

**Corruption in Public Private Partnerships as a Barrier to Sustainable Development**

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## **Statutory Declaration**

I hereby declare that I have composed the present thesis autonomously and without use of any other than the cited sources or means. I have indicated parts that were taken out of published or unpublished work correctly and in a verifiable manner through a quotation. I further assure that I have not presented this thesis to any other institute or university for evaluation and that it has not been published before.

Claire Bavington

31<sup>st</sup> July 2021

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I dedicate this thesis to all those who are committed to eliminating corruption, all those who have suffered because of it and all those who support the critical work of sustainable development to provide a better future for all.

## Abstract

The aim of this master's thesis is to investigate corruption in public-private partnerships (PPP's) as a barrier to sustainable development, and success of the United Nations (UN), 2030 Agenda for Sustainable Development Goal 16 Peace, Justice and Strong Institutions and Target 16.5 to substantially reduce corruption and bribery. Whilst public private partnerships can provide a successful platform between the Public and Private Sector, where large scale infrastructure projects can be implemented for the benefit of a country's citizens, corrupt practices between state and non-state actors have provided a culture of misappropriated funds and bribery significantly impacting the local economy of that region and diverting public funds from citizens. The present conclusions drawn from International Organisations and Financial Institutions such as the IMF and World Bank advocate that without private finance and public private partnerships the progress of sustainable development will be undermined and further the 2030 Agenda will not succeed. The motivations for this paper, therefore, are to explore the factors and conditions that influence the breakdown of PPPs through corruption and assess whether there are improvements that can be made, or alternatives implemented to support sustainable development better. The research was guided by the Principal-Agent theory where the Agent (private firm) has more knowledge and power over the Principal (Government) which causes additional imbalances within the dynamic of PPPs. Further, the use of case studies have been chosen to provide an in-depth, qualitative research approach to the complex issues of PPPs in a real-life context and to demonstrate the actor-relations which threaten the legitimacy of PPPs within society. The Case Studies chosen relate to the failures of PPP governance by three multinational corporations, Siemens, Ericsson and Odebrecht. All three companies were procured by governments to implement services and infrastructure mainly in developing countries. The importance of investigation of these three cases owe their importance to highlighting the negligence on both sides to prevent corrupt practice, the magnitude of the bribery which highlights the diversion of funds from civil society requirements to illicit financial flows and additionally the negation of treaties and conventions in place for anti-corruption to prevent malpractice. Relevant to the research, some of the important findings revealed: 1) Corruption within PPPs can be intrinsically linked to the political stability of countries of the recipient bribes. (2).The failures of PPPs are not governed by the lack of institutional frameworks but rather the lack of adherence to them. This point acknowledges that during

the period of bribery, national governments signatory to the existing laws, regulations and treaties on anti-corruption were bypassed both by the principal actors within the Public Sector (including Presidents, Heads of State and other high-level Politicians). This exposes a gap within the governance framework where governments are willing to commit to anti-corruption legislation and guidelines in theory but not in practice. (3). Interesting to the debate, the dynamic between the developed and developing world is worth further exploration. The link between corruption and countries with political instability or a low rule of law has been well documented but the relevance of the case studies within this paper emanate from the lack of focus on corruption that stems from democratic states with good governance and a high rule of law that still fail to uphold prevention of corruption within PPPs. Of worthy attention, some international organisations have come under criticism in recent years for the lack of authority to combat corruption through its members state. This will be further explored where recommendations for ‘more leniency’ from the United Nations as a soft control mechanism fails to address the required impetus needed to ensure members adhere to their existing anti-corruption obligations. Finally, the findings illustrate that the failure to address corruption within PPPs has a direct association on the socio-economic status of countries where the combination of education, income and employment are jointly affected by corruption. This can be understood where corruption can support lower quality infrastructure such as schools or a diversion of funds away from education as well as income and employment where fraud can lead to poor service output, lack of trust between employees and budget cuts within an organisation. Thus, where corruption in PPPs require funds to be available for bribery, this may have a direct impact on employment growth and company innovation where corruption replaces sustainable development. As a consequence, its administration must be carefully assessed and alternatives explored in order for the full realisation of sustainable development to be achieved. Finally, the limitations of the paper do not allow for review of each and every allegation of corruption by the companies within the Case Studies but is sufficient to illustrate the scope of bribery within PPPs to demonstrate the detriments in global sustainable development. There is also a vast and collective of anti-corruption regulations and laws, not all of which can be covered however the fundamental conventions through the OECD and UNCAC will be highlighted with relevance to the topic.

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## **List of Abbreviations**

ADB	Asian Development Bank
AfDB	African Development Bank
AU	African Union
BOO	Build Own Operate
BOT	Build Operate Transfer
BT	Build Transfer
BTO	Build Transfer Operate
BOOT	Build Own Operate Transfer
DB	Design and Build
DBF	Design Build Finance
DBO	Design Build Operate
DBFO	Design Build Finance Operate
DCMF	Design Construct Manage and Finance
DFB	Design Finance Build
DFO	Design Finance Operate
DFBOT	Design Finance Build Operate Transfer
DOJ	Department of Justice
EC	European Commission
ERP	Enterprise Resource Planning
EU	European Union
CSO	civil society organisation
DBO	design build operate
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EIU	Economist Intelligence Unit
EU	European Union
FDI	foreign direct investment
GDP	gross domestic product
IDA	International Development Association
IDB	Inter-American Development Bank



IMF International Monetary Fund  
LIC low-income country  
MDB multilateral development bank  
MIC middle-income country  
MOF Ministry of Finance  
MOJ Ministry of Justice  
NPM New Public Management  
NT National Treasury  
OECD Organisation for Economic Co-operation and Development  
O&M Operation and Maintenance  
OMM Operation-Maintenance-Management  
PDP Public Donor Partnership  
PFI Private Finance initiative  
PPIAF Public-Private Infrastructure Advisory Facility  
PPP public-private partnership  
PSIRU (Public Services International Research Unit)  
SEC Securities and Exchange Commission  
TI Transparency International  
UK United Kingdom  
UN United Nations  
UNCITRAL The United Nations Commission on International Trade Law  
UNCAC United Nations Convention Against Corruption  
UN Global Compact  
UNODC United Nations Organisation against Drugs and Crime  
USA United States of America  
USAID United States Agency for International Development  
US DOJ United States Department of Justice  
VfF value for future  
VfM value for money  
VfP value for people  
WB World Bank  
WBI World Bank Institute  
WGI World Governance Indicators

## **Introduction**

*“Corruption breeds disillusion with government and governance  
and is often at the root of political dysfunction and social disunity”*

*António Guterres, Secretary General of the United Nations*

*United Nations, 2018*

The United Nations (UN) Transforming our world: the 2030 Agenda for Sustainable Development (A/Res/70/1) is a global plan, of which 193 countries have committed to transforming the planet through its 17 Sustainable Development Goals, including to end poverty, decent work, economic growth, reduced inequalities, prevention of corruption as well as peace, justice, and strong institutions. The Agenda is not legally binding, and thus implementation relies on countries to apply governance through goals. All countries have 169 targets where the evaluation of progress is managed through voluntary national reviews. To meet some of the targets, public-private partnerships (hereafter PPPs) have been favoured by the UN, where they provide governments with an opportunity to procure and develop public assets in collaboration with the private sector firms who bear the principal costs and responsibilities of the project. In the General Assembly Resolution for the 2030 Agenda, Paragraph 67 states, 'Private business activity, investment and innovation are significant drivers of productivity, inclusive economic growth and job creation (United Nations Joint Inspection Unit, 2017). As per the UN Secretary General's Reports in June 2017 and December 2017 on (United Nations Development System) UNDS reform, the call for the United Sustainable Development Group (UNSDG) to agree on a system-wide approach to partnership included; strengthening system-wide integrity, due diligence and risk management including the 10 Global Compact principles on private sector engagement; improve global level governance from the Global Compact and reinvigoration of United Nations Office for Partnerships (UNOP) as the global gateway for partnership (USCIB, 2019). In 2019, ECOSOC Partnership Forum, co- organized by the United Nations Department of Economic and Social Affairs (UN DESA), United Nations Office for Partnerships (UNOP) and the United Nations Global Compact, focused on “Partnerships Driving Inclusive Implementation of the SDGs” (ibid). The concept is based on the premise that PPPs can alleviate the effects of government shortages of funds for procurement while utilising the expertise, technological innovation and experience of private entities (Scheyvens et al., 2016). Public assets include housing, schools and

education, hospitals and medical care, transport and technology, energy, water, sanitation and other industrial facilities. These partnerships constitute the instrument of choice by both the United Nations (UN) and International Financial Institutions (IFIs), especially for developing nations where resources are less attainable. The mechanism is considered successful for sustainable development implementation. Benefits include accessible finance and acceleration of growth in infrastructure and services where risk is transferred to the private sector operator, alleviating short-term funding issues for governments. At its heart, the dynamic partnership between the public and private sector is dichotomous, where the public sector's obligation to provide infrastructure and services to the state is separated from private-sector corporations who must maximise profits if they are to survive (Hall, 2015). The private sector's interest is to dominate market share within its industry. The premise behind this is that where firms dominate a monopolistic position within a sector, that company rids itself the problem of competition and can therefore demand higher fees for its products of services. Consequently, the priority for bribery may not be immediate profits as the latter benefits of monopoly and market share should likely guarantee this at a later stage. Corruption within PPPs has enabled levels of illegal activity at unprecedented levels of the global political hierarchy. At the top of the public sector hierarchy, both Presidents and Heads of State entrusted to govern society on behalf of its citizens have been found at the pinnacle of corruption allegations. In the private sector, Private firms are responsible for soliciting those bribes to public sector officials to obtain preferential treatment during the processes of tendering, competition, contractual negotiation, renegotiation, and dispute resolutions. As mentioned, bribery at its foremost function was mostly focused on building portfolios and amassing contracts in order to satisfy monopolistic ambitions. Indeed, such is the extent of bribery within PPPs for this purpose; companies have established whole departments to manage the operation of payments designated for the public sector worldwide. With estimations of over US\$ 1 trillion paid in bribes every year by the World Economic Forum, the drain of corruption on public funding leaves fundamental gaps within the reduction of poverty and inequalities in both developed and developing countries. John Prendergast, Founding Director of the Enough Project warns "regrettably, there is currently no coordinated strategy to gain the necessary leverage to disrupt the illicit siphoning of money by leaders and their foreign business partners, or to break the link between corruption and conflict" (United Nations, 2018). This is starkly apparent. Within the last two decades alone, judiciaries across five continents have been immersed in legal proceedings against

companies responsible for over US \$2 billion in bribes from public-private partnerships worldwide. Recorded within the bribery of the case studies within this paper, such was the level of corruption at the highest echelons of power, Presidents from multiple countries were called to testify against allegations of corruption as a direct result of taking bribes within PPPs. The OECD has published such works as *Putting an End to Corruption* which, relevant to this paper acknowledges great progress in anti-corruption marred by the recent scandals that have put a blot on the landscape of the last two decades. The OECD Foreign Bribery Report shows that, on average, bribes equal 10.9% of the value of a transaction and 34.5% of profits (OECD, 2014a). The report recognises that at 57 per cent, more than half of foreign bribery cases occur to obtain a public procurement contract (ibid). Of relevance to this paper the OECD recognises that corruption and mismanagement are a chronic problem across OECD and emerging countries where it is the developed countries that must also be examined in the context of their lack of observation to the law. Critical to the response to this prevalent behaviour, good governance practices must be implemented at the domestic level of all countries. Updating anti-corruption policies within a government with specific anti-bribery conditions should be implemented within HR policies at every level of leadership. Auditing processes must have oversight of public sector payments and receipts by public officials. Separate compliance departments that have autonomy to work independently should be incorporated into public sector organisation. Additionally, and importantly, anti-corruption legislation must be robust to ensure no person no matter the position held is above the law relative to corrupt practice. Important to note, the case studies presented do highlight positive trends in the anti-corruption narrative relative for building strength on a global level. Of significance, the transnational support that has been leveraged by the countries involved to share data, both historical and economic, to align legal responses and punishment on the perpetrators. Such frameworks are critical in the global response to corruption. Aside from tax evasion, this massive diversion of funds has significant implications on the first goal of the SDGs to end poverty where offshore accounts hide the proceeds of bribery, stifling economic growth within a country. The challenge for the regulators is to track the illicit financial flows received by businesses or individuals often secreted in offshore accounts to avoid tax and detection.

Goal 16 Peace Justice and Strong Institutions and Target 16.5 for the prevention of corruption is integral to the overall success of all goals, especially where Mauro provides empirical evidence that corruption lowers investment and economic growth (Mauro,

1995). In 2013 the UN warned, “the current global governance system is not properly equipped to manage the growing integration and interdependence among countries” (UN.org, 2013). The implications of global inequality and weak regulation constitute an inherent risk to attainment of the Sustainable Development Goals (SDGs) by 2030, especially where the OECD warns, regulatory implementation and enforcement remain the weakest link in regulatory governance (OECD, 2015). Additionally, the international institutions are also undergoing something of a crisis which OECD Secretary-General Angel Gurría commented: “International organisations contribute to a rich, diverse ecosystem of international rules and standards. Nevertheless, they are not immune from the context where trust in public institutions, evidence, and expert advice is deteriorating (OECD, 2019). As a consequence, this paper aims to critically assess the barriers of corruption within PPPs as the heavily promoted instrument of choice by International Organisations and Financial Institutions to reveal structural weaknesses that, if left ungoverned, threaten the fabric of social democracy, economic growth and political stability and consequently the 2030 Agenda of Sustainable Development Goals.

### **Research Objectives and Questions**

Following these observations, the motivation for this paper is to demonstrate the instability of PPPs both through their project governance and the overriding institutions that govern their practice. This will be supported through the presentation of academic and economic literature and qualitative research. The aim of the research is to provide a critical discourse analysis in response to the heavy promotion by the international community for the use of PPPs to fulfil the objectives of sustainable development. The research aims to present substantial evidence that the current framework of PPPs are insufficient to prevent corruption, especially concerning the developing world where the impacts promised have not been delivered. Significant factors such as the political, legal, economic and governance frameworks within the domestic arena have been cited as the catalyst for corruption within PPPs where political instability and poor governance reign.

The research is constructed of three main objectives.

- The first will assess the relevant aspects of institutional frameworks for PPPs and how inherent deficiencies in project implementation both of PPPs and within the

Institutional frameworks that support their governance allow for corruption to form and barriers to sustainable development to perpetuate.

- The second explores the Principal-Agent theory to understand the impact of corruption within PPPs and assess the significance and dynamics of actor-relations within state and non-state, national and international and domestic and global governance roles where a distortion of authority lends support to corrupt practice. Important to this analysis will be how each of the different actors within the dynamic of Principal to Agent relationship conduct their obligations of governance.
- The third examines the role of governance applicable to governments and international organisations to identify current failures within PPPs where private firms have created a platform for corruption to take place. This section addressed the mechanisms that harm and tools that strengthen the implementation of PPPs against corruption as well as alternatives that support better economic growth.

Essential questions to be addressed include (1) what are the failures of PPP administration and are there weaknesses in the existing frameworks of governance institutions that allow for a lack of adherence from countries obliged by anti-corrupt regulation; (2) what are the various dynamics of relationships that surround the execution and governance of PPPs and how do they affect corruption within PPPs; (3) What are the governance frameworks in existence, how do they support protection against corruption within PPPs and how can innovation and improvements within the governance system better prevent corruption in PPPs moving forward.

## **Research Methodology**

The research methodology is organised into four parts, of which the first section will undertake a review of the academic and economic literature. The study will primarily seek to define the definition, purpose, objectives and framework of the three main topics: PPPs, corruption and sustainable development. This section will introduce the Principal-Agent theory to demonstrate the significance of the power play between the Principal or Government and Agent or Private firm where the Principal may, for example, delegate a project to an agent where the Agent is in receipt of more information (such as costs, quality of materials, risks etc.) than the Principal. The Agent uses this information to gain

the advantage of the Principal, which disrupts the balance of the partnership. The Agent can also distort the relationship by offering incentives or bribes, which will further deter the Principal from making impartial judgements either at the tender, budget or renegotiation stage, thereby obstructing the legitimacy of governance from within the project. The literature is then divided between two different camps. While most authors within the review support the claims of corruption as a barrier to sustainable development; some scholars propound the hypothesis of corruption as an enabler for growth where corruption shifts financial resources faster than traditional procurement methods. Some scholars (Huston, 2007, Méon and Weill, 2008) have even offered these as the stimulus to which not only can corruption thrive, but socio-economic conditions can experience growth. Further examination of the literature will explore this concept to understand if society can be improved through corruption in PPPs accelerating the growth of services and infrastructure

The first chapter is divided into four parts. An examination of the role of PPPs to support sustainable development will be explored in the context of the global governance role, followed by the mechanisms used to influence the contractual process unjustly. The section will further, examine the dynamic relationship between the state and non-state actors where impediments of risk transfers, cost failures and corruption undermine the execution of development. The more comprehensive assessment will follow with the contrasting positions of the developing and developed world to highlight the inconsistencies between the expectations on less advanced economies set against the lack of equal condemnation that appears to affect the more developed countries that operate under a higher rule of law. This chapter will also explore opportunities that may support developing and indeed developed nations to manage the complexities of PPP contracting. Using examples by notable Theorist Jean Tirole this section explores the importance of economic regulation to support overall market sustainability. The final part of this chapter assesses the consequences of corruption within the global economy. Here corruption in PPPs will be examined in terms of the propensity for money laundering and illicit financial flows where this diversion impacts negatively on both sustainable development and progress of the 2030 Agenda for Sustainable Development Goals.

