institutional goals with individual goals. The administrative purpose of performance management is explained by its ability to provide valid and useful information that allows decision makers to make correct decisions about workers, salaries, promotion and the identification and recognition of employees (Aguinis, 2009). The purpose of communication in performance management is in its role as a communication tool, allowing all the stakeholders to be aware of where improvement is needed, their expectations and what aspects of the work is believed to be the most important (Aguinis, 2009). The developmental purpose of performance management is explained by its capacity to be able to include feedback, allowing managers to train employees and help them improve performance continuously. The purpose of organisational maintenance of performance management is in its ability to keep information that can assess future training needs, and evaluate performance achievements at both the organisational and individual levels (Aguinis, 2009). Finally the purpose of documentation is explained by the fact that performance management keeps all the data that can be used in assessing or predicting important administrative decisions (Aguinis, 2009).

Haarhoff (2008) however argues that the main objectives of performance management are the following: monitoring the performance of the service provider so that if any failure or financial deficits occur, it will be easier to adequately address them; paying for services that have been provided; making sure that services have been delivered as stipulated in the contract; and allowing continuous improvement in services delivery. As far as PPP projects are concerned, Haarhoff (2008) suggests that in order to meet contractual obligations and output criteria, organisations need to develop a contract management plan based on a performance management model. For the performance management model to be effective, it must include the following: reporting obligations that will be imposed on the private party; implementing performance management which will be used by different entities involved in the project; creating

mechanisms to facilitate feedback, including a complaints procedure; specifying the public sector officer who will be in charge of monitoring performance,; and estimating the amount of money that the government will inject into the project to be used for the purpose of managing performance.

No table of figures entries found. Event though not all countries have established specific new PPP legislation, almost all countries accept the importance of amending existing legislation in order to ensure that public institutions have the required powers to contract out services under PPPs (World Bank, 2006). PPP enabling legislation is a key prerequisite for private infrastructure investment (Geddes and Wagner, 2010). Alfen, Hans Wilhem et al (2009) argue that it is very important for a country to have enabling legislation before it can initiate PPP projects. They argue that this is because the implementation of projects involves multiple stakeholders, and PPP projects have a broad variety of risks which need to be correctly allocated to stakeholders. In addition the implementation of PPPs must be flexible, having the ability to respond to all the circumstances and changes that may occur. In order to create a suitable environment that can facilitate the implementation of PPP projects, the government needs to introduce specific laws that speak to issues related to PPP.

However, Seungwoo Son (2012) raises two important legal aspects that need to be taken into consideration as far as PPP legislation is concerned. He argues that neither common law nor civil law jurisdiction has the same understanding in regard to issues that are relevant to PPPs (Son, 2012). This simply means that the establishment of specific PPP legislation will never be the same in those countries using civil law to those using common law. Son (2012) clarifies his view by pointing out that in countries under civil law jurisdiction; a distinct administrative law administers PPP arrangements because the service provided by a PPP is considered to be a public service. Administrative law sets out basic principles which cannot be deviated from or overridden by agreement of the parties, and therefore provides the framework in which PPP contracts can be negotiated. While in countries under common law, the common law provides the fundamental basis for all commercial transactions, civil law jurisdictions have a more prescriptive approach in organising PPPs (Son, 2012). Enabling legislation for PPP supports the establishment of a stable institutional environment that accelerates private investment (Geddes and Wagner, 2010). Therefore by facilitating the consolidation of important legal provisions

dealing with PPPs into one law also allows the government to legislate the use of certain processes for the development, procurement and regulation of PPP projects (World Bank, 2006). Considering the fact that PPPs involve multiple stakeholders (Alfen, Hans Wilhem et al (2009), the World Bank (2006) points out that PPP legislation provides mechanisms and procedures that can efficiently settle disputes between parties. But it must be well understood that certain legislative amendments are required to ensure that the PPP concept is consistent with the country's constitution as it may take years for a government to enact the appropriate legislation (Alfen, Hans Wilhem et al, 2009).

2.8 PPP Unit

PPPs are very complex contracts that vary significantly from project to project and from place to place. Many countries do not have the technical capacity and expertise to enable them to become involved in PPP projects while at the same time protecting the public interest. This has resulted in no less than 31 countries around the world creating specialized institutional entities called PPP units. These units operate at a national or subnational level and have different purposes, such as quality control, policy formulation, and technical advice (Istrate and Puentes, 2011). Although a PPP unit does not have a universal definition, Istrate and Puentes (2011) have defined the unit as an entity designed to accomplish functions such as quality control, designing and coordinating policy, providing technical advice, standardising and disseminating, and promoting PPPs. On the other hand the World Bank (2006:22) in Istrate and Puentes, (2011:6) defines a PPP unit as “any organization designed to: promote or improve PPPs, and has a lasting mandate to manage multiple PPP transactions, often in multiple sectors.” At the same time Farrugia, Reynolds and Orr (2008) in Istrate and Puentes, (2011) consider the PPP unit as any institution set up with full or partial aid of the government to make sure that the essential capacity to create, sustain and assess different PPP contracts is made available and grouped together within government. Using these definitions one would agree with Istrate and Puentes (2011) when they argue that a PPP unit is not the procuring agency, it is a public entity that is tasked to support other public institutions to procure projects through a PPP procedure.

2.9 Advantages and Disadvantages of PPP

McQuaid (2000) argues that delivering public services and the construction of public infrastructure through partnerships have gained more support from government institutions, policy and decision makers, street-level bureaucrats and local communities around the world. For instance the Commission for European Communities (1991) in McQuaid, (2000) predicted that the delivering of public services and infrastructure using partnerships are likely to remain high on the policy agenda at all levels of governance.

Regardless of the popularity of partnerships in the delivering and construction of infrastructures, not everyone considers PPPs to be a good deal for the public sector. This is despite many definitions emphasising that PPPs contracts are signed because of its ability to provide benefits for both government and private institutions (Grave and Hodge, 2005). Brown (2001 in Grave and Hodge, 2005:8) provides good examples of criticisms of PPPs. He notes that in the UK people see PPPs as “yet again screwing the taxpayer” and private sponsors are satirized as “evil bandits running away with all the loot”; and in Canada PPPs have been described as “problem, problem, problem” (Grave and Hodge, 2005:8). On the other hand McQuaid (2000) asks a very relevant question, in why public institutions use partnerships in the provision of public services and infrastructure to its people/ while it is traditionally known that the only institutions that supposed to provide public services are public institutions. The simplest way of responding to McQuaid’s (2000) question is to enumerate the advantages of PPPs to both public and private institutions.

2.9.1 Advantages of PPP

The Economic Commission for Europe (ECE) (1998) grouped the advantages of PPPs into five groups; fiscal, economic, social, technologic and political, while McQuaid (2000) grouped them into three; resource availability, effectiveness and legitimacy. In drawing a comparison between traditional procurement methods and the PPP methods, Katz (2006:4-5) provides three advantages of PPPs. He argues that PPPs provide “better whole of life project evaluation, stronger incentives to innovate and minimise cost, and access to additional capital without affecting the gross debt target”. The seven groups of advantages of PPPs provided by the

Economic Commission for Europe (1998) are very relevant because they cover all the groupings presented by both McQuaid (2000) and Katz (2006).

- **Fiscal Advantages of PPPs**

The ECE (1998) argues that PPPs have the capacity of easing budgetary constraints, because they enable projects to proceed with little or without any government funding, they allocate risks to the private entity, and they help government to measure the actual cost of a project within the framework of the economy. This corresponds to what McQuaid (2000) calls resource availability when he argues that PPPs increases the availability of financial resources. In support of the ECE (1998) argument, Van Herpen (2002) reiterates that the creation of value for money is the key advantage of PPPs. He explains that value for money is the ability of a PPP to deliver services or infrastructure at a lower or the same cost with the same or higher quality than it would if delivered through traditional procurement methods.

- **Economic Advantages of PPPs**

PPPs can help accelerate economic modernization by fostering local capital markets, attracting international and domestic investment, promoting efficiency in development and the management of infrastructure development projects, PPP projects can be completed more reliably against time and cost restraints (ECE, 1998, McQuaid, 2000 and Jakutyte, 2012).

- **Technological Advantages of PPPs**

PPPs attract specialists and institutions of international standing and experience which allows the transfer and exchange of technology through training of local staff and initiation of new ideas (ECE, 1998 and McQuaid, 2000).

- **Social Advantages of PPPs**

Most of the projects delivered through PPPs respond directly or indirectly to social needs, they seek to deliver better transportation facilities, clean water, advanced communication networks and electricity; these facilities ameliorate the living conditions of the people (ECE, 1998). They may legitimise policy because of the participation of local communities directly rather than through democratic institutions that are mandated to represent the people (McQuaid, 2000).

- **Political Advantages of PPPs**

PPPs have redefined the role of public institutions in regard to services and infrastructure delivery, management, regulation and supervision; they have allowed the government to redefine their roles in relation to market economies, and they have freed public projects from political influence through the participation of private institutions in the implementation of public projects (ECE, 1998). McQuaid (2000) argues that PPPs have shifted the role of the politically elected body to non-elected institutions.

2.9.2 Disadvantages of PPP

McQuaid (2000) argues that there are many problems in working with partnerships which may vary according to the form of partnership. At the same time ECE (1998) highlights that PPP contracts are naturally much more complex than traditional procurement contracts mainly because of the need to anticipate all possible eventualities that could arise in a long-term contractual relationship. McQuaid (2000) maintains that unclear goals, resource costs, unequal power, cliques usurping power, differences in philosophy between partners, organisational difficulties and the impact on other services are the disadvantages of PPPs.

- **Unclear goals**

Not having clear aims or goals is most often mentioned as the major cause of the failure of partnerships. Because many partnerships normally agree on the broader aims, the finer details are often unclear resulting in partners having completely different interpretations of what the goals are (McQuaid, 2000). Jakutyte (2012) argues that in a PPP, government signs long term contracts with a single private partner for services or assets that will be used in the future. The long term aspect of a PPP is very problematic in the sense that people's needs may change over time.

- **Resource Costs**

PPPs accumulate a lot of resource costs derived from time consumed during discussions and decision making processes. Delays normally occur because of consultations with different partners (McQuaid, 2000). Van Herpen (2002) maintains that poor value for money is the greatest disadvantage of a PPP. He believes that PPPs produce higher capital costs because of borrowing rates. Katz (2006) is also convinced that PPPs accumulate higher transaction costs

because of the tendering and development costs which are higher than in the traditional procurement process.

- **Unequal Power**

Syrett (1997 in McQuaid, 2000) argues that there is a failure to accept that unequal power exists in most partnerships. But McQuaid (2000) maintains that the existence of unequal power should not be interpreted as the need for equal power being essential in partnerships. Some partners should have more power than others with their greater involvement in the project. McQuaid (2000) explains that this can be very problematic to the implementation and functioning of PPP projects, because greater power generally resides in the hands of the partner controlling the resources.

- **Cliques Usurping Power**

The operation of partnerships does carry certain dangers because certain actors, groups or cliques may assume power, forcing the objectives and goals of a PPP to respond to individual and groups' benefits rather than overall welfare (McQuaid, 2000).

- **Impact on other services**

McQuaid (2000) argues that partnerships may draw resources from other mainstream public services or create confusion in the mind of beneficiaries of public services. This may be explained by the inability of partners to draw from a range of services, because most of the time local authorities do have more responsibilities than other stakeholders, such as regional developmental agencies and community groups.

- **Organisational Difficulties**

Coordination and management of a PPP project, and the partners involved, is very challenging because of the differences in terms of organisational structure and work ethic (McQuaid, 2000). Katz (2006) also argues that it is very difficult to manage each individual partner's performance in a PPP project, because each partner tends to have a different view on customer and public relations.

- **Differences in philosophy among Partners**

There are multiple philosophical differences between partners. The partners may have different interpretations of economic assumptions; on how the market can respond to challenges of urban development, or on the structuring of a contract, all of which reflect public and private management and philosophical principles in one organisation (McQuaid, 2000).

2.10 Conclusion

In the past, public bureaucracies were the only entities that had the mandate to implement public policies, despite the existence of other private institutions that operated outside the public domain (Lipsky 1980 and Karmarck 2007). The continuing dissatisfaction of policy implementation, and the mismatch between policy objectives and their implementation has forced citizens to mistrust state bureaucracies (Karmarck, 2007). The NPM advocates for the transformation of public bureaucracies into institutions that look and operate more like private institutions. It conceptualizes the use of market principles as a means of enhancing the efficiency and effectiveness of the public institutions (Peters, 2010). One of the strategies advocated by the NPM is PPPs. This does not mean that the NPM wants to get rid of traditional bureaucracy, as PPPs have emerged as a new alternative for service and infrastructure delivery. Even though PPPs differ from privatization, some people believe that they are a new form of privatization. Sharing of risk is considered to be the most important feature of a PPP, thus stakeholders involved in a PPP project are obliged to develop mechanisms that will manage and analyse the different forms of risk affecting the implementation of a projects. But it should be well understood that because of its long term nature, the management of a PPP project is very complex. To facilitate better implementation and regulation of PPP projects, a government should develop enabling legislation and create a special PPP unit to guide the implementation process. PPPs do have their advantages and disadvantages, but their success or failure may depend on the final services or infrastructure they deliver. The next chapter will examine PPPs in South Africa.

Chapter 3

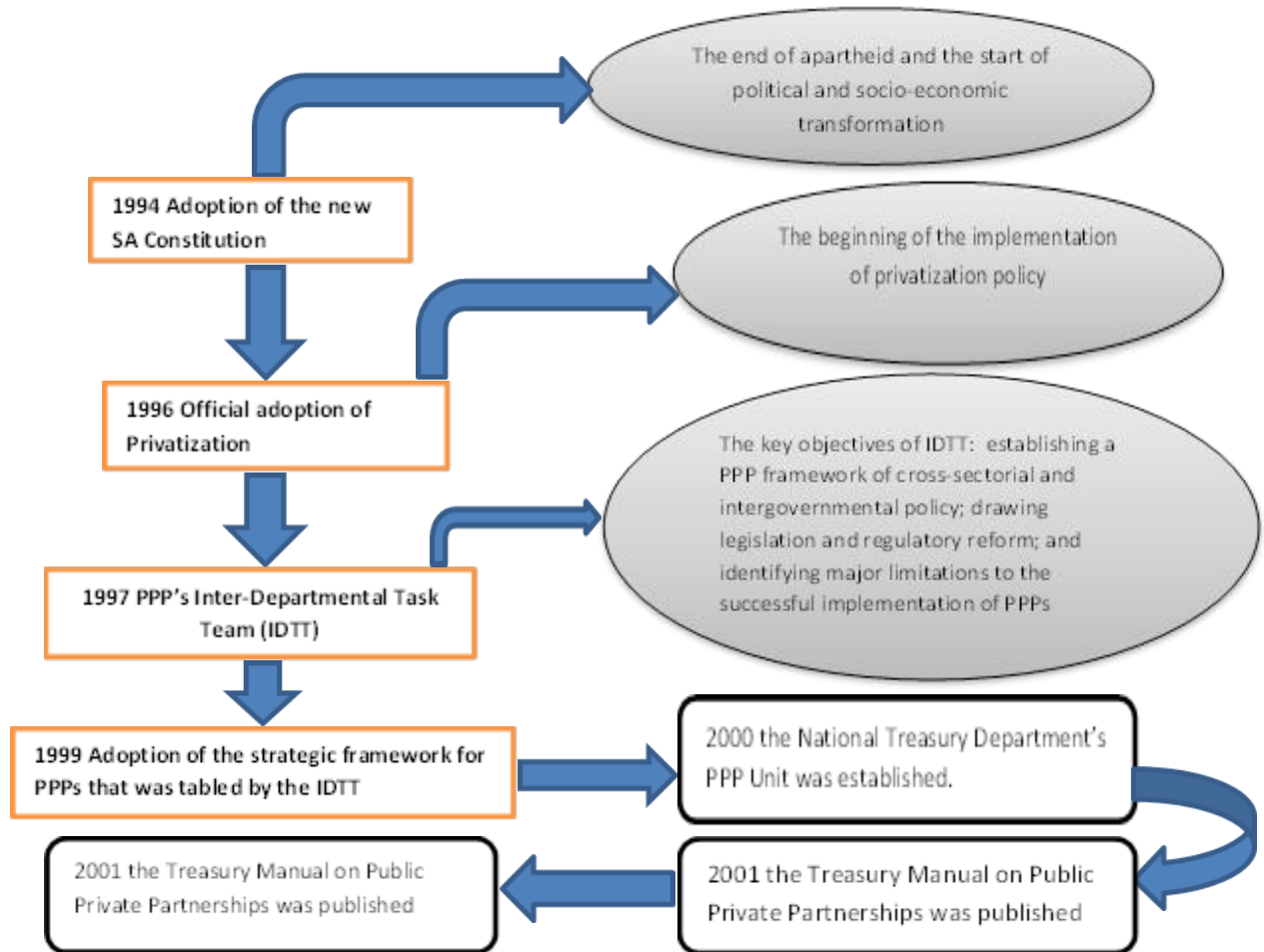
PUBLIC PRIVATE PARTNERSHIPS IN SOUTH AFRICA

3.1 Introduction

The adoption of a new South African constitution in 1994 marked the beginning of social and political transformation. All laws and policies were amended so they would correspond to the principles, vision and aspirations of the new constitution (Heyman, 2003). This transformation facilitated changes in the South African government's approach towards the management of public properties, encouraged the application of institutional hybridity and forced state institutions to move from government to governance (Burger, 2006). Burger (2006) argues that the transformation of South African public bureaucracy and new approach to the management of public properties encouraged the use of PPPs in infrastructural development and service delivery.

In April 1994 the cabinet approved the formation of an Inter-Departmental Task Team (IDTT), whose mandate was to identify major limitations to the successful implementation of PPPs, to draw legislation and regulatory reform, and a cross-sectorial framework, and facilitate intergovernmental policy (Schoenteich, 2004). In December 1999, the cabinet did approved the strategic framework for PPPs tabled by the IDTT, and as a result in 2000 the National Treasury's PPP Unit was established (PPP Unit, 2007). In early 2001 the Treasury Manual on Public Private Partnerships was published (Schoenteich, 2004). In order to govern the implementation of PPPs at the national and provincial level, the treasury regulations were published in terms of the 1999 Public Finance Management Act (PFMA), and the Treasury Regulation 16 (Levinsoh and Reardon, 2007). The diagram below provides the evolution of PPPs in South Africa.