The use of case studies in the second chapter has been carefully chosen to provide a deeper frame of reference to the problems that encompass PPPs and their use for

sustainable development and economic growth. The case studies offer real-life contextual narratives which demonstrate the inabilities of both state and non-state and national and international actors to govern PPPs legitimately and transparently, thus providing further attestation to their limitations and risks and the constraints of current regulation. The case studies focusing on three multinational corporations, Siemens, Ericsson and Odebrecht, will be deconstructed to illustrate the dangers and destruction that PPPs in international business have performed. The findings will show that both public and private sectors disregarded the regulations to extract criminal gain in each case. Notably, each instigator of bribery has its origins from a wealthy state and, in most cases, expels its corrupt practices towards economically challenged states. The case studies reveal that actors' behaviour substantially distorts the nature of PPPs as authentic providers of service and infrastructure. The findings also highlight the inefficiencies of countries to adhere either to their domestic laws or the international governing treaties and conventions they are signatory. What this demonstrates for this paper is two points. The first justifies the hypothesis that PPPs are not fit for purpose and risks long term development. Secondly, the global governance organisations are insufficiently empowered to prevent corruption on a grand scale. Some states for example have still not criminalised all aspects of bribery, demonstrating a lack of commitment to the anti-corruption governance structures. The final point regards the monitorships allocated to the private firms. This paper also proposes lengthening the governance where short-term monitoring of 3-4 years may not adequately reform the future behaviour of perpetrators.

The final chapter conceives the hypothesis as correct and presents the concluding results from the analysis of the topic. The paper concedes that corruption is endemic within multiple parts of the PPP process but is also resultant of the lack of legitimate control mechanisms between each of the relationships of state and not-state and developed and developing nations. Many governing institutions exist which offer precise and resolute administration of the execution of PPPs, such as the United Nations Convention against Corruption which stipulates the code of conduct obligated by the public and private actors within the partnerships. Additionally, there are legal frameworks that offer resolution towards bribery and corruption cases where substantial fines and monitorships of companies are awarded. Despite these constitutional arrangements, the continued problem of bribery persists. The analysis thus incorporates recommendations towards better governance as well as practical and achievable implementations that can support a



reformation of the PPP operating framework through regulation, technological innovation and legislation. The chapter will close on the issue that is fundamental to the ongoing threats to sustainable development, where this paper proposes a re-evaluation of the institutional powers is required to provide a better and omniscient role of the governor to corruption through PPPs.

In conclusion, this paper carries the notion that current efforts to reform PPPs are unsustainable unless radical reforms are made at the domestic and international levels. The root cause of corruption is too systemic to allow the ritual of the Principal-Agent relationship to continue ungoverned. This has led to some innovative and welcome reforms, which will be further explored. Whilst the International community offer a multitude of modes of governance, the more significant issue that requires continued research and exploration is the failure to which nations that are obligated to treaties, notably the developed ones that have high levels of governance and the rule of law and yet are systematically caught obstructing it. This point is dedicated to both the recipient country of the bribes and the originating country of those bribes. Consequently, where the limits of this paper do not allow for an in-depth analysis of the Principal-Agent relationship between countries, nations that do hold back information for private gain sufficient and implementable control measures are needed to change future outcomes radically. Ultimately, for and until the Goal of Peace, Justice and Strong Institutions is fulfilled, the risk of corruption to all implementation Agenda Sustainable Development Goals is endangered.

## **Literature Review**

### **Introduction**

The literature review aims to contextualise the research study into its dominant topics, public-private partnerships (PPPs), sustainable development, and corruption risks. The first part commences with the deconstruction of a PPP, its core parts, definition, historical origins and models. The chapter will include PPPs' objectives and essential aspects that demonstrate the historic nature of risks that PPPs exhibit. This chapter will introduce the frameworks of agency theory expounded by economic theorists to explain the imbalances in PPPs through the Principal-Agent theory. The critical part of this theory is the fundamental dichotomy where execution will constantly be jeopardised by the imbalance of each actor's behaviour. The second part of this review examines the controversial theoretical basis for corruption as a proponent for strategic economic growth where bribery can accelerate the execution of projects for infrastructure and growth in low governance nations. The third part of this review will introduce Sustainable Development and the United Nations 2030 Agenda for Sustainable Development Goals with specific interest for Goal 16, Peace, Justice and Strong Institutions and Target 16.5 to prevent corruption. The study will highlight the aims, objectives and review methods for the goal of Sustainable Development whilst providing a context of statistics that evidence the threats of non-attainment of these goals. Finally, the review illustrates the contrast between good and bad governance as catalysts to support or negate sustainable development progress.

### **Definition of Public-Private Partnership**

The demand for public infrastructure and services globally grows unabated. With the corresponding requirements for sustainable development, the public sector increasingly relies on the private sector to support investment and execution that meets market demand in Public-Private Partnerships. This dynamic is the essence of this paper, where the debate of whether PPPs support or are a hazard to sustainable development are explored.

The World Bank (WB) defines the concept of public-private partnerships (PPPs) as a long-term contract between a private party and a government agency for providing a public asset or service, in which the private party bears significant risk and management responsibility (World Bank, 2012). In essence, the collaboration stemmed from government financial constraints where access to capital from private institutions could act as an enabler for providing infrastructure or services. Through PPPs, governments could

implement critical transport, water, waste, sanitation and power infrastructure, improved healthcare, education, housing, prisons, and urban growth were areas of expertise support increased infrastructure growth, technological progress and employment.

Such is the complexity and multiple variations of 'public-private partnerships' globally, both academic and international institutions are yet to define a singular, agreed, the definition of the relationship (Felsing 2008, Hodge and Greve 2007, Zhang 2005a). For example, the OECD stipulates, "there is no widely recognised definition of PPPs and related accounting framework. Eurostat, the International Accounting Standards Board (IASB), International Monetary Fund (IMF), International Financial Reporting Standards (IRFS) and others work with different definitions (OECD, 2012). Some scholars perceive PPPs as a relationship between any contracting entities, while others have interpreted it to mean an emergence of an alternative to contracting out (Nayak, 2019). Leavitt and Morris (2007) argue that PPP involves a continuous range of private/public mixes. According to Grimsey and Lewis (2005), the concept of PPP entails some form of privatisation since the state does not perform a direct and vibrant role in projects. At one end of the spectrum, a government entity facilitates the production of services or products, while at another extreme, the state entirely divests all roles for services or products. PPP arrangements lie between the two extremes. Lorman (2018) says a PPP is a form of outsourcing or the frequently misused concept of privatisation. Hodge, Greve and Boardman postulated the broader question is not the definition, historical origins or degree to which it constitutes a new policy delivery solution or even the technical complexity (Hodge, Greve and Boardman, 2010). It is the accusations of illegitimacy and concerns about the crucial governance challenges that current governments are placing on future generations through long term contracts" (ibid).

Historically, public-private partnerships in various formats have been in use for centuries. Still, one of the earliest and most relevant for this paper was the Charles River Bridge which dates back to the 1700s in Massachusetts, USA. Although successful (the bridge earned over US\$1 million in its first forty years), citizens complained about ongoing tolls despite profits exceeding the original cost of construction. (Lorman, 2018). Following an application for a new bridge that offered free passing to citizens, the private firm commenced legal proceedings where the firm alleged violation of its property rights. The case went to the United States Supreme Court who would rule that the right to use water

was non-exclusive, and the private firm lost the case. There are two critical points to this case. The first is relevant to the protection of citizens where sustainable development gave way to private gain with no public sector regulation for the rights of its citizens. Second, the lack of regulation and forecasting failed to examine the burden of risks not just to the private firm but to the state's citizens and even the stability of the state (with who the private firm vigorously challenged in court). Ultimately, the case exhibits some of the lack of definition and ambiguity that exists within PPPs today. For more recent and relevant context, this paper highlights the British implementation of the Private Financial Initiative (PFI) first brought in by the conservative government in 1992 and moderated by the Labour government of 1997. Established to modernise traditional procurement procedures, the PFI spurred a fresh approach of private firms managing the risk and funding of projects whilst enabling governments to reduce the burden of debt on balance sheets. The concept was born out of neoclassical notions that public services and infrastructure would benefit more from competitive incentivisation than state coordination. Additionally, efficiencies in time, cost and resources would be better served by the private sector over the public sector.

Historically, this neoclassical view was attributed to the industrial revolution, where technology accelerated (Glaeser, 2009). Equally relevant, the Keynesian arguments warned unregulated markets will fail to maximise resource allocation efficiently. Further to this argument and this paper's rationale, failure to prevent the monopoly power of the private sector and govern efficiently leads to abuses of monopolistic control and the emergence of hidden knowledge. This undermines transparency and accountability within markets and leads competition to break down. The problem that would impinge the neoclassical thinking relevant to the case studies presented in this paper show the economists failed to see the dangers of PPPs since economic transactions are believed only to occur when both parties, acting rationally, consider them to be mutually beneficial (Caporaso & Levine, 1992). The establishment of PPPs within policymaking followed concerns by former UK Prime Minister Margaret Thatcher over high inflation rates and the stronghold of trade unions and public ownership, which was seen as detrimental to the advancement of industry growth. Important to note, this privatisation witnessed some of the highest UK unemployment rates in the 1980s at 11.9 per cent and 3 million unemployed (Office National Statistics, 2015). Nevertheless, what would follow the UK's foray into PPPs would be a global interest in privatisation and the mechanisms of PPPs in several

countries, including the United States, France, Sweden, Portugal, Brazil, Korea, Canada, Australia, and New Zealand. During this time in history, public-private partnerships were seen as long-term partnerships between the public and private sectors to develop higher-quality goods and services at lower prices (Roehrich et al., 2014).

One of the significant factors behind the implementation rationale in the 1990s was the focus on 'Value for Money'. Theorists Colverson and Perera believed that private firms enhance efficiency, innovation and expertise in PPPs that contribute to better time saving and greater cost efficiency during the construction, maintenance and operation phases of projects (Colverson & Perera, 2011). Consequently, value for money is attained. PPPs also foster the distribution of project risks (such as community consultations, finance, planning permits and timeframe) between the private and public sectors based on the actors who are best equipped to mitigate the risks based on the cost and expertise (Colverson & Perera, 2011). However, many theorists dismiss this claim where the longevity of the projects produces unforeseen risks and costs arising from long term operation, maintenance and management. Here it can be evidenced that private sector borrowing costs are often higher than those of their public counterparts (with sovereigns, particularly, being able to obtain finance on more favourable terms) at 3-4 per cent for governments but 7-8 per cent for private firms (Jomo, 2016). Felsing says 'effective PPPs recognise that the public and the private sectors each have certain advantages than the other. The government provides social responsibility, environmental awareness, local knowledge, and mobilising political support. The private sector's role uses its expertise in commerce, management, operations, and innovation to run the business efficiently (Felsing, 2008). The justification rises from the commonly used rationale that higher costs are justified owing to the advanced innovation and technology that private firms have over public governments. Important here is not the predication that the private firm has knowledge or expertise that exceeds that of the public officials. Moreover, the state may not have the expertise to audit and control this information effectively. Theorist Jomo warns that if public officials do not understand the complexities of PPP contracts, then services, infrastructure, and sustainable development will be jeopardised. For example, supporting similar theories and warnings from financial entities such as the World Bank and IMF, Jomo asserts if the risk assumed by the private sector partner were to be over-priced, it would increase the cost of the service to the consumer, making PPPs unviable (Jomo, 2016). Equally, if the price is undervalued, governments will be forced to extend guarantees, bear a greater risk and

potentially high fiscal costs over the medium term (ibid). Above and beyond the contractual concerns, there is a larger gamble that pervades the employment of PPPs and threatens future fiscal and sustainable management, which is the recording of PPPs off-balance sheet. This point is relevant as it indicates the project will not appear on the current balance sheet of governments (where the private firm will bear the majority of risks), but importantly, where finance is not recorded in the current fiscal year, future governments will have to manage additional debt. In 2011, the Chairman of the British Treasury warned of the barriers to future sustainable development, "PFI means getting something now and paying later... We can't carry on as we are, expecting the next generation of taxpayers to pick up the tab PFI should be brought on the balance sheet (old.parliament.UK, 2011). The Treasury should remove any perverse incentives unrelated to value for money by ensuring PFI is not used to circumvent department budget limits" (ibid). A decade later, the debate of managing public-private partnerships off-balance sheet' constitutes a current risk to the implementation of sustainable development goals, which leaves financial gaps for future governments to bear, subsequently leaving less for future generations.

### **Operating model**

PPPs are established for various functional objectives, including funding, operating, developing and maintaining infrastructural projects such as convention centres, public transport, hospitals, parks or railway lines (Ittmann, 2017). In terms of the contractual basis for a PPP, scholars have presented many delivery models of PPPs. These include operation and maintenance contract (O & M), Build-operate-transfer (BOT), build-lease-transfer (BLT), Build-own-operate-transfer (BOOT), build-finance (BF), build-own-operate (BOO), design-build-finance-maintain-operate (DBFMO), design-build-finance-maintain (DBFM), design-construct-manage-finance (DCMF) and design-build-operate-transfer (DBOT) (Leviäkangas et al., 2016) (See Operating Models of PPPs). PPPs take several models of operation. For instance, they may adopt a simple financing arrangement where a private entity funds a percentage of the project from the start. Upon completing the work, the private entity will run and maintain the project with a percentage of what is paid to the private entity originating from users' fees (Leviäkangas et al., 2016). PPPs can also take the model of a long-term arrangement where the private entity partners with a public entity to design, build and fund a project. In such an arrangement, a long-term lease

will be formed with some portion of the income generated from the project going to a private entity (Leviäkangas et al., 2016). After the lease comes to an end, project ownership will return to a government agency for operation, maintenance and revenue collection. A wider explanation of PPP Operating models can be viewed below.

#### ***Operation and Maintenance contract (O & M)***

This mode involves a private act guided by the state's contract to operate a government-owned project or assets for a predetermined period. A public actor still maintains the official ownership of the project. The model lowers the risk for private-sector and its involvement (Gatti, 2013). Examples include the water sanitation and management projects in Europe where private actors are responsible for operating and maintaining water facilities.

#### ***Build-operate-transfer (BOT)***

BOT denotes full incorporation of the project delivery. The established contract will administer the design, operation, construction, funding and maintenance of the work. When the concessionary years end, the project is ultimately returned to the public (Gatti, 2013). Countries known to use BOT include Japan, Turkey, Saudi Arabia, Iran, Egypt and others.

#### ***Build-Lease-Transfer (BLT)***

This model allows a private actor to build an asset and subsequently rents it to the public entity. As a result, the control over a facility is shifted from the owner to the lessee (Gatti, 2013). Thus, the ownership remains through shareholders, but operations are rented. The agreement is built on a leased period which means ultimate ownerships and responsibility will remain with the public sector. BLT is commonly used in the healthcare sector in Turkey.

#### ***Build-Own-Operate-Transfer (BOOT)***

The BOOT structure involves a private entity owning the work. Throughout the concession years, a private entity will own and operate the asset to recover the capital cost and maintenance while attempting to accomplish higher returns for the project. This model has been utilised in several projects such as railways, public roads and power production (Villani et al., 2017). Canada, New Zealand, Nepal and Australia are some of the nations that utilise BOOT.

### ***Build-Finance (BF)***

A private entity develops a facility and funds the costs throughout the construction. Post-construction, the public sector relinquish control; thus, for the private actor's risk and its participation, the model is at the lower end for both the two measures (Gatti, 2013).

### ***Build-Own-Operate (BOO)***

In the BOO model, the project ownership squarely rests on the project company like a Mobile network. As a result, a private firm obtains residual value benefits from the projects. The model is employed when the tenure of a facility overlaps with the concession years. The BOO model entails a significant amount of funds and a long payback period (Villani et al., 2017).

### ***Design-Build-Finance-Maintain-Operate (DBFMO)***

The DBFMO model is similar to BOOT, but there is no definite transfer of ownership. Additionally, the contractors take up the risks of funding until the contractual period comes to an end (Leviäkangas et al., 2016). The owner will then assume the responsibilities of maintenance and operating the project. DBFMO model has extensively been utilised in particular infrastructure projects like toll roads (Villani et al., 2017). A construction firm is held responsible for designing and constructing an asset for the public, the actual owner. Meanwhile, the responsibility of raising funds throughout the project squarely rests on a private entity and even during the exploitation period (Pakkala, 2002). The payment to the private entity for the project starts post-construction. The DBFMO model is commonly utilised in the European Union (European Court of Auditors, 2018).

### ***Design-Build-Finance-Maintain (DBFM)***

This structure of PPP involves private entity building, funding and facility management, and upkeep services using a long-standing agreement. The project owner (the state) will operate the asset. The model is considered to lie in the intermediate of the spectrum in terms of private actor's involvement and risk (Villani et al., 2017).

### ***Design-Construct-Manage-Finance (DCMF)***

This model allows a private actor to be delegated the responsibilities of designing, constructing, managing and funding a facility, guided by the government's specifications. The facility's cash flows originate from the state's rent payment for the asset (Villani et al., 2017). Examples of DCMF model projects include the development of public hospitals and prisons.



### ***Design-Build-Operate-Transfer (DBOT)***

This financing model is frequently used when the client or owner has little familiarity with the infrastructural project under construction. Thus, the client outsources the project to a private firm that will design, build, operate and ultimately transfer the project. DBOT has been used in refinery developments (Izenson, 2002).

The European Commission notes, "the term public-private partnership ("PPP") is not defined at the community level. This point is more relevant than is realised where the community generally are often disregarded when corruption is prevalent in PPPs. In general, the term refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service" (European Commission, 2004). Thus, entering into a PPP commences with the assertion of a specific country's public infrastructure or service requirement. The Concession Agreement is a detailed contract between the parties that describes the project in technical and financial terms, including risk management. (PPIAF, 2009). Zhang describes a systematic approach for the proposed concession agreement in four stages in the infrastructure and service delivery process, including:

1. Design of a workable concession.
2. Competitive concessionaire selection.
3. Financial regulation of the selected concessionaire during the concession period.
4. Periodic re-concession and rebidding to allow changes and adjustments of the concession

The general framework is built on the realisation that although many aspects are project, sector, or country-specific, the general concept, process and service delivery through PPPs are essentially identical (Zhang, 2012). This is supported by the World Bank and the Inter-American Development Bank (ibid).