Diagram 1: The Evolution of PPP



3.2 Definition of PPPs in South Africa

As noted in Chapter two, there are many definitions of PPP from different scholars, governments and non-governmental institutions. Different countries tend to prefer their own definition of PPP in order to facilitate its implementation; therefore it is very important to look at how a PPP is defined in South Africa. However, it is important to understand that even though the theory of PPP is also considered to be practical and able to be implemented, the reality is that in terms of service delivery or for providing development solutions, PPPs are not realising their potential (Mitchell, 2007). In his study Mitchell (2007) concluded that the primary reason behind the inability of the PPP concept to reach its potential is the narrow application of the definitions provided in most literature. Mitchell's (2007) studies discovered that as far as the PPP concept is concerned, there is very little South African literature that has emerged since 2005. Mitchell

(2007) is convinced that this lack of literature in South Africa is a clear indication that the development of partnerships is slowing, while unwieldy legislation is developing.

The World Bank (2007) suggests that countries need to define the term “PPP” in order to clarify the role of the PPP Unit and set limitations in terms of responsibilities, and differences between PPPs and other government transactions within the private sector. South African law (PPP Unit, 2007: 5) defines a PPP as “a contract between a government institution and a private party, where the private party performs an institutional function and/or uses state property in terms of output specifications; substantial project risk (financial, technical, operational) is transferred to the private party, with the private party benefiting through unitary payments from government budgets and/or user fees”. By looking at the legal South African definition of PPP, one can say that it does not differ from this broad definition. The broad definition of PPP presented by the World Bank (2007:13) considers it as “an agreement between a government and a private firm under which the private firm delivers an asset, a service, or both, in return for payments. These payments are contingent, to some extent, on the long-term quality or other characteristics of outputs delivered”. Schoentech (2004) argues that the term PPP is used by the South African government in referring to the method of outsourcing the delivery of public goods and services by a private entity. To contradict Schoentech (2004) the Treasury Regulation 16 argues that a PPP is not just a simple method of outsourcing the delivery of public services; it is a long-term contract that is based on transferring substantial risk. The Treasury Regulation 16 advises that a PPP must not be considered as a donation of public good from a private party.

3.3 Types of PPPs in South Africa

There are numerous PPPs in different sectors of the South African economy, including health, transport, information technology, tourism, toll roads, fleet management, and education. The South African Treasury Regulation 16 distinguishes PPPs into two types: PPPs where the private party performs an “institutional function” and PPPs where the private party secures the “use of state property” for its own commercial purposes (National Treasury, 2007). Institutional function is defined broadly as a service, task, assignment or other function that an institution performs in the public interest, or on behalf of the public service generally (National Treasury, 2004). The South Africa Constitution assigns a functional area of competence to each institution of government. Treasury Regulation 16 does not explicitly exclude any type of institutional

function from being performed by a private party, but it maintains that certain institutional functions are reserved under applicable law, for performance only by the institutions concerned and may not be outsourced to the private sector (National Treasury, 2004).

The term state property is defined in Treasury Regulation 16 as all movable and immovable property belonging to the state including intellectual property rights. Even though the term ‘use’ is not defined by the Treasury Regulation 16, the National Treasury (2004) points out that the term ‘use’ in relation to property, may include a variety of ‘use’ forms recognized by South African law, and therefore state property can be used under a contract of “lease” or a contract of “concession”. However using international experience, Treasury Regulation 16 permits PPPs to be established with a range of different characteristics that facilitate the transferring of risk to the private party for designing, financing, building, and operating infrastructure and services (National Treasury, Department, 2007). BOOT, BOO and BOT are the most common models of PPP used in South Africa; BOO and BOT are similar to concessions, but are mostly used in green field projects. Other predominant models are DBFO, DBOT and (DBO), with the Lease Own Operate (LOO) not yet dominant in South Africa. This could emerge as a worthy model, similar to a BOO, where an existing asset is leased from the government for a specified time (KZN Department of Economic Development, 2005).

3.4 Statutory and Regulatory framework for PPPs in South Africa

In 2004, former Minister of Finance Trevor Manuel (PPP Manual, 2004) pointed out that the systems, laws and policies that have been established by the South African government, make it possible for South Africa to be among the leading countries in the implementation of PPPs. Burger (2006) contends that the South African framework for PPPs are very advanced and clear. Levinsohn and Reardon (2007) in their article titled “Municipal PPP Projects in South Africa: Obstacles and Opportunities”, pointed out that South Africa has one of the most developed PPP legal frameworks in the Southern African Development Community (SADC).

The South African government has established firm statutory and regulatory frameworks in terms of which the three spheres of government institutions can enter PPP agreements (Levinshon and Reardon, 2007). The statutory and regulatory frameworks for PPPs in South Africa are, the Constitution, the Public Finance Management Act (Act 1 of 1999) and

Regulations issued in terms of that Act, the Municipal Finance Management Act (Act 56 of 2003) and Regulations issued in terms of that Act, the Municipal Systems Act (Act 32 of 2000), the Preferential Procurement Framework Act (Act 5 of 2000), the Broad Based Black Economic Empowerment Act (Act 53 of 2003) , the Treasury Regulation 16, the National Treasury Regulation Practice Note on PPP and the PPP Standardization Document (National Treasury, 2004).

The relevant legislation governing PPPs at a national and provincial level are sections 31(1) (a) (iii), 51(1) (a) (iii) and 76(4) (c) of the Public Finance Management Act (Act 1 of 1999) and Treasury Regulation 16. At the municipal level, PPPs are governed by the Municipal Finance Management Act (Act 56 of 2003 (MFMA) and its regulations, and the Municipal Systems Act (Act 32 of 2003). (National Treasury, 2007). The National Treasury argues that all of these statutory and regulatory frameworks support and reflect the South African government's objectives for delivering infrastructure and public services without contradicting its constitutional mandate (National Treasury, 2004).

3.3.1 The Public Finance Management Act (Act 1 of 1999) (PFMA).

The PFMA focuses on outputs and responsibilities, and is considered to be the foundation of government's strategy to improve financial management in the public sector, making sure that state institutions are spending taxpayers' money efficiently, and are producing the intended result (National Treasury, 2005). The PFMA gives effect to sections 213 and 215 to 219 of the Constitution, which insists on efficient management of public funds. The PFMA's main role is to promote good financial management in order to maximise service delivery through the effective and efficient use of the limited public resources. The Act refers to matters such as the government's need to modernising the system of financial management in the public sector; enabling public sector managers to be held accountable in their institutional duties; facilitating the adequate provision of quality information; and eliminating the waste and corruption in the use of public assets

3.3.2 Treasury Regulation 16

Section 76(4)(c) of the PFMA instructs the National Treasury to make regulations regarding the determination of a framework for an appropriate procurement and provisioning system which is

fair, equitable, transparent, competitive and cost-effective. Using the instruction from the PFMA, the National Treasury issued the Treasury Regulation 16. The National Treasury's Regulation 16 provides precise and detailed instructions for PPPs; it defines a PPP, and prescribes the procedures to be followed by state institutions when entering into a PPP agreement. In support of the principles of public procurement that the South African constitution requires all state institutions to follow, Treasury Regulation 16 recommends that all PPPs must conform to the necessity of affordability, value for money and acceptable risk transfer from government to the private entity.

3.3.3 Municipality Finance Management Act 56 of 2003 (MFMA) and the Municipal Systems Act of 2003 (MSA)

On the 1st of April 2005 the MFMA and MSA came into effect after an agreement between the Minister of Finance and the Minister for Provincial and Local Government. The Local Government Municipal Finance Management Act addresses the PPP provisions in both the MSA and the MFMA, and other matters in the MFMA related to the procurement of long term PPP agreements (National Treasury and National Department of Provincial and Local Government, 2007). There is considerable policy uniformity between the PFMA and MFMA regulations with regard to PPP. These include affordability, risk transfer and value for money; the main PPP principles which are also consistent in the PFMA and MFMA. The only difference is in their institutional systems and decision-making processes (Mitchell, 2007).

The MFMA aims at modernising budgetary and financial management practices in local government, and maximising the capacity of municipalities to deliver services to all their inhabitants, clients, users and investors. It also develops a comprehensive financial governance framework to clarify and separate the roles and responsibilities of the mayor, executive and non-executive councilors and officials (National Treasury and National Department of Provincial and Local Government, 2007). Section 168(1) (d) of the MFMA enables government to regulate or guide municipalities and municipal entities on issues related to the financial obligations of municipalities and municipal entities, in terms of PPP agreements and central legislation governing municipal PPPs.

The MFMA and MSA have similar provisions: both are built on a performance system adopted by the municipality; the MFMA focuses on financial performance and the procurement of goods and services, while the MSA focuses on non-financial performance, and establishing clear guidelines on community involvement (National Treasury, 2004). The MSA is applied when a municipality evaluates and decides on the suitable mechanism to provide a municipal service; it is a the framework that provides the criteria and processes that are to be followed by the municipality in when deciding on the mechanisms needed to provide a public service (Mitchell, 2007).

3.4 The PPP Unit

In analysing the origin of PPP Units in different countries, the World Bank (2007) noted that the creation of a PPP Unit in South Africa was driven by concern from the Treasury concerned over a 30 year Build-Operate-Transfer contract for two prisons. When the National Treasury investigated this contract, it was found that although the contract offered value for money, it was very expensive and would probably require additional resources from the Ministry of Public Works, which the Ministry did not have (World Bank, 2007). In order to avoid mistakes like this in the future, the National Treasury established the Treasury PPP Unit to eliminate any future fiscal mistakes during the establishment of PPP transactions (World Bank, 2007).

Established in 2000, National Treasury's PPP Unit is the main government agency for PPPs in South Africa (National Treasury, 2007). The design of the South African PPP Unit was influenced by the UK Treasury's PPP Unit (Aiello, 2010). Apart from its regulatory function, the unit plays a crucial role in the development of the South African PPP market. The main objectives of the treasury's PPP Unit are as follows: empowering the National Treasury and provincial treasuries to regulate PPPs, and to develop a vigorous and supportable PPP center of excellence; initiating PPP contracts and identifying PPP opportunities that may produce value for all stakeholders,; and providing technical assistance to government institutions through project feasibility, procurement and management. Further responsibilities of the treasury's PPP Unit are the promotion of an enabling environment for PPPs by facilitating certainty in the regulatory framework; developing best practice guidelines; providing training; distributing trustworthy information; and driving Black Economic Empowerment in PPPs (<http://www.ppp.gov.za/Pages/About.aspx>). The National Treasury (2007) argues that apart from

the regulatory function of the Treasury PPP Unit, the Unit also plays a key role in the development of the South African PPP market.

On the other hand, the World Bank (2007) contends that the objectives of South Africa's PPP Unit are conceivably more limited than that of PPP Units in other countries. The World Bank argues that this is because the South African PPP Unit was originally established to avoid poorly designed PPPs, not essentially to promote PPP ideas. It is for this reason that the objectives of the South African PPP Unit are to facilitate all PPPs to meet the criteria of affordability, value-for-money and appropriate risk transfer; and to establish a framework for PPP projects that protects the government against PPPs that are likely to fail. The World Bank (2007) is convinced that the objectives of the South African PPP Unit have also served to attract private partners to South Africa and not merely prevent bad partnerships.

3.5 PPP and Black Economic Empowerment (BEE)

The BEE policy is a broad-based, inclusive core component of South Africa's overall growth strategy (National Treasury, 2007). It is one of the policies that were adopted by South Africa's democratic government in order to redress the legacy and economic effects of apartheid. This policy is based on the Broad-Based Black Economic Empowerment (BBBEE) Act of 2003 (National Treasury and Department of Provincial and Local Government, 2004). The National Treasury (2007) considers PPPs as good vehicles for promoting and developing BEE because PPPs provide valuable opportunities for strong and sustainable economic empowerment. A Code of Good Practice for BEE in PPPs is the National Treasury's official framework for BEE in PPPs. The National Treasury Department and its PPP Unit recommends that all PPPs' implementing agencies consistently set and meet BEE targets in the entire PPP process, from the appointment of the transaction advisor to the final procurement of the private party (National Treasury, 2007).

When one reviews the different policy documents it becomes clear that the policy objectives for BEE in PPPs are as follows: to allow black people, black women and black enterprises to directly benefit from PPPs, thereby achieving efficient participation of black people, black women and black enterprises in the management control of the private party and its subcontractors in the PPP market; and to make sure that a significant share of the private party's

subcontracting and procurement is owned by black people, black women and black enterprises (National Treasury and Department of Provincial and Local Government, 2004). Even though PPPs have been considered by the National Treasury Department and PPP Unit to be the vehicle that promotes BEE in PPPs, it is very important to understand that there are many challenges affecting BEE in PPPs. Some of the challenges are as a result of blacks in the past not being able to accumulate capital, limiting their ability to enter into PPP deals. The majority of black enterprises cannot afford to pay the costs of independent financial and legal advice, and the majority of black people don't have enough experience and skill in PPPs (National Treasury and Department of Provincial and Local Government, 2004).

3.6 Advantages and Challenges of PPPs in South Africa

Haarhoff (2008) argues that different scholars and school of thoughts have evolved over the years on the advantages and challenges of PPPs. Thus it is very important to look at the advantages and disadvantages of PPPs in South Africa.

3.6.1 Advantages

Some of the advantages of PPPs in South Africa are:

- **PPPs mobilise private capital to fund infrastructure**

In a PPP, the private parties usually use their own funds to build and maintain infrastructure on behalf of the procuring public institution. This is explained by the ability of the private party to secure funds and access loans, making it easier to complete the infrastructure on time and within budget (National Treasury, 2007). However, the Treasury PPP Unit advises that the lack of funding on the part of the public institution should not be the main reason for entering into a PPP, because the infrastructure will still have to be paid for over the period of the PPP (National Treasury, 2007).

- **Project planning**

The national PPP framework obliges managers to follow careful planning processes centered on the project feasibility study. As a result PPPs become a good mechanism for government

institutions to plan projects, aligning them with their strategic delivery responsibilities and using well developed business plans (National Treasury, 2007).

- **Risk transfer and management**

PPPs are designed to allocate risks to the party most able to manage them (National Treasury, 2007). This is an advantage to government because most of the time in a PPP agreement the public institution involved in the contract allocates the risks to the private sector. In a more traditional procurement process, the public party usually bears all the risks associated with the program.

- **PPPs facilitate Local Economic Development (LED)**

Fowler (2003 in Phago and Malan, 2004) argues that the complementary role of the private sector is considered to be one of the key aspects that contributes positively to socio-economic and LED in South Africa. The contribution of PPPs in LED is explained by the innovative ideas, skills and technology from the private institutions involved in PPPs at the local level (Rogerson, 2009). The Midlands Meander project is considered to be a good example of how the private sector conceptualized and developed tourism in a once marginal economic sector, and transformed it into a leading sector for LED.

- **PPPs boost the capacity of municipalities**

Researchers have revealed that South African municipalities are not only under-resourced, but also unable to deliver basic and fundamental services in a just and equitable manner. For example, Phago and Malan (2004) argue that PPPs have been able to enhance service delivery, by allowing municipalities to utilise the expertise, investment and management capacity of the private sector to develop the infrastructure, as well as improve the delivery of services to all residents. This can be explained by the fact that PPP contracts require skills to be transferred to the public sector (National Treasury, 2007). At the same time Seemela (2008: 486) maintains that “with PPPs, municipalities may be able to realize cost savings for capital projects as well as the operation and maintenance of services”.

- **PPPs maintain the quality of service throughout the contract**

By using the traditional procurement method, the condition of an asset or an infrastructure declines as it gets older, and therefore the service levels provided by that asset or infrastructure also decline. In a PPP arrangement however, the contract can insist on that the private party has to maintain the same standard of service delivery for the duration of the contract (National Treasury, 2007).

- **Method of payment is outcomes-driven**

In a PPP, the public sector pays the private sector only when the service infrastructure or delivery agreement(s) targets have been met. If the private party delays in its delivery obligation, there is no onus on the public institution to pay. This means that taxpayers do not bear the costs for a service or an infrastructure that has not been delivered (National Treasury, 2007). It also highlights the risk element which is the largely the burden of the private partner. In other words, the private partner undertakes to take on the financial risk by (i) sourcing its own fundings (whether through loans or not; (ii) commence capital expenditure of infrastructure; with the anticipation that its user fees will offer an adequate return on investment in the long-term. If problems occur during this process, the liability remains that of the private sector.

- **PPPs are an enable tool for BEE**

PPPs are considered to be an excellent vehicle for developing BEE by focusing on skills and creating jobs for black people (National Treasury, 2007). Their long term nature creates an opportunity for black people to be awarded PPP contracts through preferential procurements processes.

3.6.2 Challenges

There are multiple challenges affecting PPPs in the world (World Bank, 2007). Some of the challenges affecting PPPs in South Africa are:

- **Inadequate monitoring and evaluation system**

Fouri (2008) is convinced that the major shortcoming of PPPs in South Africa is the lack of an effective monitoring and evaluation system to assess the benefits of sustainability. Monitoring

and evaluation is a very important process in any project, and in the context of PPPs monitoring has two functions. One is to ensure that partners are doing what they are supposed to be doing and the other is to provide an opportunity to review and enhance the process of service delivery in all its aspects, both technical and financial (Rogerson, 2009). Rogerson (2009) argues that most of the PPP contracts have inadequate or non-functioning monitoring systems.

- **Lack of highest level policy direction**

The research conducted by Castalia and Ukhamba (2007) also noted that there was no effective leadership at the national level that could take PPPs forward. Clearly the national government had failed to provide a clear and more predictable direction that would allow public institutions to decide when and why they needed to establish PPPs both in general, and in specific sectors within the South African economy. The national government has been unable to clarify whether it favours the use of PPPs in general, or under specific circumstances, or in specific sectors; this shows that the government is unclear as to precisely which policy objectives need to be achieved by PPPs in South Africa (Castalia and Ukhamba, 2007). For instance the National Treasury's advice is that PPPs should be used to achieve value for money, optimal risk transfer, and improve long-term planning, but many implementing institutions view PPPs as vehicles for financing, not service delivery

- **Lack of integration of PPPs in sector planning and poor promotion of PPPs where they are most needed.**

Castalia and Ukhamba, (2007b) argue that the planning process of PPPs in South Africa is not integrated into the whole sector planning by the appropriate implementing institutions. As a result, PPPs are often unplanned, limiting their usefulness in any sector. The National Treasury PPP Unit is a promoter of the concept of PPPs in general, and a champion for principles of good implementation of PPPs,. However limited of resources have prevented the PPP Unit from advancing into specific sectors, more specifically municipalities, where infrastructure is most needed (Castalia and Ukhamba, 2007b).

- **Incapacity of public partners**

Lack of institutional capacity to manage and maximise the potential of PPPs undermines their effective implementation, as most of the public sector 's 'employees do not have the technical expertise to engage meaningfully with the technical aspects of a of PPP contracts (Rogerson, 2009). Research conducted by Castalia and Ukhamba (2007) found that managers within national departments, provinces, and municipalities did not have sufficient time or resources to give to PPPs; they lacked the knowledge or ability to originate a PPP or manage a PPP transaction; and they did not have the confidence or authority to make significant decisions in managing PPPs. Similarly, Aiello (2010) found that managers within line departments, provinces, and municipalities lacked sufficient time and resources to dedicate to PPPs, the knowledge or ability to originate a PPP or manage a PPP transaction and the confidence or authority to make critical decisions in managing PPPs.