When managed well, PPPs have the impetus to provide service and infrastructure to society which benefits economic growth and sustainable development. The funding of a PPP functions on a broader scale than most contracts, where the period of agreement can last for twenty to thirty years between the public and private partner. The benefits of the

partnership for the public sector rely on the private sector sourcing the capital investment generally from a mix of debt and equity. The private partner will typically enter into a loan agreement with a bank to front face the capital investment. Governments rely on public taxes and depending on the operating model (see above), funds can be generated from user fees or tolls (for example road tolls, or transport fees). Financial modelling of a PPP is critical alongside regulation, which will be duly discussed in the context of corruption. Felsingner outlines the following inputs for the financial model structure, which includes: economic data (inflation, tax levels, etc.); construction data (construction costs and investments coming on stream over time, etc.); ongoing capital expenditure (both maintenance and growth-related); funding levels and types (equity, credits, bonds, subsidies, etc.); financial data (such as the terms of the financing instruments); and operational data (operational cost, demand forecasts, toll rate, transfer prices, etc.). (Felsingner, 2008).

PPPs transfer the risks of designing and constructing to sponsors; thus, the sub-contractors bear the cost of any delays. As a result, the contractors have a strong incentive of concluding the projects on time and within the set financial plan compared to conventional public procurement (Ittmann, 2017). An added advantage is that the sponsors utilise the assets and bear the cost of maintenance, leading to another incentive to ensure that the project is completed in good quality and durable (Moore, 2005). The two primary outcomes of a successful PPP are the rate of return (RoR) and return on equity (RoE). To support these ambitions, the Public-Private Infrastructure Advisory Facility (PPIAF) confirm the following necessary components as the quantitative basis of bankability in PPPs. These comprise overall project cash flow, cash flow availability, profitability/viability, cost recovery, debt service cover ratio, financial net present value (FNPV) and quantitative risk analysis. (PPIAF, 2009). For the responsibilities and long-term maintenance of contracts (that can last for decades), the private sector will seek an attractive Rate of Return above 7-8 per cent in real terms depending on countries and financial markets and the risk assessment. (Felsingner,2008) For the Return on Equity (ROE) and assuming a low risk and based on a 25-year concession, the PPIAF calculates ROE at 18 per cent, although private sector expectation would be for at least 20 per cent. PPPs can act as a source of money for financing infrastructural development since private entities partially or wholly provide the funds, paid back through user fees. By operating a PPP, the public sector's lack of funds is overcome since the private sector will fund the

project (Ghobadian et al., 2004). PPPs have been embraced in developing economies since they promise to bring new sources of funds for infrastructure that could lead to economic development (Hodge et al., 2010). For instance, nations that experience significant debt might utilise PPPs where the private players fund infrastructural development and the initial operational expenses. In return, the public sector will share revenue with the private actors after the project has been completed (Ghobadian et al., 2004). According to Moore (2005), PPPs improve the sustainability of infrastructural projects by minimising the project risks, especially the uncertainty of costs to deliver a project in the long term. Consequently, PPPs have been seen to be a financial investment that builds on the principles of improving economic growth, reducing poverty, supporting services and infrastructure and ultimately bearing the sigma of 'Value for Money (VfM). The typical definition for value for money found in the literature defines it in terms of three elements: economy, efficiency and effectiveness (Diamond, 2005). In contrast to the theoretical understanding presented, PPPs are not without danger or risk. Rybnicek warns of the responsibilities of both public and private parties to comprehend the risks involved and develop mitigation through a statistical review that identifies the hazards related to PPP implementation (see table 2 below) (Rybnicek et al., 2020).

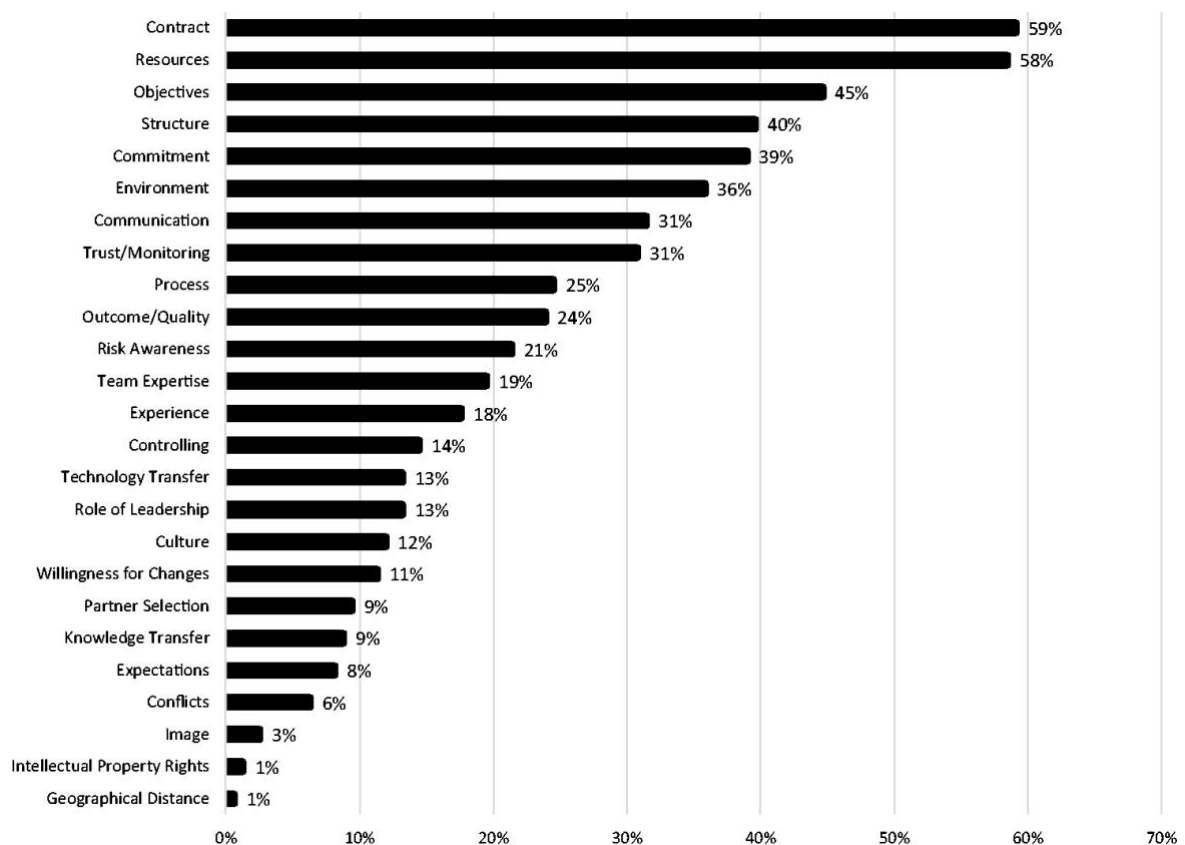


Figure 2: Risk Factors within PPPs, Rybnicek et al., 2020

Of the studies carried out by Rybnicek et al., Contracts were said to represent a significant challenge in PPPs where negotiations, incompleteness and contractual designs typified the greatest risks (Rybnicek et al., 2020). Resources were the second largest challenge where problems of poor cost estimations, cost overruns, availability of resources, lack of fiscal control mechanisms and unqualified personnel all represented the larger risks of finance, time and staff. Interestingly, the much lower considerations of risk awareness at 21 per cent, the role of leadership at 13 per cent and partner selection at 9 per cent demonstrate the private sector considerations in PPPs against the contrast of a PPP designed with the thread of good governance spun through it. Herein lies the problem between the motivations of the private actor and the public actor, and one which must be resolved by mutual performance indicators in contracts to ensure a balance of governance and best practice is in the design from the outset.

The focus on 'Value for Money', which determined the rationale behind implementation in the 1990s alongside the more recent determinants of 'Value for People' and 'Value for Future' (Peñalver, 2020), are significant. This is because they form the basis for the performance-related frameworks of PPPs relevant to sustainable development today. However, as this paper conceives, the actors for whom that value for money benefits within PPPs are some of the foundations that advocate its removal or at least restriction from future business. Relevant to the argument, both Value for People and Future have been lost concepts throughout many PPP executions where corruption disregards these aims. Thus, it is crucial to understand the power play between what Schomaker refers to as the private partner's managerial autonomy and the public body's democratic accountability (Schomaker,2020) to appreciate where the value is extrapolated.

Corruption is epitomic of self-gain where the law states' corruption is the improper and usually unlawful conduct intended to secure a benefit for oneself or another (Britannica, 2021). Thus, when we speak of the other determinants of value within PPPs, Value for Money supported by corrupt practices will inevitably negate progress for the values of people and the future. The issues arise from the imbalance of relationships between the public and private stakeholders where governments do not have the knowledge or expertise to determine best practices within private sector operations. This imbalance of

power within relationships has collected a large body of theoretical study referred to as the Principal-Agent Theory. The concept originates from two theorists in the 1970s, Michael Jensen and William Meckling. The theorists explained the Principal-Agent relationship as a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf, which involves delegating some decision-making authority to the agent (economicshelp, 2017.) If both parties to the relationship are utility maximisers, there is good reason to believe that the agent will not always act in the principal's best interests (Jenson and Meckling, 1976). Klitgaard followed this theory in 1988, where he proposed that officials who have controlling power over decisions and are not adequately managed or audited are more prone to corruption. The theorist used the equation:  $Corruption = Monopoly + Discretion - Accountability$  to support the theory that there is too little control on decision-making, poor accountability, and significant monopolistic behaviour, resulting in corruption. Rose-Ackerman developed the theory further to relate it to the topic in hand, where the author understood that all political systems need to mediate the relationship between private wealth and public power were those that fail risk a dysfunctional government captured by wealthy interests (Rose-Ackerman, 2004). If corruption prevails, programs designed to help the poor, improve the natural environment, and stimulate economic growth will have little impact and risk inflicting harm (ibid). A comprehensive regulatory framework is critical to ensuring the infrastructure or services produced through PPPs have undergone assured quality practices that will achieve a sustainable solution for governments and their citizens who will be the primary user of those facilities. In Ugur and Dasgupta's contribution, their analysis on the linkages between corruption and the economic growth of a country adhered to the Principal-Agent theory. The leading proponents of this theory believe where conflict exists between principals (the Public Sector) and Agents (the private sector), corruption occurs when a principal is unable to monitor an agent effectively, and the agent betrays the principal's interest in the pursuit of their self-interest (Persson, 2013). The principle, for example, can use the lack of technical expertise of state officials to renegotiate contracts and justify additional costs. These characteristics have the potential of rendering PPPs more vulnerable to corrupt practices as compared to other contractual agreements between the public and private entities where one side may be stronger than the other: knowledge, skills, influence or money (Liu et al., 2016). In response, governments may hire a consultant to oversee contract negotiations. Here, accusations have also arisen regarding the legitimacy of consultant support where the Principal-Agent theory can also be applied.

Manipulation may be used to justify long term employment contracts. This paper advises recruitment straight from the source where an ex-private firm expert can provide legitimate benchmarking cost-benefit analysis. This has been used in the Government of Abu Dhabi and has worked well to ensure more sophisticated procurement practices and transparency. International Organisations such as the United Nations (UN) and (Organisation for Economic Cooperation and Development (OECD), United Nations Office on Drugs and Crime (UNODC), United Nations Commission on International Trade Law (UNCITRAL) and International Financial Institutions, e.g., the IMF, World Bank, Asian Development Bank (ADB), Inter-American Development Bank (IADB), as well as National Governments, Civil Society Organisations and the legal fraternity have created numerous frameworks and regulations against corruption. Two of the most significant international legal treaties or conventions for the prevention of corruption are the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organised Crime (UNTOC). In terms of domestic law, PPP legislation has differed in strengths, allowing for both management and delivery weaknesses. Here, this paper conceives it is not the plethora of regulators that are the issue but the lack of power in the regulation that allows the problems to persist. Notably, it is the avoidance of adherence to rules built to protect against corruption within PPPs. What is required is strengthening on a consequential basis with sanctions to encourage good governance to determine whether barriers to sustainable development can be removed.

### **The Nature of Corruption**

There are many definitions of corruption presented by academic literature, international institutions, legal and regulatory entities, governments and civil society. The World Bank defines corruption as a form of dishonesty, or a criminal offence undertaken by a person or an organisation entrusted with a position of authority to acquire illicit benefits or abuse power for one's private gain (World Bank, accessed 2021). In a helpful study, Notable Economist and Theorist Daniel Kaufmann analysed the differences between so-called legal and illegal corruption. The study, which incorporated 8279 firms in over 104 countries, revealed three types of equilibrium outcomes which Kaufmann determined as one based on criminal corruption, where the elite does not face any binding incentives to limit corruption; one centred around legal corruption, where the elite must incur a cost to protect corruption legally; and finally, a no-corruption outcome, where the population is

able to react to corruption (Kaufmann, 2011) effectively. This information is relevant concerning the cultural beliefs attributed to the actions of corruption. Until 1999, bribery was not considered an illegal act, although not a justification, perhaps the failure to instruct cultural change in European business properly can be seen as a catalyst to the bribery that evolved after establishing legislation.

The most significant detriment of corruption is those factors that pertain to civil society. Notable theorist Jean Jacques Rousseau said, one of the most critical functions of government is to prevent extreme inequality of fortunes; not by taking away wealth from its possessors, but by depriving all men of means to accumulate it; not by building hospitals for the poor, but by securing the citizens from becoming poor (Rousseau, 2008). Though Rousseau does not speak specifically of PPPs, the advice is applicable for the motivations of PPPs where the function of a PPP is to drive forward socio-economic improvements within a society not to divert funds away from its citizens through bribery, monopoly and corrupt practice. As notable theorist Rousseau countenances, where governments immerse themselves into the arena of corruption and bribery, it is the citizens who will suffer most from the actions he called the corruption of the people from the weakening of all springs of government (Rousseau, 2008). The spread of corruption detailed within the three cases discussed for this paper illustrates the effects of corruption on society. Without loyalty to the functions of the court or public confidence, the magistrate's instruction is useless (ibid). Rousseau demonstrates peace, justice, and strong institutions will ultimately fail under the weight of corruption in the public institution. The theorist further warns if the lesson is unsupported by authority, all instruction is useless, poignant to the failures of governments and private companies today that do not adhere to the regulations they are signatory to (Rousseau, 2008).

As aforementioned, there are many international organisations and civil society organisations that support national and international as well as public and private sectors in the pursuit of anti-corruption. These include UNODC, UNCAC, OECD, UNCITRAL, UN Global Compact, International Association of Anti-Corruption Authorities (IAACA), Transparency International, Global Organization of Parliamentarians Against Corruption (GOPAC) etc. The limits of space do not allow a complete historical or chronological listing of each one but are relevant to this paper; the literature will expand on a few. The most relevant conventions are the UNCAC and UNTOC. The reason for their importance

rests on their capacity as mandatory legal instruments by those governments which have ratified them. The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000 and entered into force on 29 September 2003, is the main international instrument in the fight against transnational organized crime with specific protocols to prevent trafficking, illegal smuggling of migrants and illicit manufacturing and trafficking of arms (UNODC, 2021). Relevant to the fight against corruption, states must undertake the creation of domestic criminal offences, (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities (ibid). The mission of UNODC is to contribute to global peace and security, human rights and development by making the world safer from drugs, crime, corruption and terrorism. The United Nations Convention against Corruption (UNCAC) was adopted by the UN General Assembly on 31<sup>st</sup> October 2003 and entered into force on 14<sup>th</sup> December 2005 in accordance with article 68 (1) (UNODC, 2021). The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange as well as many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector (ibid). The UNCAC provisions call for appropriate procurement systems based on transparency, competition and objective decision-making to prevent corruption. Additionally, the convention advises pre-determined criteria in procurement, accountability relevant to PPPs with auditing in financial management and an efficient system of risk management. The obligations also refer to corrective action in the case of failure to comply with the referenced requirements. The UNCAC also sets out individual standards for both the public sector in Articles 7, 8, 10 and for the private sector in Article 12, where the convention compels both parties to act with measures to enforce its obligations, promotion of standards of anti-corruption, cooperation, accountability and transparency. For the Private Sector, it is forbidden to establish off the book accounts. For the public sector, the code of conduct for public officials must be obliged and appropriate legislative action consistent with the convention. The United Nations Global Compact, founded in 2000, is a non-binding United Nations pact to encourage businesses and firms worldwide to adopt sustainable and socially responsible policies and report on their implementation



(UNGlobalCompact, 2021). The focus is on anti-corruption, peace, and the rule of law. Finally, the Organisation for Economic Co-operation and Development (OECD), established in 1961, is an intergovernmental economic organisation that provides a forum in which governments can drive social, economic and environmental change worldwide. The OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction (OECD, 2021). The Convention is of significant importance where it provides recommendations for Good Practice Guidance on Internal Controls, Ethics and Compliance. The OECD operates the Working Group on Bribery Resultant of the working group, the OECD have produced many specific recommendations and studies on illicit financial flows from developing countries, better governance, foreign bribery enforcement, anti-bribery recommendations and even evaluations of PPPs and traditional procurement for the pursuit of value for money. UNCITRAL alongside its significant work on International Trade Law has also produced a comprehensive legislative guide on PPPs. The plethora of Institutions, Conventions and Guidance is integral to the coordination of efforts to combat both bribery and corruption. The complexity lies in the knowledge that these conventions and treaties were already established (with Germany, Sweden and Brazil as members obligated to those treaties) when the grand bribery described in this paper by private firms was committed. The challenge for the international community then is much greater. If the regulations and laws are already in existence and overtly disregarded, addressing corruption poses more difficulty due to the lack of cooperation and adherence to the rules. Addressing perpetrators of corruption who originate from countries with good governance and the rule of law is the oxymoron of the paper. It raises more questions than can be answered directly here.

### **Corruption as a catalyst for Global Economic Growth**

One of the more controversial theories purported by some scholars suggests that rather than preventing economic growth within nations (developed or developing), corruption in PPPs can operate as a catalyst that supports GDP acceleration in an economy. Following the themes discussed, it would be remiss of this author not to investigate further the antithetical theories that propose to negate this paper's hypothesis. Consequently, this

section will review and subsequently repudiate this proposal. The rationale behind the theory states that in the level of regulation in terms of governance, political framework and the rule of law, the lower the regulation, the easier corruption can manifest. The theories expounded by Leff (1964) and Huntington (1968), whose theory propounded that where bureaucratic practices impeded development within the public sector, bribery constituted funds that 'greased the wheels of growth'. An empirical study conducted by Dreher and Gassebner (2013) examined the short-term implications of corruption and found that in nations where the vice is rampant, new entrepreneurs emerge since corruption in the public sector promotes activities in the private sector (Rose-Ackerman, 2017). Indeed, the first presentation of evidence supports the theories that corrupt actors can bypass procurement delays, negotiate lucrative contracts on a national or transnational scale, and allow faster access to funds. In turn, there is support for public sector activity, including the avoidance of debt shown on the balance sheet of that same fiscal year and the advancement of services and infrastructure within the community. The loans provide financial institutions with high returns, the private sector with growth and the public sector fulfilment of obligations to the society it governs. This was certainly the case for the corporations of Siemens, Ericsson and Odebrecht, albeit part of the corrupt gains may have ultimately fallen into the path of illicit financial flows (IFF) rather than received as taxes. The relevance of political status was essential to the advancement of these theories. Economists Houston and Meon, Mendez and Sepúlveda, sought to link the stability of political regimes as an additional determinant to growth (Méndez and Sepúlveda 2006). In a sample of 63 to 71 countries investigated within the period 1970 and 1998, Meon and Sekkat confirm that factors are dependent on the governance of a country which although demonstrating the potential for an increase in investment, the results do not negate the 'sand in the wheels' impact on growth (Meon and Sekkat, 2005). According to Svensson (2005), the models used to measure the effects of corruption are not sufficient. This author agrees, the formats for the Corruption Perception Index based on experts opinions negate the fact that Sweden and Germany most recently were complicit to worldwide bribery yet remain in the top ten ranking on the Index. Many indexes do not relate stolen assets to the overall balance sheets and thus this needs change.

Corruption occurs in various forms, and it should not be assumed that all types of corruption are in the same way harmful to economic development. Owing to the occurrence of bribery operating in different ways, not all corrupt deals negatively affect

the economy. This supports the preceding points in this paper where governance does not simply equate to absolute adherence where corruption can still prevail. Further analyses have revealed that the perpetrators of corrupt deals coordinate their activities differently, but ultimately, corruption directly and adversely affects growth in low-income countries (Ugur & Dasgupta, 2011). In the absence of organised corrupt networks, every bureaucrat will collect bribes individually. On the other hand, organised corrupt networks imply that the collective bureaucracy reduces the cumulative value of bribes, resulting in lower bribes and higher innovations, resulting in positive economic development. Therefore, the interesting question is not about why the extent of corruption in the least developed nations is more significant than in developed economies, but why the nature of corruption varies between the two (Ugur & Dasgupta, 2011). The degree to which corruption is organised is just one of the aspects, but other factors exist. For instance, it is common in some nations to pay ex-post (a share of profit) rather than ex-ante (advance bribes) to politicians or public officials. Thus, it is presumed that the implications on the economy will vary (Sûmah, 2018). In this case, the regulator will be influenced towards offering larger and longer-term projects to one firm, bringing competition down and reducing positive public investment.

Despite the theories of corrupt practices bringing gains to the economy, the abundance of literature and statistics that support the hypothesis of corruption as a barrier to sustainable development overtake this theory. Indeed, macro-level studies using country-level data to explore governance and economic indicators have consistently attested to lower growth rates, GDP per capita, economic equality and lower levels of human development (Chêne, 2014; Mauro 1995; Rothstein and Holmberg, 2011; Smarzynska and Wei (2001). The findings show that corruption affects the magnitude and composition of investors, and thus a reduction in foreign direct investment will occur. Accordingly, corrupt nations are reportedly less appealing to investors. Therefore, if they opt to invest in such countries because of non-transparency bureaucracy, they will enter the market via joint ventures that understand corruption issues (Thach et al., 2017). Farhi and Tirole understood that banks would more likely take on the risk if other banks were unwilling to lose out on potential returns, safe knowing that public sector authorities would intervene if the burden became too great. Further to this debate, the reliance on public sectors instead of fiscal prowess does not greatly support balanced or even justified growth where shared risks are better than no risk. However, rather than operating in silos between countries (especially relevant

in the developed to developing country ratio), the theorists advocate for a macro-prudential regulation which would allow for a collection of information to inform the risks on a global basis which in turn would allow for a globally effective enforcement system (Farhi and Tirole, 2012).

### **Sustainable development and the barriers of corruption**

By the year 2050, there are predicted to be over 9.9 billion people on the planet. In the year 1800, that number was just 1 billion, and today we stand at 7.7 billion globally. (worldometers.info). The desertification of up to 20 per cent of land currently affects '40 per cent of the entire world population' with estimations of mass migration caused by desertification, threatening 'displacement of up to 135 million people by 2045' (unccd.int, 2021). The pressures on living conditions for human sustainability are also deeply concerning, with predictions of '50 per cent more food, 45 per cent more energy and 30 per cent more water' adding to critical imbalances between nature and humanity (unescap.org). In 2015, in an unprecedented collaboration of action, 193 UN member states committed to the '2030 Agenda for Sustainable Development. Comprising 17 Sustainable Development Goals (SDGs) and 169 targets, this ambitious program aims to accomplish the long-term aim of 'peace and prosperity for people and the planet, now and into the future (UN HLPF, 2020). The success of the 2030 Agenda is measured through the implementation of 17 goals (shown in Table 1 below) under the pillars of social, economic and environmental, sustainable development and, attainment is predicated on the UN ideation of 'governance through goals'.

## **Sustainable Development Goals (Source: United Nations 2015)**

- Goal 1.** End poverty in all its forms everywhere
- Goal 2.** End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3.** Ensure healthy lives and promote well-being for all at all ages
- Goal 4.** Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
- Goal 5.** Achieve gender equality and empower all women and girls
- Goal 6.** Ensure availability and sustainable management of water and sanitation for all
- Goal 7.** Ensure access to affordable, reliable, sustainable, and modern energy for all
- Goal 8.** Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all
- Goal 9.** Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation
- Goal 10.** Reduce inequality within and among countries
- Goal 11.** Make cities and human settlements inclusive, safe, resilient, and sustainable
- Goal 12.** Ensure sustainable consumption and production patterns
- Goal 13.** Take urgent action to combat climate change and its impacts
- Goal 14.** Conserve and sustainably use the oceans, seas, and marine resources for sustainable development
- Goal 15.** Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation, and halt biodiversity loss
- Goal 16.** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels
- Goal 17.** Strengthen the means of implementation and revitalize the global partnership for sustainable development

Table 1 – United Nations Sustainable Development Goals, UN, 2021

The importance of this is two-fold. First, there is no binding legislative mechanism through which the SDG goals can be implemented. Rather, the achievement is based on the principle of self-governance and political will by each nation. Second, the marked asymmetries in each nation's social, economic and political systems place negotiation to implement the goals in a precarious position. Critical to attainment, national heads of state must champion 'the right change' through coordinated policies, regulations and laws with accountability and transparency. National public policymaking has the impetus to support sustainable development. This includes supporting industry, manufacturing and agricultural transformation; to structure trade and financial practices; to support and protect the fundamental rights of health, security, inclusivity and employment of its citizens and govern the laws and regulations that threaten climate change and depletion of land and water. These are all core elements within the SDGs, and what will influence success is safeguarding policies that are relevant, far-reaching and balanced towards the nuances of each goal.

Goal 16 for Peace, Justice and Strong Institutions is a standalone goal. Still, its failure will create a domino effect for all goals where political instability, corrupt politicians, weak

legal and regulatory frameworks and intemperate private firms will undermine economic growth, leaving shortfalls for funds dedicated to sustainability. Its success, therefore, lies with the myriad of stakeholders, including National Governments, International Organisations (IO's), Financial Institutions, Civil Society Organisations (CSO's), Non-Government Organisations (NGO's), Charities, Academia, Scientists and finally, the 7.7 billion citizens in today's world. As mentioned, the goals are the designated responsibility of the 193 member states committed to them. Several mechanisms can track performance. In the context of official governance of the Sustainable Development Goals, the UN High-Level Political Forum (HLPF) acts as the leading platform for 'governments, international organisations, civil society organisations and other actors to meet and review the 2030 Agenda for Sustainable Development (sustainabledevelopment.un.org, 2020). Significant to acknowledge, however, is the lack of progress and indeed reporting in developing nations. There are currently 26 countries from Africa, Asia Pacific, Latin America and the Caribbean that have still not presented any VNR (sustainabledevelopment.un.org, 2020). This number is significant not least because it is the developing world that is at most risk through non-delivery of goals and most at risk from corruption. Political regimes are critical factors that undermine progress where weak governance and corruption can be directly linked to threats to sustainable development. For example, the correlation can be witnessed in Brazil, previously a strong advocate for the Agenda, but three years since the election of current President Bolsonaro, the country has neglected to produce a VNR. The nation has witnessed civil conflict following corruption at the highest echelons of power. Additionally, the current political power has sought to invalidate all claims towards the impacts of climate change, deforestation and, more recently, the pandemic.

In contrast, Ghana, for example, has altered its policies to support 30 per cent of procurement contracts to be given to women, young people and persons with disabilities, directly advancing gender equality and decent work and economic growth of SDGs 5 and 8 (MOPP, 2018). Conversely, other nations have witnessed corruption in PPPs as barriers and damage to the SDGs' environmental aims. The beautiful islands of the Maldives, for example, have recently been immersed in an island leasing scandal estimated to have cost US\$ 80 million, which diverted funds away from environmental protection, directly impacting SDGs 14 and 15 for life below water and on land. (Shipley, Transparency International 2019). As a governing principle, the OECD and similar entities promote that ownership of the SDGs should be at the subsidiarity level. This does not negate their

support but rather recognises that local issues should be addressed locally. Still, where corruption undermines society's social, economic and environmental fabric raises questions about how far global governance can exert influence to facilitate resolution when it can only advise but not enforce. The challenge for the 2030 Agenda and interest of this paper rests upon the conflict of increased global promotion of PPPs as propagators for sustainable development, where there is a dominant view that these partnerships offer lucrative financial support towards projects for services and infrastructure. The historical, theoretical and statistical data will show the extent of corruption and lack of regulation within PPPs. Their further use threatens to override the legitimacy and aims for peace, justice, and strong institutions and wreak damage to the future implementation of sustainable development.

## **Chapter I**

### **Conceptualising the framework of Corruption**

#### **Introduction**

This chapter will further identify the risks, specifically financial, that undermine overall achievements such as renegotiation and the cost of risk transfer. The chapter will expound on the different socio-economic structures within the global economy, the responses of International Organisations and the consequences of corruption on developing nations and a wider global context. The chapter concludes with the concerns of financial pathways between developed and developing countries that threaten to undermine real economic growth, thus removing the capabilities of some nations to attain financial independence, ultimately threatening the achievement of sustainable development where it is needed most.

#### **1.1 The Role of PPPs as a barrier to Sustainable Development**

Scholars agree that the achievability of sustainable development goals is a big task (Randers et al., 2019). In the General Assembly Resolution for the 2030 Agenda, Paragraph 67 states, 'Private business activity, investment and innovation are significant drivers of productivity, inclusive economic growth and job creation (United Nations Joint Inspection Unit, 2017). The UN acknowledges the private sector's diversity, ranging from micro-enterprises to cooperatives to multinationals and call upon all businesses to apply their creativity and innovation to solving sustainable development challenges United Nations, 2015). Operated transparently, the use of the private sector to advance sustainable development is not an erroneous statement. Further, the 2002 Johannesburg Declaration encouraged private sector collaboration contributing "to the evolution of equitable and sustainable communities and societies" (United Nations, 2002). This statement was echoed by the Rio +20 conference in 2012, which stated, "the implementation of sustainable development will depend on the active engagement of both the public and private sectors" (United Nations 2012). Similarly, the Addis Ababa Action Agenda (AAAA) adopted by the UN in 2015 indicated that partnerships mean raising funds for supporting SDGs (Sundaram et al., 2016). The AAAA acknowledged that both the private and public sectors play a significant role in infrastructure financing (Jomo et al., 2016). To



overcome funding issues for governments, the UN, EU, World Bank, International Monetary Fund, Asian Development Bank, European Investment Bank, Asian Development Bank view PPPs as mobilisers for large scale service and infrastructure projects. In 2017, The United Nations Conference on Trade and Development reported that "achieving the SDGs will take between the US \$5 to \$7 trillion, with an investment gap in developing countries of about \$2.5 trillion" (UNDP 2019). Many of the International organisations mentioned view PPPs as essential in achieving Sustainable Development Goals. Scheyvens advocates that the sustainable development framework requires a consultative approach to ensure that the public sector includes the private sector in the negotiations (Scheyvens 2016).

In 2018, the UNECE presented a second guide, 'People First Public-Private Partnership', focusing on low- and middle-income countries. At least for the Governing body, the onus should benefit the people where PPPs should qualify as 'Value for People' projects. Relevant to our argument, even with this promotion, UNECE said the model was 'not fit for purpose', adding weight to the mixed messaging of the International Organisations reported within this paper. Specifically, UNECE warned PPPs in general delegate a key implementation role of Government to non-state actors such as the private sector or civil society, and rather than contributing to the successful delivery of governmental infrastructure and service, the approach is an abrogation of the responsibility of the Government (UNECE, 2018). Further comments advise that PPPs introduce a dangerous profit motive in delivering public services, marking it as an unsuitable model that should be replaced by something else, or at least significantly improved (ibid). Over and over, such warnings have been made by the international community, yet PPPs have continued to be pushed towards low and middle-income countries. There is a significant responsibility placed on the International Organisations to govern an incredibly ambitious and challenging Agenda for the SDGs. Nevertheless, even negating the scandals that this paper presents, PPPs have been of critical debate within the Political and International community that have never measured up to scrutiny since their inception. More than barriers to sustainable development, this paper advocates such discomobulation supports the fundamental statement that PPPs are not fit for purpose.

Regarding Private Sector Partnerships and the 2030 Agenda, the Secretary-General of the United Nations was advised to make amendments to the operational guidelines. These were to include: more flexible financial rules governing the transfer of funds concerning businesses, in the specific context of partnerships; re-evaluation of the red lines between partnership and procurement; the simplification of the internal operational processes and workflow; increased delegation of authority to lower managerial and operational levels where appropriate, while taking additional measures aimed at building capacity and increasing accountability and transparency and an outline of soft, system-wide guidelines on monitoring, assessing, and reporting on partnership engagement with the private sector. (United Nations Joint Inspection Unit, 2017). This action is highly relevant to our supporting argument. At the time of production of these proposed amendments, the global scandals of corruption mentioned within this paper were highly established across the world media. With comprehensive information on the extent of corruption prevalent in PPPs, the advice for more leniency within these partnerships appears naïve. At this point, a thorough audit of PPP practices would have been beneficial to enable deconstruction of the frameworks and improve accountability and transparency within their operation. Although publicly condemned, the international community had an opportunity to send a strong indication that criminal malpractice within PPPs would not be supported by enforcing stricter guidelines and sanctions. The proposal for a 'softer approach within PPPs' only emphasises the leniency with which PPPs are governed by the international community and misses a crucial opportunity to change the narrative.

The power play within the PPP is significant, affecting the potential outcomes for all the actors concerned. The tools used are equally important, and one of the most important for strategising within PPPs is renegotiation. In support, Guasch, Laffont and Straub provide context for this point. In 2003, the theorists put forward a hypothesis to question the high rates of contract renegotiation and the viability of the concession model to attract private participation in infrastructure in developing countries (Guasch et al., 2003). The authors studied over 1,000 concessions in the Latin America and Caribbean region between 1985 and 2000 (ibid). They identified 10 per cent of electricity concessions, 55 per cent of transport concessions, and 75 per cent of water concessions were renegotiated (ibid). Guasch suggested that the high rate of renegotiation so soon after concession award may reflect poorly designed tender processes, weak regulation, or opportunism on the Government or the private sponsors (ibid). The WB denotes that most renegotiations are

favourable to the operator, resulting in increased tariffs or reduced or delayed investment obligations (World Bank, 2020). Morales and Morales (2019) also refer to the contract renegotiation's responsibilities in the modus operandi of the Odebrecht scandal of which this paper will further investigate. In more recent research, studies show that in projects where bribes were paid, renegotiations escalated the value of investments by over 71% compared to only 6.5% in projects where the company never paid bribes (Camacho & Vázquez-Maguirre, 2021). In most nations, infrastructure auctions were objectively competitive. The cost inflations accounting for the paid bribes were found later during the renegotiation phase, whereby contracts were adjusted without transparency and scrutiny. A US \$1 million bribe can quickly amount to a US \$100 million loss to a developing country through derailed projects and inappropriate investment decisions which undermine development (OECD, 2014). Accordingly, increased costs through renegotiations cause substantial damage to state funds. From paying higher prices and obtaining lower quality goods and services, local companies lose out in a procurement process and consumers potentially experience indirect but measurable harm where bribery leads to higher utility or telecoms prices for users (Transparency.org, 2020).