- **Understanding, interpretation and implementation of the law**

The majority of public partners have difficulty managing the legal requirements associated with the selection and management of PPPs. For instance the MFMA and MSA require feasibility studies to be completed before signing a PPP contract. While the feasibility studies are similar tofor each party, the municipality is obliged to satisfy all the requirements stipulated in both the MFMA and MSA. This procedure is very complex, and requires legal expertise which some municipalities don't have. As a result municipalities are discouraged from engaging or initiating PPPs (Castalia and Ukhamba, 2007). Funani (.....) is convinced that in practical terms the feasibility study process tends to be sporadic and is rarely linked to government planning processes. In the Castalia and Ukhamba (2007) study it was discovered that the formal legal framework of a PPP is illogical and overwhelmed by conflict between the MFMA and the Municipal Systems Act (MSA).

- **Unnecessary regulation by the PPP Unit.**

The World Bank (2007) maintains that the roles of South Africa's PPP Unit are more limited than those of PPP Units elsewhere. South Africa's PPP Unit aims at preventing poorly designed PPPs, and not necessarily promoting PPPs. Workshop participants from the private sector and from some implementing agencies who participated in Castalia and Ukhamba's (2007b) research

believe the PPP Unit's level of oversight has been more extensive than necessary to ensure the flow of high quality PPP transactions in South Africa. The World Bank (2007: 49) points out that "the Treasury PPP Unit has been criticized by some observers for being too restrictive, either directly or tacitly, thereby preventing good PPPs".

- **Changes in political leadership**

PPP contracts can last from five to more than twenty years. In fact, PPPs that pertain to major infrastructure projects are often twenty year contracts. This means that the PPP will be exposed to different political leaders. Changes in political leadership may affect the management of the PPP arrangement, regardless of the contract. At the same time, there have been frequent leadership changes within the PPP Unit itself, which has affected the development of the policy environment for PPPs in South Africa (Castalia and Ukhamba, 2007).

- **The management of a PPP agreement**

The management of PPP agreements or contracts is a procedure that needs to enable all parties in the PPP arrangement to meet their respective responsibilities in order to deliver the objectives required from the PPP agreement. It includes the establishment of a smooth working relationship between the public and private parties that will shape the execution of the contract from the beginning to the end (National Treasury, 2007). The fundamental aim of managing PPP agreements is to facilitate the PPP to deliver the services or infrastructures as they were specified in the contract, and to guarantee ongoing affordability, value for money and appropriate risk transfer (National Treasury and Department of Provincial and Local Government, 2004).

The accounting officer or accounting authority of the public institution that has initiated a PPP contract is responsible for making sure that the PPP agreement is correctly implemented, managed, enforced, monitored and reported on, and must preserve such mechanisms and procedures as the Treasury recommends (National Treasury, 2007). Managing the PPP agreement has three key functions: partnership management; service delivery management; and contract administration (National Treasury, 2007). Partnership management focuses on the processes of accountability and how the public and private partners relate to each other; service delivery management is concerned with the systems and procedures that were designed in order to manage risk and performance; and contract administration is linked to all the compulsory

administrative processes that seek to ensure that all the procedures and mechanisms contained in the PPP agreement, and all the paper work related to the PPP agreement, are excellently managed (National Treasury and Department of Provincial and Local Government, 2004). But the National Treasury Department (2007) advises that during the implementation of a PPP agreement, these functions need to be undertaken instantaneously at any particular phase of the project. The challenges list above, make the overall management of PPPs an even more difficult task than it already is.

3. 7 Conclusion

There are multiple definitions of PPPs, but South African law (PPP Unit, 2007: 5) defines a PPP as “A contract between a government institution and a private party, where the private party performs an institutional function and/or uses state property in terms of output specifications, substantial project risk (financial, technical, operational) is transferred to the private party, the private party benefits through unitary payments from government budgets and/or user fees”. This definition is considered to be unclear and as a result the majority of implementing agencies get confused on how to determine risks. Even though there are numerous PPPs in different sectors of the South African economy, South African Treasury Regulation 16 distinguishes PPPs into two types:; PPPs where the private party performs an “institutional function”;; and PPPs where the private party secures the “use of state property” for its own commercial purposes (National Treasury, 2007). National Treasury’s PPP Unit, established in 2000, remains the main governmental agency for PPPs in South Africa (National Treasury Department, 2007).

Despite the challenges that PPPs are facing in South Africa, they have remained the relevant alternative for service delivery and infrastructural development. They are designed to allocate risks to the party that is best able to manage them, while also creating value for money (National Treasury Department, 2007).

Chapter 4

PPPs IN THE SOUTH AFRICAN HEALTH SECTOR: CASE STUDIES

4.1 Introduction

Throughout third world countries health services are provided by both the private sector and the public sector, with the public sector struggling to provide adequate health services to the people because of a lack of resources (Haarhoff, 2008). The public sector's lack of funds, resources, advanced infrastructure and expertise has made the private sector the better health service provider due to its massive resources and highly developed infrastructure (Haarhoff, 2008). In order to find a solution to all the challenges affecting the public sector, the World Bank (2007) has advised developing countries to form partnerships with the private sector in infrastructural development and service delivery. The World Bank's (2007) call for partnerships between the government and private sector raises multiple debates on whether healthcare services can be publicly or privately financed, or whether healthcare services can be provided by public or private institutions (Lim, 2005). Because the World Bank (2007) advises that there is no single institution that can find a solution to all the problems affecting the people, one could argue that the issue should not be whether the private or public sector is the legitimate provider of health services, but rather that a partnership between the government institutions and private organisations would be a better option.

Lim (2005) maintains that the main challenges affecting public healthcare worldwide are, how to raise income to fund health services and infrastructure; how to avoid risks related to resource and infrastructural development; and how to establish and deliver health services and infrastructure in the most efficient and cost-effective manner. In responding to these questions, Lim (2005) agrees with the World Bank's (2007) suggestion of using PPPs as an alternative tool for service delivery and infrastructural development in the struggling health sector. Lim (2005) explains that PPPs reflect a situation where a public institution mobilizes the private sector to fund healthcare services, or a situation where the government and the private sector participate in the delivery of public health services and infrastructure. In South Africa, the National Treasury Department has been encouraging all spheres of government, including the National Department of Health, to

develop PPPs as an alternative mechanism for service delivery and infrastructural development (Haarhoff, 2008).

4.2 Challenges affecting the South African Health Sector

The Republic of South Africa has a population of 52.98 million people (Statistics South Africa, 2013), living in nine provinces. Even though, the South African democratic government's objective has been to transform public institutions into ones that provide equal services to all (Special Unit for South-South Cooperation, 2012), the South African healthcare sector is facing a lot of challenges in both the public and private sectors (National Department of Health, 2007). The 1997 South African Health Review reported that the majority of health care facilities are in bad condition, were poorly distributed and lack essential resources (Infrastructure Barometer, 2012). In 2007, the National Department of Health pointed out that the lack of resources, variations in services, inadequate diagnosis and treatment, inefficient use of resources, poor information, inadequate referral systems, disregard for human dignity, drug shortages, records not well kept and poor delivery systems are the main challenges facing South African healthcare in both public and private sectors. The health service standard provided by the World Health Organization (WHO) stipulates that that one clinic should accommodate only 10000 patients, but in 2009 the estimated number of patients per clinic was 13906, and in 2010 it was 13718 per clinic (Infrastructure Barometer, 2012). This can be explained by the fact that between 2004 and 2009 the South African population growth was greater than what could be accommodated by the health facilities (South African National Health Strategic Plan 2010/11–2012/13).

The policy on Quality in Health Care for South Africa (2007), the Infrastructure Barometer (2012) and the Special Unity for South-South Cooperation (2012) all advise that in order to provide equal health services to every South African, the construction and maintenance of new medical infrastructure is needed. Both the National Development Plan (NDP) (2030) and the Unity for South-South Cooperation (2012) identified the private sector as a key contributor in the provision of public hospitals given the state's limited resources. The World Health Organization (2010) in Ricks, van Rooyen, Gantsho and Ten Ham, (2013) consider PPPs to be one of the keys tools that can facilitate the successful implementation of Health for All" in the twenty-first century, and highlighted the need for PPPs among institutions at multiple levels and all sectors concerned with health. To concur with the World Health Organisation, the South African NDP

argues that meaningful PPPs in the health sector are important; and should be guided by best practice purchasing, provisioning, procuring and sound financial management of health services to create incentives for improving access, greater equity, higher quality, more innovation and serving the poor with efficiency (NDP 2030: 321).

4.3 Rationale for PPPs in the South African Health Sector

There are multiple reasons for the National Department of Health to use PPPs in the maintenance and construction of hospitals in South Africa. Some of these reasons are:

- To accelerate the effective delivery of healthcare services at costs that are reasonable (Shuping and Kabane, 2010);
- To obtain private institutions' skills and expertise (Haarhoff, 2008);
- To reduce government spending on the provision and maintenance of hospitals (Lim, 2005);
- To address the challenges of infrastructure needs, that have been affecting the South African public health sector (Shuping and Kabane, 2010) and Special Unit for South-South Cooperation, (2012);
- To improve healthcare delivery standards as well as mutual benefits for both partners involved in a PPP contract (Ricks et al., 2013);
- To improve governance whereby the National Department of Health oversees performance against output requirements managed by a single person (Haarhoff, 2008).;
- The construction and maintenance of hospitals using PPP are found to be more cost-effective than purely public sector provision (Lim 2005 and Haarhoff 2008).;
- To create jobs without using government expenditure (Shuping and Kabane, 2010);
- Services or infrastructure are delivered according to appropriate and measurable output specifications, and payment of services is linked to quality of service or infrastructure;
- PPPs are voluntary in nature and are a product of often prolonged negotiations, where all the parties are free to choose to sign or not to sign the contract, and there is room for all the parties to obtain the best advice and take well considered decisions (Shuping and Kabane, 2010).