## **1.2 State and Non-State Actors – The Basis for Corruption**

The basis for executing a PPP is determined by most markets' supply and demand dynamics, whereby the state requires infrastructure but lacks sufficient and instant financial resources. The non-state actors possess the capability but lack market penetration. The primary consideration for the public partner stems from capital requirements, managerial competencies and technical skills, vital in providing the complex infrastructure needed to achieve sustainable development goals without losing the political control over the provision of infrastructure (Schomaker, 2020). In essence, if the principal lacks the necessary information to monitor the Agent's performance in a practical way, the 'information asymmetry that arises from the Agent having more or better information than the principal creates a power imbalance between the two and makes it difficult for the principal to ensure the Agent's compliance (Booth, 2012). One of the considerable appeals of PPPs for the private contractor is the contract's longevity, which by its nature can produce long term yields over a long period (20- 30 years) both for the banks financing them and the private partner involved. The implementation of services and infrastructure cover basic infrastructure (roads, rail and ports; power stations; telecommunication; water

and sanitation), food security (agriculture and rural development), climate change mitigation and adaptation, health and education. Complementary to the process, service and infrastructure projects typically require large numbers of contracted personnel, supporting employment quotas. In this regard, the proponents for PPPs would argue that partnerships support decent work and economic growth (SDG 8). For governments, the private sector can expedite construction or similar projects faster. Also, as many forms of PPPs allow the financing of the public infrastructure off-balance-sheet, at least the general perception is that these models avoid new debt (Schomaker, 2020). The challenges to the outcome of these projects rely on opportunities where the actors (both public and private) can manipulate various loopholes within the contract for private gain (Iossa and Martimort, 2014; Klitgaard, 2012). In some countries, the PPP contract may be subject to administrative law, while in others, it may be governed by private law (UNCITRAL, 2020). Various issues arising out of the PPP contract, or the operation of the facility may not be the subject of mandatory rules of a public law nature, which may include formation, validity and breach of contract, including liability and compensation for breach of contract and wrongful termination (UNCITRAL, 2020). Where the establishment of the law is weak, corruption can be better cultivated. Where there are insufficient resources to combat bribery, there can be a lack of judicial process, resulting in a lack of investigations, prosecutions and adequate evidence and sanctions against companies bribing foreign officials. (OECD, 2014). The asymmetry of information within the Principal-Agent relationship supports the process to which legal systems fail. Thus, the Agent can be seen to exert significant pressure and influence within the realms of governance and justice. On this note, Rose Ackerman proposes that better funding resources towards combatting corruption should aim at projects that improve governance. Inputs to the projects would cover such performance objectives as the speed and effectiveness of government activities, the satisfaction of citizens, and the distribution of benefits and cost savings (Rose-Ackerman, 2004). This is important to creating a better dynamic where we have witnessed non-adherence to anti-corruption networks tackling the root causes of political instability and weak institutions aids progress of Goal 16 supporting the opportunities to help all goals.

Integral to the analysis of costs within PPPs and the impact of corruption appears to divide the Scholars. According to Dreher and Herzfield, a one-point increase of corruption reduces growth by 0.13 points and includes factors such as public expenditure, foreign aid,

investment and inflation. Hague and Kneller, however, purport that an increase by one standard deviation of corruption has a higher impact of reduced growth of 5 per cent. Within the research, there appear many disparities within these indexes. Nevertheless, corruption by its nature is hidden; ergo, costs can be an unknown quantity. Additionally, macroeconomic influences may be greater than the incidences within the PPP, such as political or the pandemic, for example, which will have a broader effect on the growth or reduction of an economy. Ugur and Dasgupta's study of 55 cases acknowledged the need for inclusion of macroeconomic levels within their meta-analysis which found a one-point increase on the Corruption Perceptions Index (produced by Transparency International) results in a reduction of growth of 0.007 per cent. Their findings are interesting where they contrast with the general theoretical understanding that corruption impacts low and middle-income countries more than wealthier economies. The underlying theme that corruption can stimulate a positive effect is explored further. However, the complexity of measuring the nature and differences between the different global economies, this paper confirms the current methods may not accurately or sufficiently offer precise measurements.

In contrast to the Corruption Perception Index, where Germany and Sweden operate in the top ten rankings, the case studies presented within this paper show evidence that both countries were highly immersed in corruption, reflecting the countries ranking. Yet, as explained the Index remains largely unaffected. Relevant to the findings, perhaps the lack of corruption recorded for these countries lies in a more profound issue related to the culture of bribery being an acceptable part of public and private political life for an extended period. Until 1999 and the OECD Anti-Bribery Act, bribery was legal, and in terms of conflicts of interest Germany for example, can have a member in parliament expounded political rhetoric and recommendations at the same time as acting as a lobbyist pushing particular interests in the same matters (Transparency, 2021). Thus, governance for any real effect is hindered by its interpretation of what that should entail. *Governance* can be defined as the actions and decisions of the state towards a collective problem through guidance, policy and the rule of law. Where corruption can spread is a clear indicator that the mechanisms for governance and accountability are lacking. Some theoretical studies have shown a causal link between a dominant, interventionist state like a dictatorship and the high levels of corruption. This situation purportedly allows politicians at the highest echelons of power autonomy to act within corrupt means without

reprisals. Therefore, an enhanced statistical representation should include the catalyst effects of corruption from developed to developing nations. The correlation between reduced growth can originate from the corruption of wealthier countries that manipulate weak governance in poorer states. Officials in power may be drawn to corruption in developing countries such as Latin America, Asia or Africa. Private firms support political candidates to rise or remain in force by financially incentivising their campaigns. In return, the Agent expects to earn the monopoly on service and infrastructure projects within the state or country. This trigger can then set in motion a chain of events where the elected official already susceptible to corrupt practice may then continue elevating private firms inappropriate for services and infrastructure delivery owing to the receipt of bribes and regardless of the detriments to society. Additionally, listing projects and consequently costs, off-balance sheets, the details remain concealed better and longer where future governments may lack expertise in auditing these old accounts. Some PPPs may fail due to poor planning or inadequate fiscal or operational management. The X factor is the point that moves a PPP from an inefficient burden to a hazardous event and is the crossover between negligence to corruption. At this point, governance fails, and the far greater risk of PPPs affects the core elements of democracy, human rights, and political stability. Assuming that both public and private actors in PPP negotiations have no implicit preference towards engaging in more or less ethical behaviour, the final decision to either abstain or engage in corrupt practices will be informed by the incentive offered by the specific situation or the expected costs and benefits accrued from their decision (Schomaker, 2020). Many studies show high-corruption countries achieve weaker economic growth, lower literacy rates, a loss of trust in public services, inadequate healthcare services, fewer freedoms, less environmental sustainability, higher mortality rates and overall worse human development outcomes (European Union 2015, Kaufmann et al., 2005; Mauro 1995, 1998; Ndikumana, 2006; Transparency International, 2021; UNESCO, 2009). In Brazil, where corruption is prevalent, one of the key impediments to exposure of corruption has been the suppression of the press, where current and, indeed, previous Presidents have sought to bind the media from freedom of reporting. The effects eventually always washdown. What is often seen is the rise of civil society to protest against the endemic corruption both in politics and in freedoms where the collective will aim to bring down the few to bring about a more democratic state. The final effect of corruption from the private to the public to the state's citizens is often the unravelling of

political stability into a violent conflict where the worse outcomes stemming from corruption ultimately destroy the democratic freedom of society.

### **Risk Transfer between State and Non-State Actors**

One of the many benefits of a PPP for the public sector is the private sector's risk responsibility, both the operational and financial risks, with the added potential for states to utilise more funds for projects. Outwardly, this may persuade a state's citizens that their current political party is perhaps more successful in implementing infrastructure and services than previous governments. This transference of risk to the private sector, however, is both temporary and illusory. First, the cost of capital of the private partner is usually higher than that of the Government, i.e., the interest rate on private sector loans exceeds generally the interest rate on public sector loans (PSIRU, 2008). Thus, if the efficiency gain of a PPP falls short of the additional interest cost, the minimum unit price at which the private partner can deliver the service will not be lower than the price governments will pay in the case of traditional procurement (ibid). If this is the case, the European Economic and Monetary Union warns 'PPPs may be operated even when they are more costly than purely public investment' (EMU 2003, OECD 2008). Secondly, the cost of risks may be exaggerated by private firms, which raises the costs to governments who lack the expertise to determine the appropriate levels per project. The IMF has warned of such dangers where a government overprices risk and overcompensates the private sector for taking it on, which raises the cost of PPPs relative to direct public investment." (Eurodad, 2018). Additional risks culminate from aggressive renegotiations that culminate in high costs above the preliminary budgets agreed. Often, these negotiations occur at critical periods where impending elections are a breeding ground for payments to politicians in return for future contracts. For example, in a study of 307 water and transport projects in five Latin American countries between 1989 and 2000, Guasch, Laffont and Straub (2006) found that about four-fifths of government-led renegotiations occurred after the first election during the life of the project. Recent efforts of the World Bank and other development banks advocate that risk ownership is better deployed through private investment over public funds. However, many economists believe this risk transfer to be temporary. As this paper previously identified, the burden of debts carried forward to future governments from PPPs only harms the aims of sustainable development. Additionally, where private firms may encounter financial issues such as

bankruptcy leading to non-delivery or non-completion of a project, this will push a 'white elephant' burden upon the state to manage. Fundamentally, suppose the current state makes the project off-balance. In that case, the future Government will have to carry the operational, renegotiation, or even destruction costs of a project and thus impede future growth.

### **Cost Failures of PPPs**

In a study commissioned by Eurodad, ten global PPPs from Sweden to Lesotho and Paris to Jakarta were examined to understand the success rate of PPPs. Within each project, failures were attributed to high costs, technical shortcomings, and poor infrastructure. Each loss negatively influenced the impacts on social, economic, health, education, and environmental development. This recent report produced for Eurodad in collaboration with CSO's around the world identifies the failings of PPPs as follows: Sweden's construction of a hospital saw escalated costs from 1.4 to 2.4 billion euros; the Queen Mamohato Hospital in Lesotho saw 'invoiced' fees amount to two times the "affordability threshold" set by the Government and the WB at the outset of the PPP; the Castor offshore gas project in Spain estimated at €3.8 billion and never used, was stopped after gas injections caused more than 1000 earthquakes; a thermal power station project in Gujarat, India, witnessed a deterioration in water quality and fish populations and harmful air emissions and in Germany, Berlin's PPP cost for its new airport has risen from €114 million and currently estimated at €7 billion (Eurodad, 2018; Boell.de, 2018). Such was the failure of one PPP; the construction of a courthouse in Paris proved so complex, costly and controversial that the presiding French Justice Minister deciding never to engage with a PPP again. (ibid). It is essential to note where PPPs contribute negatively to periods of economic crisis. During the financial crash of 2008, in both Portugal and Cyprus, the IMF/EU 'troika' packages identified PPPs as a contributory cause of the countries' fiscal problems (EIB, 2010). They required an audit and renegotiation of existing PPPs a freeze on new PPPs (ibid). Rather than supporting economic and sustainable development, the continual failure of PPPs removes future funding from governments (as most are off-balance) and impedes growth. Consistently, the information reveals that the actual execution of PPPs does not indicate their virtues; instead, their use delays and inhibits growth through negligence, where the model transforms from an inefficient event to a hazardous burden on society. A global accounting standard for PPPs is needed to ensure



that the value for every dollar put into joint ventures is balanced against other factors in the PPP architecture (Roehrich, Lewis, George, 2014).

### **1.3 The National and International Stage – Consequences for the Developed and Developing World**

A country's enforcement activity must be weighed against the size of its economy and exposure to international business (OECD, 2014). Since the UN adoption of 'The Declaration on the Right to Development' ', States have a duty to co-operate with each other in ensuring development and eliminating obstacles to development.' (OHCHR.org, 1986; UN.org.). The UN has a concern that achieving the SDGs will take between US\$5 to \$7 trillion, with an investment gap in developing countries of about \$2.5 trillion" (UNDP 2019). As a consequence, PPPs are heavily promoted by such IOs as the UN, IMF and IFIs as the World Bank and IMF. They have been hailed as the hero to the Agenda, where public sector risk is minimised against the private sector, and banks can look forward to the returns on SDG investment. The World Bank is emerging as one of the key providers of funds to foster economic development and eradicate poverty. Its support for PPPs has continually increased from \$0.9 billion in the last decade to \$2 billion (Romero, 2016). The differences between progress on the VNRs in Developed and Developing nations are telling. With reports absent mostly from developing nations, the onus has been to push PPPs to help overcome short-term financing issues so sustainable development goals can progress. With a socio-economic structure vastly outside the normative compass of high-income countries, it should be recognised that progress may not have the same accelerated pace for developing nations. Thus, the emphasis on PPPs should be considered carefully. This should not negate the legitimacy of action taken by those countries but rather reflect that the realisation of the SDGs may not happen at equal levels. Additionally, there may be circumstances that prevent progress which the PPPs exacerbate. Low credit ratings, high debt and inflation continue to be a preventative barrier to national development in developing countries. Loans and donor aid continue to be a staple of economic support but offering these and the off-balance, deferred payment structures of PPPs may not be the panacea the developed world needs.

Competition in global markets is the hallmark of free trade, but corruption negates the concept that it is free. Economic Theorists such as Marshall, Robinson, Hastings and

following, Petzman, Brozen and Demsetz have contributed to the study of industrial economics and the issue of this imperfect competition. The studies focus on the behaviour and strategies of firms towards collected market dominance and, importantly, the emerging scepticism they saw in the inadequacies of anti-trust law and government regulation. Corrupt politicians manipulate the regulatory environment to benefit and create inefficient regulations that incentivise individuals or firms to pay bribes to secure an advantage within that market. (Transparency International, 2014). Monopolies and oligopolies subsequently gain a competitive advantage over local or national companies where bribery is used less for profits than for market share within a country and often within developing nations. Siemens, for example, alongside a consortium of electricity firms, Alstom, Areva, Schneider Electric, Fuji Electric, Mitsubishi Electric and Toshiba, were all found guilty of conspiring to fix prices to control the contracts in the energy sector in fines worth €750 million.

Using game theory, Nobel Prize-winning economists Jean Tirole and Jean Jacques Laffont developed research to examine activities between the regulator and the regulated. The study sought to uncover where regulators seek to control the behaviours of monopolies or oligopolies and the regulated hide information to procure lower costs in the PPP contract negotiation. Laffont and Tirole advised that states should develop a framework that explicitly assesses the potential risk of the regulator hiding information and conspiring with the regulated firm. In response, a menu of contracts with a cost-plus or fixed priced contract. The regulator can then make an informed decision towards the firm opting for the fixed-price contract to stabilise the risk of higher costs (with the caveat regulators must ensure against price rigging). Natural monopoly situations lead to widespread market power and a concomitant willingness to lose money for a long time to "buy" the prospect of a future monopoly position (Tirole, 2018). Tirole posits that necessary for competition to operate, rivals must be able to enter the market freely. Still, in economics parlance, such "entries for a buyout" create very little social value as they are mainly a mechanism for the entrant to appropriate a piece of the dominant firm's rent. (Tirole, 2018). Relevant to this point, in a study by the World Bank, only 20 per cent of Africans have internet access which international firms operate. The combination of a lack of financial capital in African start-ups and subsequent ownership by developed nations over local firms widens the disparities across the continent. The nature of a developing nation's economic and technological progress tends to be negatively cyclical. Restrictions on access to capital in

developing countries often signify high debts and a lack of spending power, infrastructure, training, education, employment and economic growth. Add to this market share of monopolies increased by bribery, and the result will be a curtailing of sustainable development including SDGs Decent Work and Economic Growth (SDG 8) and Industry Innovation (SDG 9). Within the three case studies examined within this paper, two of the multinational's involved (Ericsson and Siemens) hail from Sweden and Germany. Both are developed and advanced economies operating under the 1999 OECD Bribery Convention at the time of their unlawful practices. In the third case, Brazil is also one of the world's largest economies and is obligated to the OECD convention. In each example, a corrupt practice that originated from a developed country was used to disrupt the economic stability of a developing country for a period between 10 and 20 years. To provide context, during that period and despite obligations to the convention, the OECD reported 57 per cent of bribery cases pertaining to its members involving procurement contracts with 53 per cent of corporate management involved. The implications of corruption within these PPPs are immense:

1. The private firms involved failed to adhere to their anti-corruption regulation.
2. The countries failed to administer governance to the private sector that worked for them.
3. The institutional frameworks established to support and prevent transnational corruption failed in what has been heralded as some of the most significant global bribery in history.

The OECD posits that 'combating illicit flows from developing countries must focus on improving governance at the source'. This notion is implicit in most global anti-corruption studies, including economic theorist, Khan who has contributed over 15 years to the study of corruption in the developing world. However, what appears to be absent in the theoretical narrative is the extent to which the developed world can be considered more complicit in the role of corruption. These countries operate in democratic, free competition states with high governance and the rule of law. Yet, these principles and experiences did not deter deliberate and sustained efforts to cause corruption in other parts of the world. The question does not negate the magnitude of corruption within the developing world; instead, it supports further research aiming to focus on the propensity for the developed world under such good governance to perpetrate such violations. What Khan does say and

interesting to this context is that though reviews of existing theory have shown that in the comparison of prosperous developing countries, there was no significant difference between countries with more or less governance (Khan, 2006). The final point on the dichotomies between the developed and developing world relate to the current progress of SDGs through PPPs. Specifically, where evidence of corruption interferes with the traditional core functions of Government: allocation of resources, stabilisation of the economy and influence income distribution and poverty in varying degrees, both directly and indirectly (Gupta et al., 1998). Global trade agreements are changing the industry's landscape with evidence of priorities for economic growth over sustainable development set against the backdrop of globalisation rising exponentially. Specifically, China's ambitious plan for its Belt and Road Initiative (BRI) will transform the energy sector across the continents of Africa and Asia. At this point, indications support transnational support from the developed to the developing states. Of the potential 70 countries involved, however, it is predicted that China plans to build over 240 coal power plants to facilitate energy requirements. In outsourcing its emissions, the nation continues to separately progress on its SDG targets for climate change and improvement to the environment whilst propelling the by-products of its fossil fuels on countries under-resourced to finance greener alternatives. This concentration on geopolitical and economic self-interest puts at risk the global targets set for carbon neutrality (SDG 13). In response, the EU and the United States have proposed trade alternatives, although some have suggested this may relate more to trade wars between the east and the west than unconditional support for the environmental cause. Nevertheless, relative to all parties within this context is the previous guidance offered by the OECD. They reiterate: the purpose of policy coherence for development is to ensure that domestic and foreign policies support, or at least do not undermine, the development aspirations of developing countries (OECD.org, 2009). This objective is critical in the goal for peace, justice and strong institutions.

#### **1.4 Consequences of Corruption within the Global Economy**

This section outlines the statistical analysis of financial flows concerning corruption and sustainable development. In a study exploring the illicit financial flows (IFFs) in and out of 148 developing countries, the study found that trade related IFFs appear to be both significant and persistent features of developing country trade with advanced economies

(GFIintergrity, 2019). Trade mis-invoicing remains an obstacle to achieving sustainable and equitable growth in the developing world (ibid). The report illustrated that in the top quintile (30) of countries, which included Brazil, Mexico, India, for example, trade statistics showed over US\$ 152 billions of illicit outflows ranked by dollar value. The top 30 countries ranked by the dollar of illicit inflow was recorded as over US\$ 100. However, the authors report these figures are harder to track where their invisibility from governments, exclusion from taxes, origins and use (e.g., drug trafficking) is unknown (ibid). The significant impact of corruption on income inequality and the negative effect of corruption on income growth for the poorest 20 per cent of a country have been proven empirically (Gupta et al., 2002). UNCTAD estimates the proceeds of bribery of foreign officials may remain within a developing country or travel in illicit financial flows (IFF's) that lie in the range of US\$ 49 – 193 billion dollars (UNCTAD, 2021). In contrast, the total cost for the SDG targets related to poverty, health and education is an estimated US\$148 billion a year (dev.policy.org, 2016), with an estimated US \$420 billion to fulfil the needs of the Sustainable Development Goals in Africa alone (Calderon et al., 2019). The consequences of corruption on sustainable development and, specifically, the 2030 Agenda are evident. Statistics illustrate that a reduction in poverty at 54 per cent in 1990 to 41 per cent in 2015 in Africa stands in stark contrast to the rest of the world, which has seen reductions from 36 down to 10 per cent (IMF, 2019). At the macro level, the most immediate impact of illicit financial flows (IFFs) is a reduction in domestic investment and expenditure which means delays to infrastructure, fewer funds for healthcare, energy, education, technology and transport, higher unemployment and a weaker rule of law.

The World Economic Forum estimates that corruption increases the cost of doing business by up to 10% on average. An estimated US\$1 trillion is paid each year in bribes, and in the developing world, this may amount to the equivalent of 15-30 per cent of official development assistance (OECD 2014). In 2019, the OECD reported that official development assistance (ODA) by member countries totalled USD 152.8 billion (OECD, 2020). One of the issues that have arisen alongside the debate on donor aid is conditionality. International donors deciding where to allocate funds will consider a weak state or one with high levels of corruption will be unlikely to manage aid well and get less (Rose-Ackerman, 2004). The IMF's foreign investment research has demonstrated at least a 5 per cent decrease in investment in those weak or high corruption states compared with more balanced nations with solid anti-corruption mechanisms. Ultimately, those weakened

states remain vulnerable with a lack of support. Rose-Ackerman argues that policies that try to isolate corrupt countries and individuals from the international community encourage their rulers to descend into paranoia and isolation and are ineffective ways to help the citizens of these countries who are the real victims of corruption (Rose-Ackerman, 2019). The combined statistical and theoretical data raise many issues regarding corruption within the global economy and the developing world. In a chain reaction, the funds offered in development aid can be siphoned diverted towards illicit financial flows especially in PPPs.

Such financial disarray can only harm the delivery of sustainable development goals where the lack of conviction towards achieving Goal 16 acts as a domino against all the goals of the Agenda. The G8 and G20 are urging countries to act on several fronts: strengthening their anti-money laundering regimes, enforcing greater transparency of company ownership, and supporting efforts to trace, freeze and recover stolen assets. Members are also obligated to automatic exchanges of information to tackle tax evasion. Furthermore, given the interconnectedness of our economies, global compliance is required to tackle many of today's challenges (OECD, 2014). Opportunities exist that can support alternative means for countries to progress sustainable aims. These include public procurement, re-municipalisation and Public Donor Partnerships (PDPs). These will be addressed in more detail, but essentially, they allow for more control within the state and increase accountability and transparency. The OECD posits that 'combating illicit flows from developing countries must focus on improving governance at the source'. This point needs reiteration, for as this paper illustrates, the source is not necessarily the weak states aforementioned. As each case study demonstrates, corruption at the source emanates from solid and advanced economies, with two out of three emerging from states with anti-corruption laws and a well-established rule of law. The developed nations are responsible for initiating the bribes, and though the poorer, less well-governed states acquiesce to those bribes, a more substantial reform of developed world corruption needs attention. Ultimately, this paper believes the true path of governance starts at the source but remembering where that source originates in the actual test for global governance.

## **Chapter II**

### **The Case Studies**

#### **Introduction**

This chapter uses a qualitative study of three case studies to provide a contextual basis for the hypothesis that corruption in PPPs is a barrier to sustainable development.

The case studies presented are all valid representations of global corruption that have presented themselves within the last two decades and have faced judicial proceedings and punishment. The case studies are relevant as they allude to a significant dilemma this paper raises regarding corruption that stems from the developed and more advanced nations. The socio-economic position of the recipient of bribes in less wealthy nations may preclude them from the knowledge or capability to opt for legitimate and anti-corrupt measures that will support better growth for their country. The study will examine the political context and relevant theoretical understanding of the broader issues of corruption in PPPs and developing nations. The cases involve large corporations, namely Siemens, Ericsson and Odebrecht and have been specifically chosen to illustrate the pervasive effect of corruption that PPPs can have globally. The cases are also relevant owing to the punishments executed, including fines, regulation and monitorship. The additional significance rests on the failure of all three corporations and states to adhere to international organisations' conventions and the laws that support anti-corruption. Finally, the conclusion will support further development of the regulation of PPPs and strengthening anti-corruption Conventions to support the overall goal of legitimacy in contractual relations and the prevention of diverted funds that undermine sustainable development.

#### **Siemens**

Founded in 1847, the German multinational conglomerate, Siemens, is one of the largest industrial manufacturing companies in Europe with an extensive portfolio covering sectors such as Energy, Gas, Nuclear power, Construction, Transport, Telecommunications and Healthcare. As of June 2021, Siemens current global net value is estimated at US\$139 billion with sales of US\$58 billion (Forbes, 2021). However, it's worth, both operationally and reputationally, has undergone considerable damage and reform to resume its current 74th place on the Fortune 500 global company index. The damage follows extensive

criminal activity involving corruption spanning five continents (including Latin America, Asia, Africa, the Middle East and Europe) between 2001 and 2007. Following exposure of global corruption within its PPPs, the corporate giant has had to undergo an extensive transformation to redeem a reputation mired by bribery to public sector officials to attain contracts and monopolise industry sectors. The limitations of this paper do not allow for examination of each case (estimated to be over 4000 incidences by the DOJ), but, overall, the judicial processes revealed bribery worth US\$1.3 billion. This case study illustrates the profound impact of corruption in public-private partnerships, both socially and economically, where Siemens assisted in fostering the culture of corruption and impunity in these countries where it made illegal payments (Blanc et al., 2013). Additional damage is caused by undermining fair competition and increasing costs (Berghoff, 2018). Ultimately, the actions of Siemens undermined attempts to improve the overall wealth of a country, diminishing its image, including loss of trust from its citizens and the international community (Wenzhong & Limin, 2012).

Critical to the pervasive growth and duration of corruption within Siemen's corporation, the use of bribery was, in fact, legal until 1999 when the OECD created the OECD Anti-Bribery Convention, to which Germany was a signatory. Indeed, until that point, bribes were a tax-deductible expense of which Siemens operated large slush fund systems to manage the substantial sums required to ensure market domination. Bypassing traditional procurement processes and technical bids, Siemens regularly targeted public officials to ensure favouritism in contracts. According to court documents and in an interview with the New York Times, Reinhard Siekaczek (former accountant at Siemens) admitted that from 2002 to 2006, he oversaw an annual bribery budget of approximately \$40–\$50 million. In a breakdown of payments, Siekaczek confirmed:

- \$5 million in bribes to the son of Bangladesh's Prime Minister and other senior officials to win a mobile phone contract in the country.
- \$12.7 million in bribes to senior officials in Nigeria secure government contract.
- \$40 million in bribes to win a \$1 billion contract to produce national identity cards in Argentina.
- \$20 million to senior government officials to build power plants in Israel.
- \$16 million to obtain urban rail lines in Venezuela,
- \$14 million for medical equipment in China, and
- \$1.7 million to "Saddam Hussein and his cronies" in Iraq



(Source: Bixby, 2010; Schubert and Miller, 2008).

These figures are not insignificant; this ripple effect would diminish political stability where corruption negatively affects a state's democracy since the daily experiences of crime affect public trust in governmental agencies and institutions. It reduces the willingness of the public to take part in democratic processes (Judge et al., 2011). Significant to the duration of the bribery and despite Germany's commitment to the OECD Anti-Bribery Convention in 1999, Siemens transferred its management of bribes to external consultants using cash cheques to hide evidence and offshore accounts to secrete funds. Siekaczek claims the organisation of fixes was "an economic necessity (Schubert and Miller, 2008). If Siemens did not pay bribes, it would lose contracts, its employees might lose their jobs...and...otherwise we would ruin the company" (ibid). The basis of this provides context to the previously mentioned hypothesis for corruption as an exponent for good. Theorists Leff (1964) and Huntington (1968) observed developing countries with less efficient institutions might benefit from corruption where bribery speeds up bureaucratic processes to stimulate infrastructure growth. Houston further expands on the author's hypothesis that corruption may be considered a valuable substitute for a weak rule of law as the value of behaving corruptly. The value of additional productive transactions that occur can exceed the costs of engaging in corruption (Houston, 2007). Siemens' implementation of bribery thus benefitted from political instability and weak institutions in developing countries, enabling opportunities for corrupt behaviour to be supported. Mendez and Sepúlveda confirm this theory where corruption can lubricate the flow of commerce when few legal (noncorrupt) options are viable for economic actors. (Houston, 2007). Proponents for this theory could argue the means justifies the end where Siemens' corrupted PPPs ultimately enabled development, such as implementing power plants, railway lines, telecommunications, and supply of medical equipment.

However, this does not count against the ultimate destabilisation of civil society through illicit financial flows nor the opportunity for shadow economies to flourish removing funds from civil society. Neither does it protect against poor-quality infrastructure. Siemens, far removed from the theoretical arguments surrounding its activity and consequences, would only reform its anti-bribery framework following investigations and ultimate prosecution by both the Munich Public Prosecutors Office in Germany and the DOJ and SEC in the United States. Investigations commenced following scrutiny of

overpayments between Greek Government officials and Siemens regarding the 2004 Summer Olympic Games. What swiftly followed was further investigations from Switzerland, Italy and Lichtenstein and Germany over other suspicious payments expanding to the US, resulting in one of the largest international corruption scandals of its time. Had the German Company not floated shares on the US stock exchange, the scale of penalties awarded to Siemens may have been to a lesser degree where the FCPA would not have exposed violations; thus, the DOJ or SEC would be uninvolved. Additionally, the attainment of lucrative contracts may have tempted Siemens own government towards leniency as its economic paragon of the country. In November 2006, over 36000 business files were removed from Siemens employees' homes and business locations by 250 public officials and 23 public prosecutors (Primbs and Wang, 2016). By December 2006, International law firm Debevoise and Plimpton were instructed to conduct an independent evaluation of violations within Siemens to record any infringement against anti-corruption regulations. As documented by Primbs and Wang showed, the investigation included: 1750 interviews, 88 million electronic documents, 14 million sighted documents, 38 million analysed financial transactions and 10 million reviewed bank records (Primbs and Wang, 2016). In 2008, in a culmination of the judiciary proceedings, the SEC reports: Siemens offered to pay a total of \$1.6 billion in disgorgement and fines, which is the largest amount a company has ever paid to resolve corruption-related charges (US Securities and Exchange Commission, 2008). The fines included \$350 million in disgorgement to settle the SEC's charges and a \$450 million fine to the US Department of Justice to settle criminal charges (US Securities and Exchange Commission, 2008). In related actions, Siemens will pay a \$450 million criminal fine to the US Department of Justice and a fine of €395 million (approximately \$569 million) to the Office of the Prosecutor General in Munich, Germany (ibid). Siemens previously paid a fine of €201 million (approximately \$285 million) to the Munich Prosecutor in October 2007 (ibid). A more detailed account of the litigation report can be accessed through the US Securities and Exchange Commission. Of significance, and in addition to the fines issued, Siemens was placed on a compliance monitorship under the FCPA. Although not applicable in German law, due to the violations pertaining to the FCPA, Siemens would have to undertake 152 recommendations that the DOJ deemed "reasonably designed to improve the effectiveness of Siemens' program for ensuring compliance with the anti-corruption laws including third-party risks, financial controls, and compliance policies and training, all of which were implemented (Koehler, 2013; FCPAProfessor.com, 2013). German law

does not provide statutory guidance or processes to acknowledge voluntary disclosure and cooperation as a reduction in financial penalties in corruption cases; however, in a recent decision, the German Federal Court rewarded the existence of an effective compliance program with lower fines (Gibson Dunn, 2018). Although promising, the imbalance between the US prosecution and regulation and European courts needs attention. It was the FCPA that enforced the monitorship on Siemens, not the country where the Company originates. Should the bribery have not been overseen by the FCPA, would Siemens have continued its bribery operation, albeit on a much tighter application? The Siemens of today, in stark contrast, is lauded for its anti-corruption efforts. Siemens appointed an advisor from the notable anti-corruption organisation Transparency International, hired over 500 full-time compliance officers, and set up an online portal to allow for risk assessments of clients to support its ongoing transformation. The role of actors was significant, especially in the global extent of bribery practice which ultimately led to their expulsion. However, the true criminal was the culture that accepted bribery in the developing and developed worlds. Germany was and is a signatory to the OECD Convention against Bribery amongst other anti-corruption regulatory bodies. Yet, Siemens was to deny its German responsibilities to the Convention. This lack of compliance prompts a deeper interest in the legitimacy of international frameworks where both governments and businesses do not necessarily commit in practice as much as in theory. The 2030 Agenda is predicated on governance through goals, yet this case concerns self-governance that does not offer guarantees against corruption. Thus, this paper highlights the challenge that stronger ramifications are needed to ensure attainment is achieved. The final point relates not to the bribery that took place but the onus of survival of a company post bribery and post punishment. Siemens undertook vast measures to support a transformative change that would transversely support its reputation externally. As aforementioned, these changes have proved successful, as Siemens current value of US\$139 billion proves. Further research to understand whether the previous acts of corruption solidified Siemens sustainability in business would be useful. This idea is based on the premise that market share was built up so successfully during its corrupt period that the reliance on its products outweigh the notion that its business should be suppressed. The implication of this highlights where Siemens bribery led to prevalent market dominance, the consequences of legal proceedings, reputational damage and financial punishment has not dislodged its success from the global industry. Therefore, the question is not can bribery grease the wheels of growth, which we understand is a short-term

consequence within PPPs, but can bribery secure market growth irrespective of corruption being exposed and punished. This outcome is not guaranteed (see Ericsson below). Other factors are intertwined in a company's success, such as market trends, innovation within the sector, and the global economic climate. Still, the point is interesting to examine, noting the dominance to which Siemens maintains a global position of 74th on the Fortune 500 Index and a high position as a nation on the Corruption Perception Index despite its recent and substantial malpractice.

## **Ericsson**

The Swedish multinational Ericsson is a global provider of telecommunications, mobile network equipment and software. Its history in the last two decades has seen much volatility; indeed, on the Fortune Global 500, it has fallen from its top 200 rankings in 2000 to the lowest global rank of 500 with just US \$23 million in revenue reported in the last fiscal year. Its demise can be attributed to its 2019 corruption case with the SEC, whereby admissions of bribery dating back to 2000 saw an imposed US\$539 million in disgorgement through a consent judgement in the civil case to the SEC and US\$ 520 million to the DOJ. (SEC.GOV, 2019). The SEC's complaint alleges that Ericsson subsidiaries obtained business valued at approximately US\$427 million by using third parties to bribe officials in Saudi Arabia, China, and Djibouti... with further FCPA violations in Vietnam, Indonesia and Kuwait. (SEC.GOV, 2019). Although Ericsson is alleged to have 'only' paid US\$62 million in bribes, the deliberation was made inclusive of the profits alleged to have resulted from the fixes. Trace International reports the Swiss Federal Public Prosecutor's Office began investigating Ericsson even before these allegations. In 2003 for alleged bribery of officials in Bulgaria, Libya, Poland and Slovenia, mobile contracts with irregularities worth CHF 550 million in the Company's financial transactions (traceinternational.org, accessed 2021). According to a report from Reuters on 10 September 2003, the Swiss investigators did not find enough evidence to charge Ericsson with bribery (ibid).

In 2019, the US ruling 2019 on the Company charged four of the former management personnel at Ericsson with bribery of Djibouti officials, including the country's Attorney General (and with documentation suggesting links with the Djibouti President), in efforts to win a contract with Djibouti Telecom SA (Bloomberg, 2021). It should be noted Sweden's Penal Code only permits criminal proceedings against individuals, not the

prosecution of companies, something which the OECD and other International Organisations requires Sweden to change. The DOJ reported that between 2010 and 2014, Ericsson, via a subsidiary, made approximately \$2.1 million in bribe payments to high-ranking government officials in Djibouti to obtain a contract with the state-owned telecommunications company valued at approximately €20.3 million to modernise the Djibouti mobile networks system (DOJ, Justice.gov, 2019). Additionally, the report confirmed payments of US\$ 4.8 million off-the-books slush funds in Vietnam, US\$ 45 million in a similar ruse in Indonesia, US \$ 450,000 in Kuwait and tens of millions of dollars in China to win Chinese telecommunications business. (DOJ, Justice.gov, 2019). The Report on Exporting Corruption by TI confirms there are no official statistics on foreign bribery enforcement.