4.4 Case Studies

This chapter examines three of the hospitals that have been provided for through PPPs and the lessons learned from these projects. The case studies will be examined by using the three phases as they are reflected in the National Treasury PPP Manual.

- **The first phase is project inception**

Module three of the National Treasury PPP Manual (2004:7) advises that “once a public institution has identified a project that may be executed using a PPP, the accounting officer or accounting authority must in writing, register the PPP with the relevant treasury, inform the relevant treasury of the expertise within that institution to proceed with a PPP, appoint a project officer from within or outside the institution and appoint a transaction advisor if the relevant treasury so requests”.

- **The Second phase is a feasibility study (Treasury Approval: I)**

Module four of the National Treasury PPP Manual (2004) advises that in order to decide whether a proposed PPP is the best option for a public institution, the accounting officer or authority of the institution must conduct a feasibility study. Feasibility studies focus on needs analysis; options analysis; value assessment; economic valuation and procurement plans (National Treasury, 2007).

- **Procurement (Treasury approvals IIA and IIB)**

Procurement focuses on designing a fair, equitable, transparent, competitive, cost-effective procurement process, and preparation of bid documents, including a draft PPP agreement.

4.4.1 Case Study One: Inkosi Albert Luthuli Central Hospital (IALCH)

4.4.1.1 Background

The idea of building a sophisticated modern hospital in the Cato Manor suburb of Durban KwaZulu- Natal was conceived in the 1980s. The aim of the project was to build a teaching hospital with 1000 beds (Haarhoff, 2008). In the mid-1990s after the first democratic election, the project of building a modern medical institution changed into the construction of an 850 bed

referral hospital called Inkosi Albert Luthuli Central Hospital (IALCH) instead of a teaching hospital (National Treasury Case Studies, 2007). The IALCH project gained momentum in 1996 when Dr Zweli Mkhize was the KwaZulu- Natal Provincial mMinister of Health and Professor Green- Thompson was the head of the KZNoH (Jokozela, 2012). Jokozeke (2012) argues that Dr Mkhize and Professor Green-Thompson believed that KwaZulu- Natal needed a modern central hospital that would be a center of excellence. The net present value of the IALCH is R5billion (Nyagweci, 2008).

Project Finance Magazine, a leading financial magazine, recognized the IALCH as the African PPP/Health care deal of the year in 2002 (USAID, 2005) and it is one of the most sophisticated modern hospitals in the world. The IALCH is the first public hospital in South Africa to be constructed under a PPP, where by a number of functions were shifted to the private sector (Leeman, 2002). Even though the construction of the IALCH started in 1996, before the current South African PPP process was approved in 2000, many of the principles laid down in the South African PPP manual were followed, and may even have informed the formulation of the National Treasury PPP Manual. (National Treasury Case Studies, 2007).

The IALCH project is considered to be a pathfinder project because it is the first South African PPP project to be implemented under the regulation and guidance of the PFMA (National Treasury Case Studies, 2007).

4.4.1.2 Objectives and Mission of the IALCH Project

The National Treasury PPP Unit (in Jokozela, 2012: 79) makes clear that the main objectives of the IALCH project are:

- To increase value for money by selecting the services on the basis of the whole life cost;
- To make service payment based on the availability;
- To make sure that expenditure is within the province's capacity;
- To establish a replacement program for all equipment;
- And to transfer appropriate risk to the private party.

The Treasury Case Studies (2007) stipulates that the main mission of the IALCH is to provide a world-class tertiary and central hospital service through the delivery of first class facilities and by making sure that services are provided by trained and competent people who are working together with the aim of always putting the needs of patients first.

4.4.1.3 Phase One: Project Inception

- The appointment of a project officer and project team

At the beginning of the project Mr. Siphon Buthelezi was appointed as project officer, the project team was constituted by the KZNDoh personnel (National Treasury Case Studies, 2007). Later Mr Siphon Buthelezi was replaced by the chief financial officer of the KZNDoh (Haarhoff, 2008).

- The appointment of the transaction advisor

KZNDoh appointed a transaction advisor consisting of representatives from a number of different disciplines, and it was led by Pricewaterhouse Coopers (National Treasury Case Studies, 2007). In 2000, Ezempilo Consortium was appointed as a transaction advisor (Jokozela, 2012).

4.4.1.4 Phase Two: Feasibility study (Treasury Approval: I)

At the time of conducting the IALCH feasibility study the practice manual issued by the PPP Unit of the National Treasury Department was not yet issued, and as a result the IALCH feasibility study did not follow the process provided by the practice manual (Haarhoff, 2008). The purpose of a feasibility study is to help determine whether or not a PPP is the appropriate vehicle for a project, it also has to determine whether the PPP choice is affordable, can transfer appropriate technical, operational and financial risk to the private party, and can give value for money (National Treasury, 2004). The IALCH's feasibility study was done by Ezempilo Consortium on behalf of the KZNDoh and who advised the KZNDoh to sign a PPP deal to deliver non-clinical services, such as the supply of equipment, information management and technology (IM&T) and facilities management to the IALCH (Jokozela, 2012) to facilitate operations. Other services required from the private sector were maintenance and medical

equipment and facilities, as well as the replacement and upgrading of software for IM&T to remain technologically up-to-date (National Treasury Case Studies, 2007).

To provide a realistic budget reflecting the general cost of equipment in South Africa, the transaction advisors used a room-by-room approach to decide what equipment was required; they determined that medical equipment needed to be replaced every five years based on the lifecycle stipulated by manufacturers, and that technology and software upgrades should be done in three year cycles (National Treasury Case Studies, 2007). The feasibility study advised that the maximum affordability should be in accordance with the manual's recommendations and must be disclosed in the tender documents. The contract term must be for 15 years, starting from March 2002 until 2017, when it can be extended for a minimum of 6 months and a maximum of 12 months (Jokozela, 2012).

- **Treasury approved IIB**

The approved contract between KZNDoh and Impilo Consortium is for 15 years, from March 2002 until 2017, and can be extended for a minimum of 6 months or a maximum of 12 months (Jokozela, 2012). It stipulated that Impilo Consortium is the Special Purpose Vehicle (SPV) responsible for all purchases relating to medical, Information Technology (IT) and facility management in the hospital (National Treasury Case Studies, 2007). The subcontractors for medical equipment and IT were Siemens and Vulindlela; and facility management was subcontracted to Drake and Scull (National Treasury Case Studies, 2008). Financing of the project is made up of 60 million shares raised by Impilo Consortium and R320 million from the KZNoH (National Treasury Case Studies, 2008). In terms of BEE formalities, the IALCH project responds effectively with BEE equity at 40 percent and sub-contractors at 40 percent.

4.4.1.6 Risk Assessment

Haarhoff (2008) argues that using the information provided by the National Treasury Department, it is very difficult to determine whether all the risks were transferred to Impilo Consortium, but the available information shows that risks such as foreign exchange and currency fluctuation would probably be a disadvantage to the public sector. At the same time the Haarhoff (2008: 114) believes that the “8 percent occupancy and the costs associated with it is of

concern, because of penalties for the KZDoH if occupancy and other forms of usage exceed the agreed levels”

4.4.2. Case Study Two: Universitas and Pelonomi Hospitals Co-location

4.4.2.1 Background

In 2000, the Free State Department of Health (FSDoH) began a process of making use of underutilized hospitals in the Free State for the establishment of private hospitals in partnership with public institutions (Shuping and Kabane, 2007). Pelonomi and Universitas Hospitals in Bloemfontein were identified as appropriate institutions for the launch of an independent private hospital using surplus infrastructure within both institutions. Through a co-location model of public-private partnerships, the project called Universitas and Pelonomi hospitals co-location PPP was launched (Jokozela, 2012). A co-location PPP occurs when the public and private sectors operate a similar service and join forces rather than competing. This type of arrangement allows the public sector to generate revenue, and the private sector to generate profit in a win-win enterprise (Shuping and Kabane, 2007). Shuping and Kabane (2007) point out that a co-location PPP occurs when the public sector has redundant assets, and the private sector has well-defined commercial motives for the utilization of these excess public assets. The co-location PPP between the CHM the FSDoH was the first of its kind in the South African health sector (Shuping and Kabane, 2007).

4.4.2.2 Objectives and Mission of Universitas and Pelonomi Hospitals Co-location PPP

The project was initiated by the FSDoH because of facilities management excess and the need to create additional private beds in Bloemfontein (Jokozela, 2012).

The table below summarized the objectives of the Universitas and Pelonomi hospitals

Universitas Hospital	Pelonomi Hospital
To utilise excess ward space	To utilize under-utilised equipment.
To optimise the use of theatres and major equipment.	To provide private hospital beds in the Bloemfontein area.
To provide tertiary and academic services to the private partner.	
To promote retention of professional staff in the public health sector.	
To enhance the reputation and capability of Uuniversitas hospital through a partnership with a leading academic center.	