Interestingly, Sweden is ranked 3rd to Germany's 9th position on the Corruption Perception Index, which shows significant strength in Anti-Corruption frameworks, yet this has not prevented scandals even in the cleanest of anti-corrupt countries. In Swedish legislation, bribery is regulated by the Swedish Penal code. However, just as there is no prosecution against companies committing bribery, there is no specific offence for bribery of foreign public officials. In both cases, the results are financial penalties (with individual convictions of a maximum of six-year imprisonment). In 2014, fines for individuals were a maximum of SEK 150,000 (US\$17,000) and for companies SEK 10 million (US \$1.16m). With a move towards improved anti-corruption legislation, in 2019, the Swedish Government approved legislation to increase fines from SEK 10 million to SEK 500 million (US\$50 million) with SEK 3 million (US\$318,000) for individuals of foreign bribery. "Implementing strong compliance systems and internal controls are basic principles that international companies must follow to steer clear of illegal activity," said Don Fort, Chief, IRS Criminal Investigation (DOJ, Justice.gov, 2019).

Similarly, to Siemens, Ericsson also came under the monitorship of a compliance program but for just three years. The critical concern for these governance measures is how effective or far-reaching are they, and do they create a barrier to corruption? Since 2012, the OECD Working Group on Bribery, of which Sweden is a member, has repeatedly urged Sweden to reform its laws to ensure the investigation and prosecution of companies that bribe foreign public officials to obtain advantages in international business (DOJ, Justice.gov, 2019; OECD, 2019). In February 2019, another telecoms operator, Telia, settled charges in Europe and the US of US \$966 million, yet Sweden's district court

acquitted all individuals related to the corruption charges. The prosecution of foreign bribery is limited by factors including the dual criminality requirement and the corporate liability requirement. Additionally, senior managers cannot currently be held accountable for directing employees to engage in bribery (OECD 2017). At the core of every public-private partnership are the individuals representing each active part; thus, functionality that acts as a deterrent to malpractice on either side is critical.

Corruption undermines the purpose and integrity of regulation as it enables corrupt officials to circumvent regulations or bend them for their interests (Transparency International, 2014). What suppresses action against corruption is the systems of governance and judicial process that fail to commit more significant efforts to the cause. As Houston advises, rather than attempt to increase the cost of corrupt behaviour, the appropriate policy in these circumstances is to reduce the cost of engaging in legal transactions. This means improving fundamental institutions that support markets, emphasising contract law (Houston, 2007). So far, what becomes apparent within these case studies is the reluctance of European, developed nations to institutionally reform the public and private sectors that allow corruption to take place. As David-Barrett advises, both the laws and enforcement regimes send conflicting messages to companies about whether bribery is always unethical. Many anti-bribery laws include an exemption or defence for 'facilitation payments, for example, implying that such bribes are less unethical or that firms have a weaker responsibility to avoid paying them than is the case for bribes' to gain a business advantage' (David-Barrett, 2014). In the same year as David-Barrett's analysis into the scale of harm in bribery, the EU commissioned its own Anti-Corruption Report of 2014. In the report, the EU suggests that municipalities and county councils should be obliged to secure transparency in public contracts with private entrepreneurs as well as, improving the transparency of financing political parties by considering a general ban on donations from donors whose identity is not known (European Union, 2014). The fight against corruption is critical to support Peace, Justice and Strong Institutions in line with Goals 16 and 16.5. The issue remains, if governments and the legal system do not apply the same legal punishments, whether the bribe is big or small, by Oxfam or an arms dealer, to secure a place at the front of the customs queue or for a million-dollar contract, a public official securing private advantage is unjust (David-Barrett, 2014). Ultimately concern rests at the tolerance or not of the public recipient to the damage carried out by corruption where, David-Barrett warns if the public does not

regard the state as legitimate, then it may appear rational to individuals to subvert state institutions and pursue interests through informal decisions. If this occurs, then a complete breakdown in societal order is inevitable as it becomes difficult to implement public policy and the rule of law is further weakened. (David-Barrett, 2014).

## **Odebrecht**

Brazil's position in the global economy is a slight oxymoron occupying the 12th largest economy with a GDP of US\$1.4 trillion. According to the World Bank Databank, statistics indicate that following the 2014-2016 recession, over 5.6 million Brazilian citizens were living on less than £5.50 per day, with an increase from 2.5 million to 9.3 million in 2018 of citizens living on just \$1.90 per day. This juxtaposition highlights the discrepancies between Brazil's apparent wealth and negative figures of poor health, education and efforts towards sustainable development. For instance, figures obtained from the IDB report on Brazil's infrastructure report show only 13 per cent of its road network is paved, compared to the OECD average of 70 per cent, Brazil possesses 3.4km of rail per 1,000 square km of railways, compared with 14.7km in the United States and the percentage of the population with access to safely managed sanitation services in Brazil is 38 per cent compared to 84 per cent in other OECD countries (Castillo, 2019). Regarding its position on the Global Corruption Perception Index, Brazil scores a meagre 38 out of 100 (a decrease of 5 since 2012) (transparency.org, 2020). Corruption is endemic in the country. Chronic instability in the political system and propensity for bribery has led to a continuous breakdown of trust between the political regime and civil society. Accusations of corruption pitched at both former and current Presidents and leading public officials have led to multiple protests by civilians, tired of its country's breakdown at the upper echelons of power. Tens of thousands gathered in 2013, 2015, 2016, 2019 and June of 2021, providing context to Brazil coming last (137/137) in the measurement of public trust in politicians and a lowly 107th place for irregular payments and bribes on the Global Competitiveness Index (2017-2018) (WEF, 2017). The Rule of Law faces extensive challenges. Despite the transformation of 'the Federal Police, the Federal Public Ministry (MPF), and the Federal Public Prosecutor's Office enabling the prosecutions of those previously protected by impunity, criminal syndicates operate across the state, and police corruption and brutality jeopardise peace and stability for the country. Human Rights Watch (HRW) reported this year that police were responsible for 6357 citizen deaths (HRW,2020). What compounds this relevance is the lost opportunities that corruption in

public-private partnerships attributes to the failings of improvements within the country and, ergo, the success of sustainable development goals for ending poverty (SDG 1), clean water and sanitation (SDG 6) and industry and infrastructure, (SDG 9).

One of Latin America's most significant companies, Odebrecht SA, is a family-owned engineering and construction company operating in power, transport, sea, and airports. Such was Odebrecht's successful reputation; in 2010, IMD Swiss Business School named the company "the world's best family firm" (The Economist, 2015). Additionally, McKinsey, an American consulting firm, published a highly flattering interview with Emílio Odebrecht, the chairman, which was headed: "Principles and values have helped this Brazilian family-owned conglomerate thrive" (ibid). Just five years later, Odebrecht faced one of the most prominent corruption cases worldwide. The Company was deeply implicated in the Brazilian investigation known as Operation Lava Jato or Operation Car Wash, so-called because of the location of the money laundering process to which its infamy arose. The barriers to sustainable development in a country comprise many crucial steps between the public and private actors to avoid prosecution against corruption. The chain reaction of bribes to officials for contracts, lawyers to suppress evidence and judges to dismiss charges all serve to break down governance for justice and strong institutions. Subsequently, this fragmentation hinders and destroys any potential for social, economic and environmental growth. According to the DOJ plea agreement, the Odebrecht case involved bribes of US \$788 million in bribes to high-level public officials and politicians from more than 100 projects in Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela with ill-gotten benefits worth approximately \$3.336 billion (United States Department of Justice, 2016). Critical to the attributing factors to corruption, the bribery led to inflationary renegotiation costs, which Campos et al. provide as part of the statistic overview of Odebrecht's transnational corruption listed below:



Table 1: Profits and bribes according to the Department of Justice

Country	Bribes US\$MM*	Gross Profits US\$MM**	Bribes/ Profits (%)	Investment (US\$MM)***	Period	Projects
Argentina	35	278	12.6	12.416	2007-2014	8
Colombia	11	50	22.0	1.828	2009-2014	4
Dominican Republic	92	163	56,4	4.534	2001-2014	16
Ecuador	33,5	116	28.9	3.466	2007-2016	10
Guatemala	18	34	52.9	384	2013-2015	1
Mexico	10,5	39	26.9	2.158	2010-2014	6
Panama	59	175	33.7	8.844	2010-2014	21
Peru	29	143	20.3	15.473	2005-2014	24
<b>Total (8 ctries. full info.)*****</b>	<b>288</b>	<b>998</b>	<b>28.9</b>	<b>49.103</b>	<b>2001-2016</b>	<b>90</b>
Angola	50	262	19.1		2006-2013	
Brazil	349	1900	18.4		2004-2016	
Mozambique	0,9				2011-2014	
Venezuela	98				2006-2015	
<b>Total (all ctries.)****</b>	<b>788</b>	<b>3159,9</b>	<b>24.9</b>	<b>49.103</b>	<b>2001-2016</b>	<b>90</b>

Campos et al., 2019

Odebrecht created an entire payment division to manage the substantial sums required to win contracts. The actual negotiations took many forms, such as outright bribes to win contracts or change evaluations and, ironically, in dispute resolutions to avoid arbitration and regulation that could hinder procurement of the contract. For Odebrecht, any increase in renegotiation would allow for a more significant market share. However, for Brazil's citizens, this would only reduce public funding or ensure lower quality infrastructure or services required for urban development.

In this landmark case, the Brazilian, Swiss and US authorities coordinated judicial responses resulting in fines of US\$2.6 billion and convictions against former Presidents Lula da Silva of Brazil as well as ex-Presidents in El Salvador, Peru and Panama. Although in a situation ever more complex, this year saw the overturn of former President Lula's conviction for money laundering and corruption as links between the former Brazilian Judge, Sergio Moro and prosecutors indicated conspiracy against the former President. Although compensation was awarded, this institutional lack of governance and accountability corrodes trust within government institutions preventing funds designated for infrastructure and facilities such as transport, energy, and education to be implemented. The drain of corruption on public funding leaves substantial gaps in reducing poverty and inequalities. Thus, the extent of Odebrecht's bribery in public-private partnerships would unavoidably act as a catalyst for decreasing opportunities for sustainable development nationally and internationally, where its contracts would also impede progress.

Despite a fundamental lack of governance within the country, former federal Judge Moro was a much-celebrated chevalier in Brazil who sought to end the impunity of politicians, strengthen the rule of law, and preside over the complexities of Operation Lava Jato and the Odebrecht cases. Nevertheless, Moro's increasing allegations of corruption surrounding the President and his family led to a campaign of counter accusations of impartiality in the former corruption cases where increasing pressure led to his resignation in 2020, much to the chagrin of Brazil's citizens. Meanwhile, current President Bolsonaro has demonstrated little regard for preserving either substantial frameworks against corruption or support of sustainable development objectives, including refusal to acknowledge the effects of the pandemic, reversal of environmental protection of the Amazon rainforest and removal of rights of Indigenous people in contravention of Goals 13 and 15 on climate change and the preservation of ecosystems.

Officially, Brazil is a signatory to the United Nations Convention against Corruption (UNCAC), committed to reducing corruption by 'prevention, law enforcement, international cooperation, asset recovery, technical assistance, and information exchange (UNCAC, 2004). Additionally, in pursuance of governance, the nation has committed to the United Nations Convention Against Transnational Organized Crime (UNTOC), the Convention on the fight against the Bribery of Foreign Public Officials in International Commercial Transactions, the Inter-American Convention Against Corruption and in coordination with the OECD, the National Strategy against Corruption and Money Laundering (ENCCLA). Brazil is also a signatory to the 2030 Agenda for Sustainable Development Goals. Yet, Brazil has systemically obstructed improvements to ending poverty, climate change, the preservation of ecosystems, peace, justice and strong institutions and, of course, corruption which the World Bank considers the 'fuel that perpetuates the inequalities that lead to fragility and conflict' (worldbank.org, 2020). Indeed, since his election, Bolsonaro has negated to produce any VNR regarding activity for the 2030 Agenda. Of course, the act of the VNR is, by its moniker, voluntary. However, the lack of communication suggests a lack of commitment and thus, rather than barriers, it would appear the door has been closed on sustainable development at the current time. Institutional reform is critical to enable a change within the endemic corruption pervasive in the country. It is vital that the country reconnects and recommits to the 2030 Agenda and, specifically the pursuit of Goal 16 and markedly, the development of inclusive and accountable justice systems and the rule of law reforms to provide quality

services to people, as well as build trust in the legitimacy of their government. Yet the 'United Nations High Commissioner for Human Rights has expressed concern over attacks against human rights defenders where current President Bolsonaro has 'minimised human rights violations' with 'increased military involvement in public affairs and law enforcement. In the most significant failure of anti-corruption developments to date, in July of this year, Brazil's Congress opted against the Anti-Corruption Bill this year despite the support of 2.5 million public signatures. (Reuters, 2021). Lawmakers removed the legal definition of the crime of illegal enrichment (ibid). They also scratched a clause creating a reward and protection system for informants reflecting concern over the impending plea bargain deal by Odebrecht, in which executives are expected to inform on bribes paid to as many as 200 politicians in recent years (ibid). What has been supplanted in place of the anti-corruption measures is a weakened bill that signals more protection for the legal fraternity against prosecution and fewer powers for the judiciary to prosecute, ultimately fragmented the rule of law against historic bribery. In response, recent demonstrations have called for the removal of President Bolsonaro and Congress in a final bid for democracy and support of former Judge Moro, seen as the last hero against corruption.

## **Conclusion**

The corruption problem is compounded by the concealed nature of corruption that rarely leaves any visible trail (Brooks et al., 2013). Scholars have debated how best to measure corruption where the "iceberg" effect implies that only a tiny part of corruption is visible to the general public, whilst much remains hidden (Stephenson & Schütte, 2019). That Siemens, Ericsson and Odebrecht were able to produce such levels and breadth of corruption over such a substantial period and across so many parts of the world is extraordinary. The findings in these cases revealed essential elements. Firstly, the critical policy instruments meant to preserve due diligence in the tender, negotiation, renegotiation and management stages were inadequate. Existing governance mechanisms failed to record or place accountability to either party despite evidence that an auditing process would have shown discrepancies within the PPP processes. Each Company maintained consistent methods and outputs of bribery over nearly twenty years, constituting a complete lack of governance and due diligence from both the domestic and international community to prevent corruption. Finally, the question of value for money

propounded as integral to the purpose and objectives of PPPs can be disregarded, where the loss of public funds to corruption negates the achievements to development, social, economic and environmental.

## Chapter III

### The Future Path of Anti -Corruption Mechanisms

In this final chapter, the future paths of sustainable development in the context of PPPs and anti-corruption innovation will be examined. The chapter will present the conflicts presented by the International Organisations where PPPs are both promoted and cautioned against. In response, the paper will offer potential improvements to the PPP framework and alternatives that will help bolster more transparent and accountable activity towards sustainable development goals. Further, the contributions to enhancement in technology, regulation, and legislation will be explored to show the progress within innovation that can support sustainable development and measures against corruption.

#### 3.1 The Future Path of PPPs for Sustainable Development

Some theorists argue PPPs are the bridge towards achieving the 2030 agenda, focusing on global sustainable development (Hodge, Greve, and Boardman, 2017). Additionally, the benefits of the PPP procurement approach bring rigorous risk-weighted strategy to large-scale infrastructural projects and utilises competitive bidding processes, coupled with private sector innovation and expertise (Berrone et al., 2019). Moreover, the United Nations and the international community expressly acknowledge that attaining sustainable development will be impossible without the participation of the private sector and public-private partnerships. This paper has sought to illustrate the substantial risks and concerns of reliance on PPPs for Sustainable Development. Historically, PPPs have failed even by the admission of one of its strongest advocates, the World Bank, who previously warned: "PPI [private participation in infrastructure] has disappointed and is inherently limited in scope for financing urban infrastructure, and even for water supply, subsidies are prevalent all over the world... local governments need good sources of public finance to fund those services, and some form of government borrowing is necessary for significant investments in these areas to avoid inter-generational inequities (World Bank, 2006; World-PSI, 2015). Just three years later, UNECE would report on the Global Financial crisis and hostility among the public against the capitalist system...where... PPPs are equated with the now-discredited privatisation and financial liberalisation (ibid). The breakdown of civil society globally has also been attributed to the corruption executed by the multinationals Siemens,

Ericsson and Odebrecht. Their scope of bribery spurred political instability across five continents in the last two decades.

According to Beisheim and Simon, 2015, the historical experience of many nations in the developed and developing worlds demonstrates that public-private partnerships may represent a significant financial risk to the public sector. Still, it is the primary international institutions and banks that promote it. The World Bank, the G20, OECD and others have sought to 'financialise' PPPs to access the trillions of dollars held by pension funds, insurance companies and other institutional investors (Hall, 2015; World-PSI, 2015). However, to access these funds, governments are advised to do a whole lot of PPPs at the same time to create a pool of assets that can then be bundled and sold to long-term investors. (ibid). PSI General Secretary Pavanelli warns this is precisely what the financial services companies did with home mortgages at the turn of the century, which brought us the global financial crisis of 2008 (Hall, 2015, World-PSI, 2015). Alluding to the dysfunctional dominance of the private sector over the public state, economist and Nobel Laureate Ronald Coase indicates governments are no longer the only producers of public policy but are increasingly collaborating with commercial entities (Osei-Kyei and Chan, 2015). Such imbalance of power on the state only reduces peace, justice and strong institutions required for sustainable development.