Source: Adapted from Jokozela (2012: 82)

The purpose of this project was to use public resources more efficiently. This was to be achieved by combining the assets of the public and private sectors, to improve on existing resources through private sector investment, and to improve on the maintenance of existing resources through private sector income creating activities (National Treasury Case Studies, 2007). This partnership also creates employment and the transfer of skills to the population of the Free State, and improves service provision in the public hospital through close association with the private sector, as well as through delivery of certain services to both parties by the public hospital (Jokozela, 2012).

4.4.2.3 Phase One: Project Inception

- The appointment of a project officer and project team

The project officer of the Universitas and Pelonomi Hospitals Co-location PPP is Mr M Khumalo from the FSDoH, and the project team is constituted of staff member from both partners (National Treasury PPP Unity, 2013).

- The appointment of the transaction advisor

Ignis and Naude Attornies were appointed by the FSDoH to perform the role of financial and legal advisors (National Treasury PPP Unity, 2013).

4.4.2.4 Phase Two: Feasibility study

In 2001, Community Hospital Management (CHM), which is a subsidiary of Netcare, was selected by the FSDoH as the preferred bidder (Firman and Litlhakanyane, 2010). The Treasury regulations that were in practice at the time were different from the current ones that were introduced in 2004 (National Treasury Case Studies, 2007). National Treasury Case Studies (2007) shows that during the initiation of the Universitas and Pelonomi Hospitals Co-location PPP, the Standardized PPP manual was still being formulated by the National Treasury Department and therefore there are no references made on Treasury Approvals I, IIA, IIB or III which would've provided clarity on the feasibility, study, procurement, and the main terms of the PPP contract. But for the sake of clarity the regulations that guided the creation of this study were called the 2001 regulations (Haarhoff, 2008).

Similarly, the Request for Qualification stage of the project also preceded the Treasury Regulations, and as a result no RFQ process, as recommended by the regulations, was followed (National Treasury Case Studies, 2007). However despite this omission, the registration of capability process was conducted and; interested companies were invited to submit proposals to the FSDoH,. Out of the process three organizations were pre-qualified, Afrox Healthcare, Mediclinic, and Community Health Management (CHM) comprising Netcare and the Malesela Group (National Treasury Case Studies, 2007). After the capability process the CHM was awarded the contract, and on the 25th of November 2002, the CHM and Malesela Group signed the Universitas and Pelonomi Hospitals Co-location PPP for 16 years and six months with the FSDoH (Shuping and Kabane, 2007). However the official list of signed PPP projects presented by the National Treasury PPP Unity (2013), shows that the Universitas and Pelonomi Hospitals Co-location PPP is a partnership between the FSDoH and CHM for 21 not 16 years.

The contract stipulates that CHM will upgrade medical facilities, theatres and intensive care units, and construct the Pelonomi private hospital from additional space (Jokozela, 2012). The FSDoH, has to make available all concessions place to CHM as they are without any

improvement; as well as inject an amount of R8.3m to stimulate the project. The FSDoH must also provide all the pharmaceuticals at the same price it received them from the suppliers (Jokozela, 2012).

4.4.2.5 Equity

The PPP manual recommends that in a partnership the private party should have 40% actively participating black equity, 40% of management team of the private party should be black, and 15% of the team should be comprised by women (National Treasury Case Studies, 2007). Schedule 29 of the Universitas and Pelonomi Hospitals Co-location PPP contract states that the CHM is 100% owned by blacks and will hold 40% of the beneficial equity in the concessionaire; 35% of the equity in the project has been reserved for local doctors and private investors; and 55% of this project will in turn be offered to doctors and empowerment entities. At the same time the schedule explains that nearly 70% of Netcare employees are female, and that it has significant capacity to train and transfer skills (National Treasury Case Studies, 2007). Using the statistics provided by schedule 29 of the contract, the National Treasury, (2007) and Jokozela, (2012) it can be concluded that the agreement conforms in all respects to the BEE requirements set out in the PPP manual.

4.4.2.6 Risk Assessment

One of the primary reasons why the government signed a PPP contract was to transfer risks to a private entity considered capable of handling it (Haarhoff, 2008). In this case study Haarhoff (2008) argues that the National Treasury PPP Unit and the FSDoH used a certain level of coercion to force the private sector to buy into the project. Haarhoff (2008) insists that the private partners were threatened with the refusal of a license to open a new hospital if they did not enter into the PPP. In addition the contract did not specify who would be responsible for uninsurable risks or the escalation of insurance premiums, or the situation where either party is under-insured (National Treasury Case Studies, 2007). Still, the threat of not being given a license without entering into a PPP may have forced the private partners to take on more risk than they would normally have done, which may have resulted in a negative impact in the longer term (National Treasury Case Studies, 2007).

4.4.3 Case Study Three: Humansdorp District Hospital

4.4.3.1 Background

Kouga Partnership Hospital is a Co-location partnership situated in Humansdorp in the Cacadu district of the Eastern Cape,. The partnership involves the Humansdorp district hospital that has the capacity for 80 beds, and Isivivana private hospital with 30 beds (Jokozela, 2012). The idea started in 1995 when a license was submitted to the Eastern Cape Department of Health (ECDoH) for building and operating a private hospital in the Jeffery's Bay and Humansdorp area (National Treasury Case Studies, 2007). In 1998 a study commissioned by the ECDoH and conducted by the Centre for Scientific and Industrial Research (CSIR) found that the Humansdorp hospital needed renovation and upgrades,; but because of a lack of funds the ECDoH was unable to respond to the recommendations provided by the CSIR (Jokozela, 2012). On the 26 April, 1999 the ECDoH decided to invite proposals from the private sector for the renovation and upgrading of the Humansdorp hospital,. Four proposals were received, from Afrox Healthcare (Pty) Ltd, Netcare, DriesBekker and the Malesela Hospital Group respectively. After the evaluation of all the proposals, Afrox Healthcare and Netcare's proposals were shortlisted because they met the minimum requirements (National Treasury Case Studies, 2007). In order to choose which company was suitable for the contract the ECDoH decided to formulate a new requirement list and the two companies were advised to update their proposals. After evaluating the revised proposals the ECDoH rejected Netcare's proposal because it did not meet the new requirements, and as a result in June 2000, Afrox was chosen as the preferred bidder (National Treasury Case Studies, 2007).

4.4.3.2 Objectives and Mission of the Humansdorp Humansdorp PPP

The National Treasury PPP Unit (2007) highlights that the main objectives of the Humansdorp Humansdorp PPP are:

- To build a private hospital,;
- To refurbish and upgrade existing facilities in Humansdorp Humansdorp district hospital and Isivina private hospital;
- To supply facilities management services to Humansdorp Humansdorp district hospital;
- To share medical facilities and services.

4.4.2.4 Phase Two: Feasibility study

The Project Close-out Report shows that the need for a PPP project arose from the rapid population growth in the Jeffreys Bay area and a shortage of hospital beds (Jokozake, 2012). During the initiation of the Humansdorp PPP, the ECDoH decided to form an informal committee tasked to analyse all the possible options. One option was to either grant a licence for a private hospital in Jeffery's Bay or to renovate and upgrade the Humansdorp hospital using money from the ECDoH's budget (National Treasury Case Studies, 2007). The National Treasury Case Studies (2007) notes that the informal committee analyzed multiple options. One option was questioned due to the fact that it would cause a duplication of services, and therefore confers benefit for public sector patients reduce the benefits for public sector patients as health professionals and private patients would move to the private sector decreasing public sector revenue. The option that the majority of the people in the committee favoured, despite the resistance from trade unions, was the co-location PPP, (National Treasury Case Studies, 2007). On the 27th of June the a co-location PPP was signed between the ECDoH and Metropole Hospitals; the Metropole hospitals comprised of Afrox Healthcare Ltd and a BEE partner, Metro Star Hospital. Presently the Humansdorp PPP is an agreement between Life Healthcare, initially known as Afrox Healthcare Ltd and the ECDoH. The total capital investment of the Humansdorp PPP was quite small, being R13m by the private sector and R1.5m by the ECDoH (National Treasury Case Studies, 2007).

4.4.2.5 Equity

The BEE partner Metro Star Hospital was unable to raise funds, and as a result the partnership was dissolved (Jokozake, 2012). In terms of employing local labour the Humansdorp PPP has been exceptionally successful from the ECDoH's perspective as the construction companies not only used local labour, but also employed several women on the construction site (National Treasury Case Studies, 2007). However, from Life Healthcare's perspective, because the unemployment rate in the area is high and the skills' level very low, employment of local labour has been less successful. There is also a culture of high absenteeism in the Cacadu district of the Eastern Cape which has caused interruptions resulting in the contractor bringing in replacement workers (National Treasury Case Studies, 2007).

4.4.2.6 Risk Assessment

In this partnership massive risks were transferred to the private partner. By using coercion to get private sector buy-in for the project ECDoh may have caused the Life Healthcare Ltd to take on more risk than they normally would have, thereby affecting the sustainability of the project (National Treasury Case Studies, 2007).

4.4.2.7 Conclusion

The main questions surrounding healthcare institutions worldwide are the following: how to raise income to fund health services and infrastructure; how to avoid risks related to resource and infrastructural development; and how to establish infrastructure and deliver health services in the most efficient and cost-effective manner (Lim, 2005). In order to provide equal services to all its citizens, the South African government needs to provide more infrastructures in various sectors, including the health sector (Special Unit for South- Africa Cooperation, 2012). The South African National Treasury Department has been encouraging all spheres of government, including the National Department of Health, to develop PPPs as a supplementary mechanism for service delivery and infrastructural development (Haarhoff, 2008).

This chapter has discussed the ways in which the South African provincial departments of health realised the importance of working with the private sector in delivering health services and healthcare infrastructure before the publication of the South African PPP Manual. However the main challenge is that the public sector and public healthcare in particular, does not have sufficient skills, funds, experience or capacity to engage positively in PPPs. In addition this chapter has pointed out that not only does the public sector offer very little in PPP contracts, but it can also force a private partner to accept multiple risks that could otherwise be shared by both partners. The next chapter will draw a conclusion of this study.

Chapter 5 Conclusion

This chapter draws its conclusion by looking at the findings of the research study. Since the end of apartheid in 1994, the South African government's objective has been to transform public institutions into institutions that provide equal services to all its citizens (Special Unit for South-South Cooperation, 2012). In order to materialise its dream of providing equal services to all its citizens, the Special Unit for South-Africa Cooperation (2012) argues that the South African government needs to provide more infrastructure in various sectors, including the health sector. Even though the Special Unit for South-Africa Cooperation encourages the government to provide more infrastructures, it should be well understood that currently public institutions are considered to be unable to handle the task of service delivery and infrastructure development, because they are considered to be 'bankrupt tools', incapable of delivering services to the people. (Osborne and Gaebler cited in Hughes, 2010). Lipsky (1980) and Kamarck (2007) argue that in the past, public bureaucracies were the only entities that had the mandate to implement public policies despite the existence of other private institutions that operated outside the public domain. Contrary to popular beliefs, the emergence of NPM has changed the traditional operation of public bureaucracy, because it is convinced that in order to deliver effective services and infrastructure, governments need to use managerial and business values in public institutions, and private institutions should be used in service delivery and infrastructure development (Rhodes 1997 cited McQuaid, 2010). NPM provides for new forms of relationships and interactions between government and its citizens, states and society, and governmental-institutions and non-governmental institution; NPM suggests new modes of governance such as through partnership between the public and private sector (McQuaid, 2010).

This study has discovered that the principle championed by the NPM was officially introduced in South Africa after the adoption of a new South African constitution in 1994; because the adoption of a new constitution marked the beginning of the process of transforming public institutions (Heyman, 2003). The transformation of public institutions facilitated changes in the South African government's approach towards service delivery and infrastructure development (Burger, 2006). Burger (2006) argues that the transformation of the South African public bureaucracy and new approach to the management of public properties encouraged the use of PPPs in infrastructural development and service delivery. The importance of PPP in service

delivery and infrastructure development lead the first democratic government to approve the formation of an Inter-Departmental Task Team (IDTT), whose mandate was to identify major limitations to the successful implementation of PPPs, to draw legislation and regulatory reform, and a cross-sectorial framework, and facilitate intergovernmental policy (Schoenteich, 2004). It can be said that the South African government has continuously considered PPPs to be a key driver of service delivery and infrastructure development because even in the National Development Plan 2030, the government has identified PPPs as a core vehicle for service delivery and infrastructure development.

Even though PPPs are considered to be a key driver of service delivery and infrastructure development, there is no a universal definition of a public private partnership (Economic Commission for Europe, 1998 and the World Economic Forum, 2009). PPPs may be defined separately and collectively, and PPPs meaning is mostly contextualized in the condition and context in which PPPs have been used (Linder and Pollitt cited in Skelcher, 2005). In suggesting how a partnership that brings together public and private sector should be, the Roundtable discussion of the World Economic Forum (2005) explains that a true partnership should be about joining diverse skills, know-how and capital in order to realise a common goal that is unachievable through independent action. Such a partnership has to be signed within a framework of defined responsibilities, transparency and accountability. At the same time, the World Economic Forum (2009) insists that the multitude of definitions on public private partnerships can confuse rather than clarifying the concept of public private partnership. Each country adopt its own definition of what constitutes a PPP, and determines its own legislative and regulatory framework.

South African law defines a PPP as “a contract between a government institution and a private party, where the private party performs an institutional function and/or uses state property in terms of output specifications; substantial project risk (financial, technical, operational) is transferred to the private party, with the private party benefiting through unitary payments from government budgets and/or user fees”. (PPP Unit, 2007: 5). Even though this definition echoes clearly the role of a private party, the interpretation and applicability of this definition have been criticised and considered to be among key challenges affecting the implementation of PPP projects in South Africa. In analysing this definition, Schoentech (2004) argues that the term PPP

is used by the South African government in referring to the method of outsourcing the delivery of public goods and services by a private entity. However, using the long process and procedures that state and private institutions took in starting and implementing the Inkosi Albert Luthuli Central Hospital, Universitas and Pelonomi Hospitals Co-location, and Humansdorp partnerships, this study agrees with the Treasury Regulation 16 argument that insists that a PPP is not just a simple method of outsourcing the delivery of public services; it is a long-term contract that is based on transferring substantial risk; and rejects Schoentech (2004) who argues that PPPs in South Africa is just a method of outsourcing the delivery of public goods and services by a private entity.

The South African definition of PPPs speaks about the transfer of substantial project risk: financial, technical, and operational (PPP Unit, 2007), but it does not provide suitable risk allocation strategies for PPP projects which is considered by Abd-Karim (2011) to be a very important strategy for both public and private organisations. There are multiple strategies for allocating risk, but British Columbia (2005) and the Australia Government (2008) are convinced that risks can be allocated in three ways: (i) transferring them to another party or contracting party, (ii) retaining them by government, and (iii) sharing them between two parties such as a public and private agency. Even though the South African definition does not provide risk allocation strategies, using the three case studies it can be said that the South African public institutions use two strategies for allocating risk. Namely (i) transferring them to another party or contracting party, and (iii) sharing them between two parties such as a public and private agency. But the problem is, sporadically public institutions do coerce and force private entities to enter into a PPP, and force them to take more risks that they would not take if they were to be given the chance to choose.

The National Treasury Department (2007) revealed the use of coercive measures by the ECDoH in the Humansdorp PPP forcing, in essence, the private sector to take on more risk. At the same another study conducted by Haarhoff (2008) shows that in the Universitas and Pelonomi Hospitals Co-location PPP, the public partner did coerce and force the private partners to enter into this partnership. Haarhoff (2008) argues that the National Treasury PPP Unit and the FSDoH used a certain level of coercion to force the private sector to buy into the project. Haarhoff (2008) insists that the private partners were threatened that if they did not join the PPP,

they would not be given a license to open a new hospital. The research conducted by the National Treasury Department (2007) and Haarhoff (2008) shows that even though the statutory and regulatory framework for PPPs in South Africa do not force or threaten private partners if they don't see the need to enter into a PPP deal with public partners, the conduct of the ECDoH and the FSDoH in Humansdorp and Universitas and Pelonomi Hospitals Co-location PPPs shows that statutory and regulation framework for PPPs in South Africa can be easily undermined by state institutions. This research has also found that even though the main objectives of the South African PPP Unit are to facilitate all PPPs to meet the criteria of affordability, value- for- money and appropriate risk transfer; and to establish a framework for PPP projects that protects the government against PPPs that are likely to fail; it can also be said that the National Treasury PPP Unit and other states institutions can use coercive measure and thereby scare off private partners from investing in PPPs or to positively contribute the development of an effective PPP market in South Africa.

The PPP manual recommends that in a partnership the private party should have 40% actively participating black equity, 40% of management team of the private party should be black, and 15% of the team should be comprised of women (National Treasury Case Studies, 2007). This study has discovered that some of the companies owned by black people do not have the funds to allow them to fully participate in PPP projects. Jokozake's (2012) study explains that on the 27th of June 2000 a co-location PPP was signed between the ECDoH and Metropole Hospitals; Metropole Hospitals consist of Afrox Healthcare Ltd and a BEE partner, Metro Star Hospital. However, due to the BEE partner's inability to raise funds, the partnership was dissolved and as a result Metro Star hospital was forced to abandon participation in the project (Jokozake, 2012). Presently the Humansdorp PPP is an agreement between Life Healthcare, initially known as Afrox Healthcare Ltd, and the ECDoH (Jokozake, 2012). Concerning the employment of local labor in the Humansdorp PPP, Life Healthcare has argued that employment of local labor has been less successful, because the unemployment rate in the area is still high and the skills level remains very low. There is also a culture of high absenteeism in the Cacadu district of the Eastern Cape where the project has been implemented, this has caused interruptions and the contractor has been forced to bring in replacement workers (National Treasury Case Studies, 2007).

Burger (2006) has noted that the South African government encourages the application of institutional hybridity and forces state institutions to move from government to governance (Burger, 2006). Reviews of the literature on governance mostly state that the term governance is used with a variety of meanings (Rhodes, 1996; Stoker, 1997). There is, however, common agreement that governance refers to the development of governing styles in which boundaries between and within public and private sectors have become blurred (Stoker, 1998). This study has shown that PPPs are indeed institutionalised cooperative arrangement that involves both public and private actors (Hodge and Greve, 2010). PPPs in South African healthcare sector have been able to eliminate the distinct boundaries between the public and private sectors. In looking at all the institutions involved in the three case studies it can be argued that PPPs in general, and in the health sector in particular reflect a new form of governance in South Africa because they are constituted by self-governing networks that operate under certain regulations stipulated by government and their contracts.

This study has shown that PPPs offer a viable and complimentary approach to the provision of healthcare services and infrastructure in South Africa. The concluding argument here is that the success of PPPs in South Africa, regardless of the sector, depends on government. It is the government's responsibility to nurture and sustain a sound enabling environment for the PPP market by supporting the PPP Unit within the South African National Treasury Department.

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