A report commissioned by Public Services International found that the public sector can raise long-term, cheap finance at lower interest rates, and over far more extended periods, by using tax revenues or user charges as security to raise loans or issue bonds to be repaid out of future income (Hall, 2015; World-PSI, 2015). The decision is based on the balance between user charges and taxes to finance a service and vary this balance over time according to changing circumstances (ibid). Indeed, this does transfer power back to the public sector. However, it also raises concerns as to the future debt burden illustrated earlier within this paper. The alternative by Hall is to finance investment directly out of current revenues or taxes with the benefit of low borrowing costs gained by local, central and federal governments. (Hall, 2015). Key to the issues of asymmetry of information between the Agent (private firm) and the Principal (Governments), Tirole and Laffont suggest economic regulation, which features as mentioned earlier a menu of contracts containing a sliding scale approach between a high or low powered incentive scheme

designed to protect procurement processes against potential corruption. This would also provide a better framework to support an informed approach within the use of PPPs.

Re-municipalisation offers another appropriate method where motivations include: an essential strategy for energy transition and energy democracy; bringing services back in-house is ultimately cheaper for local authorities, regain control over the local economy; give people affordable services; deliver ambitious climate strategies; opportunities for new, diversified, democratic public ownership and overarchingly to end private sector abuse (Kishimoto and Olivier, 2018, TNI, 2017). The financial modelling is worth considering where Kishimoto and Olivier cite 835 nationalisation examples of re-municipalisation of public services worldwide since 2000 (involving 1600 municipalities in 45 countries) with sectors worth US\$ 7 million in the health sector and US\$3 trillion in education (ibid). Such innovations can put the control back into the state and support the goals of sustainable development. In Hawaii, the Kauai Island Utility Cooperative (KIUC) bought a Connecticut-based private energy-telecom company which would become the state's first not-for-profit generation, transmission and distribution co-op owned and controlled by the members it serves. This locally owned and democratically controlled utility provides reliable, low-cost electricity service, with a 50 per cent renewable energy goal by 2023 (ibid). In Canada, uncontrolled spillage from a sewage maintenance operation coordinated by a PPP led to the re-municipalisation of the project. Reduced costs and environmental benefits and have supported an increase in public confidence in public sector management.

Other partnerships use government and donor finances to leverage private funds for infrastructural projects where donors offer debt and equity finances needed for PPPs initiatives. This dynamic is significant in catalysing private capital and minimising risks while increasing returns, mainly where the private sector has contributed only about 15 to 20% of the total funds used in developing countries in the last decade (Bayliss and Van Waeyenberge, 2018). Regional development banks are also part and parcel of PPPs initiatives. The ADB has acknowledged risk allocation and dispute resolution concerns within PPPs, noting a loss of confidence within the market. In response, their brief suggests project partnering. This involves a mechanism used in the construction industry, whereby the parties sign a non-binding charter or what they refer to as and the more radical alternative of Alliance Contracting, under which the parties to the contract make a

formal, binding commitment to share risks and rewards, under a "no blame" regime (Development Asia, 2020). A report confirmed that ADB approved \$22.1 billion of PPP interventions and technical assistance spread across 278 projects between 2009 and 2018. ADB's sovereign-led work had a success rate of 65 per cent but, the Bank admitted it has 'on occasion fallen short of facilitating the transformational change required to crowd in the private sector and promote quality infrastructure outcomes' (ADB, 2020). In January of this year, the Inter-American Development Bank, IADB, confirmed that it would support Brazil in promoting new models for private investment in infrastructure to boost service quality. The socio-environmental impact of investments and economic growth and productivity with a \$20 million loan approved by IDB (IADB, 2021). However, the Bank has garnered criticism where US\$21 million of a US \$25 million loans to Colombia will be used just for 'promoting private participation at public expense through detailed market research and marketing depleting resources for actual sustainable development (Hall, 2015).

### **3.2 Regulation, Legislation, and Technology in the Fight against Corruption**

Corruption can involve several actions, including embezzlement and bribery and even other practices considered legal in some nations (Rose-Ackerman, 2017).

The OECD Working Group on Bribery focuses on anti-bribery law, legislative implementation and enforcement, of which 44 parties cover 81 per cent of global outbound FDI stocks. Bribery is a crime in all 44 signatory countries, but only 21 of those have enforcement action where 560 individuals and 184 entities have been sanctioned under criminal proceedings for foreign bribery. Of those, 146 individuals and nine entities are in ongoing trials (OECD, 2021). As highlighted, Sweden has yet to enforce reforms to its penal code, which, unchanged, could witness criminal malpractice repeats itself similar to the actions of Ericsson. In Latin America (including Brazil), the OECD supports anti-corruption measures specifically formulated in the OECD Convention against Bribery which came into force in 1999. Additionally, the legislative treaty for UNCAC and the Inter-American Convention against Corruption support the foundations for anti-corrupt practice. The Conventions support knowledge-sharing, mechanisms for whistleblowing, strengthening of legal and institutional capacity and detection capabilities. However, Brazil's President and Congress's recent abolition of many anti-corruption tools nullifies their impacts. The issue for such entities and the more significant problem for this paper is



the lack of formal authority to punish countries who fail to administer the Anti-Bribery Convention. Instead, it relies on the action of judiciaries and sanctions and cross-country condemnation to alter behaviours. As witnessed, this type of soft power is not proving strong enough to counter the more significant problem of corruption and a country's neglect in managing it. Financially and in support of these efforts, a recent joint report by the OECD and World Bank focuses explicitly on how to ensure that monetary sanctions are harsh enough to deter companies from engaging in bribery (European Parliament, 2015). In other regulatory provisions, the G20 Anti-Corruption Working Group and the 2015-2016 Action Plan works to prevent the abuse of legal persons and arrangements through beneficial ownership transparency, promotion of public sector transparency, risk identification and asset recovery. UNCAC, adopted in 2003 by the UN, is centred on international cooperation, including state prevention through coordinated policies for prevention, criminalisation of bribery, mutual legal assistance and asset recovery through technical, financial and recruitment resources. (UNODC, 2004).

UNCAC supports the prevention and sanctioning of illicit financial flows through its anti-money laundering (AML) measures. The Convention also lays a civil and criminal law framework for tracing, freezing, forfeiting, and returning funds obtained through corrupt activities (UNODC, 2004). There are also measures to enhance the protection of victims of corruption, such as the 1985 UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which supports fair treatment, restitution and compensation to victims. UNCAC Article 32, supports the protection from retaliation or intimidation for witnesses (useful in the related topics of whistle-blower protection) and Article 38 cooperation between national authorities for investigating and prosecuting criminal offences (UNODC, 2004). The Victim Declaration does not deal with victims of corruption directly but supports through its focus on the abuses of power. With the advancement of innovation and technology within crime, revisions to the regulation may need modernising for better protection of victims of new crimes such as cybercrime, ecological crime and organised crime where sophisticated uses of technology as well as trade corridors opening up through globalisation allow criminals to commit offences on a much grander scale at particular detriment to the progress of Target 16.5 and global sustainable development.

The work of the UN Global Compact covers corporate sustainability in human rights, labour, environment, and anti-corruption. There are indeed multiple other institutions, conventions and civil society organisations that support the global aims of those mentioned, which are equally vital to the protection against corruption. UNCAC stipulates a code of conduct for both Public and Private actors with a specific focus on the regulation of PPPs where its code clearly states the expected behaviour actors must adopt within a PPP to ensure accountability and transparency. Within PPP contracts, the objectives of sustainable development should be woven into the core fabric. Additionally, the EU has made vigorous changes in its PPP regulation, including an almost 100 per cent ban on renegotiations. Legislation guidelines include the UNCITRAL Guidance on PPP/Concession Laws, EBRD Core Principles for a Modern Concession Law and OECD Principles for Modern Concession Law. This is critical to improving progress on the \$132 billion that is lost to corruption every year throughout the European Union's member states, according to the EU Commissioner for Home Affairs (WEF, 2019).

In terms of country context, in April of this year, Brazil implemented its new Procurement Law, which allows governments to establish specific funds to ensure contractual obligations, which operate somewhat similarly to how escrow accounts operate in common law countries (Laws of Brazil, 2021). The new law encompasses strict liability, which applies to local or foreign companies and has the provision that liability should prevail whether involvement is in Brazil or overseas or with local or foreign public officials. This is at odds, however, with Brazil's overall compliance measures concerning PPP corruption. As aforementioned, Sweden is yet to implement such robust legislation but has Law (2016-1147) on the procurement of Concessions on public procurement on public procurement and Law (2016\_1145) on public procurement on public procurement. In Germany, there is no specific act or law on PPP projects or contracts. Nevertheless, before using a particular procurement structure such as a PPP, the government – under budgetary requirements – has to conduct a cost-benefit analysis on different procurement possibilities (see Section 7(2) Federal Budget Act) (Mueller, 2019). A specific public law entrustment is necessary if the private partner will be authorised to take authoritative decisions concerning third parties (Mueller, 2019; Bonhage and Roberts, 2021). What is illustrative is that substantive frameworks exist within the global structure (indeed Brazil's laws were supported by entities such as OECD and UNCAC), but there is a lack of

enforcement, especially within countries that are signatories of many of the Institutions for anti-corrupt regulations.

The growth of global artificial intelligence (AI) has enabled revenues of up to US\$ 34.87 billion globally, which is predicted to grow at an accelerated pace to US\$ 126 billion by 2025 (Statistica.com, 2020). Artificial intelligence encompasses multiple forms, but essentially it gives humans the capabilities to replicate human processes faster in a more advanced and efficient manner. AI operates in a wide range of manufacturing, agriculture, electronics, technology, medical innovation, and sustainable development and has transformed our lives and work. The OECD defines an AI system as a machine-based system that can make predictions, recommendations, or decisions influencing real or virtual environments (oecd.ai, 2019).

Many advancements in AI have led to ground-breaking discoveries that can support sustainable development. In the fight against criminal acts and support of Goal 15 for Life on Land, artificial intelligence has helped develop 'cameras with enhanced image processing and deep neural network algorithms that allow rangers in Africa to detect and respond to poachers in real-time (cognition X, 2020). In the fight against deforestation, technology also exists, which uses algorithms to 'create a 'baseline' of rainforest sounds. The system allows for earlier detection of anomalies in the rainforest's 'bio-acoustic signature' (theengineer.co.uk, 2020). In layman's terms, this translates to technology that can detect chainsaws and other industrial machinery use in forests that rangers can then track and stop.

The McKinsey Global Institute, in partnership with the UN Development Programme (UNDP), has identified 160 potential uses of AI which specifically support the SDGs. With a specific impact on the use of PPPs, digital procurements can support anti-corruption rooted in the principle-agent issue by providing an environment that allows supervisors to effectively track official activities (Cater, 2013). This is supported where digital procurement minimises face-to-face contact between citizens and state officials (Mungiu-Pippidi & Dadašov, 2017). In Brazil, the World Bank helped develop an Artificial Intelligence System that identifies 225 red flags of potential fraud in public procurement processes and can help improve expenditures (World Bank.org, 2020). The system has, so far, led to the identification of hundreds of high-risk cases, firms with a

high likelihood of being shell companies, linked firms competing against each other, public servants working at the same government agency that has executed the contract, among others (ibid). Furthermore, a more recent and perhaps controversial opportunity can be proffered is through blockchain technology. The premise is based upon the notion that the information contained is completely transparent. That the information can be visible and importantly process tracked, this can highlight any large payments that cannot be easily explained. This is especially important where the World Economic Forum advises that bribery is formed by the parties in the procurement process where both the public and private sides are induced into corrupt acts by the size of potential financial gains (WEforum.org, 2021). The close interaction between public officials and business, and how easy it is to hide corrupt actions (ibid). The use of evaluation criteria applicable to every bidding company in blockchain procurement allows for scores to be given, which is retained in the data process and made public to mitigate attempts to doctor results (We forum, 2021). Technological advances have led to the emergence of whistleblowing tools that deploy Information and Communication Technology (ICT) which, just like crowdsourcing platforms, allow citizens to report any wrongdoings (Chege & Wang, 2020). Systems such as 'I paid a bribe' launched in India and adopted by other nations enables users to anonymously share information about corruption (Adam & Fazekas, 2018). In Financial Institution's, cybersecurity developments can facilitate detection against fraud and money laundering with highly advanced sourcing data to identify suspicious transactions. In India, 'switching from cash to digital payments for pension transfers cut bribe demands by 47 per cent (World Bank, 2017). As with most modernisation, however, artificial intelligence is growing exponentially, exceeding our ability to regulate and govern it concomitantly. The challenge to the perfect AI model rests on a fundamental truth that 'human-defined objectives' will always be subject to the socio-economic, cultural, geopolitical and cognitive bias that can form a path to corrupt behaviour. In 2013, the UN warned that "the current global governance system is not properly equipped to manage the growing integration and interdependence among countries." (United Nations, 2014). A study published by the European Commission (EC) has also warned that AI could jeopardise 59 targets, which equate to one-third of all SDGs. Consequently, AI as an instrument for sustainable development can be both an enabler and inhibitor where implementation can accelerate progress, but limited access, education, and training widens inequalities between developed and developing nations.

'Nudge theory', a persuasive communications tool developed by two theorists, Thaler and Sunstein, is used by governments to promote mass vaccination or better nutrition which alleviates pressures on Health Care services. The recent misuse of this technology for political propaganda campaigns saw personal data mined from 87 million Facebook users targeted by private firm Cambridge Analytica, corrupting public election processes in the US, UK, India, and Kenya. At this level, not only does corruption in artificial intelligence threaten the goal of Peace, Justice and Strong Institutions (SDG 16), but it sets a dangerous precedent for criminal intent to control and manipulate populations throughout the world, justifiably destroying the quintessence of the 2030 Agenda. Undoubtedly, the speed and advancement of technology can accelerate the progress that would otherwise not materialise fast enough to keep the main aims of sustainable development. The benefits of AI are evident, but prioritisation and compliance will need to be determined for framing the best use of technology. There is an inescapable truth that with the advancement of technology comes great power, which, if unregulated, will destroy the fundamental principles that the 2030 Agenda rests upon and subjugate the fundamental rights of free will with dangerous consequences. A systematic approach to monitoring and auditing is essential to ensure against misuse and corruption.

In support, there are current modes of governance, such as the OECD's Recommendation of the Council on Artificial Intelligence, which provides ethical standards based on eight principles. These include sustainable development, inclusive growth, human-centred values, respect for the rule of law, transparency, responsible disclosure, security and accountability (OECD.org 2021). The UN has published its report 'AI for Good', which details 260 projects by 30 internal UN organisations, which are based on the principles of collaboration, coordination and cooperation to govern the use of artificial intelligence. In Financial Institution's, cybersecurity developments can facilitate detection against fraud and money laundering with highly advanced sourcing data to identify suspicious transactions. The European Commission has developed its own 'Framework for Trustworthy AI'. The European Union (EU) has implemented progressive legislation, the General Data Protection Regulation (GDPR), to challenge Big Tech companies to protect data privacy rights for all European citizens. Indeed, by January 2021, with 121,165 data breach notifications, over €158.5 million fines have been issued (Tessian 2021). Both domestically and within the international governance frameworks, artificial intelligence aids sustainable efforts for implementation and protection against corruption. However, it

can also subvert it where the paradox for public and private actors and the adverse effect of AI is not inconsequential.

### **3.3 Global Governance for Anti-Corruption**

Implementation of the 2030 Agenda is reliant on national governments, but the governance role is obligated to the United Nations and other International Organisations. The involvement of International Financial Institutions (IFIs) and the governance arms of the UN, G8 and G20, EU and the World Economic Forum are firmly rooted in the promotion of PPPs. As this paper has evidenced, the lack of impact and the role of corruption within PPPs has undermined progress for sustainable development. In the current crisis of confidence bestowed on these international organisations, due diligence is integral to the future actions of these entities. Thus, where each nation has different social, economic and environmental requirements, appropriate financial and operational guidance to secure progress must be accommodated.

International organisations typically comprise treaties which are international agreements governed by law and prescriptive instruments, which are legally binding decisions and resolutions adopted by IO's (OECD, 2019). These are addressed to states to implement as part of international obligations rather than law with recommendations or guidelines on policy statements and finally incentive instruments such as best practice, codes of conduct which are non-legally binding (ibid). The structure of IOs is significant, not least because of the recent crisis of confidence that has emerged pointedly at the lack of legitimate power within their constitution where governance is reliant on guidelines and obligations rather than sanctions or laws. The recent corruption scandals reviewed in this paper highlight the discrepancies between the international regulations and non-adherence from the nations obligated to them. Within the 2015 OECD Regulatory Policy Outlook, the report outlined two critical observations. The first notes that regulatory implementation and enforcement remain the weakest link in regulatory governance at the national level. The second underlines the weakness in IOs for enforcement and compliance (OECD, 2019).

This year, the UN has made sustained efforts to the aims of anti-corruption. New regulations and legislation prove that the fight against corruption continues with strength.

One of the most significant and essential contributions to the development and most recent to the table is the proposition for the United Nations International Anti-Corruption Court. Currently gaining momentum, establishing a legal, sanctioning entity that enables 193 countries to face prosecution within an international arena is exciting. The IAAC would help address some of the fundamental issues of impunity that negate high-level political figures' prosecution within their state. Pursuant to the obligations laid out in the United Nations Convention against Corruption (UNCAC), the IACC and would be empowered to issue criminal convictions to Heads of States and preliminary figures in political regimes, which would be recognised globally. Important and relevant for this paper, the Court would enact discipline to all countries under the IACC obligations; thus, the developed countries accountable for some of the most extensive bribery in recent history would be held to account. The positive ramifications for this development are vast. In presenting a robust and proactive solution to the challenges of the present anti-corruption mechanisms, the international community have the opportunity to radically alter the path of sustainable development by bringing those to justice who seek to prevent it. Additionally, the statistical data results of the information captured at trial could support more relevant corruption indexes and research into mitigating the international acts of bribery and illicit financial flows that remove critical funding from its global citizens. In June, a new political declaration for advances in anti-corruption, including asset recovery, including 64 recommendations to detect and punish corruption. Additionally, the UN established a new network, GLOBE, the Global Operational Network of Anti-Corruption Law Enforcement Authorities, that seeks to empower all countries with practical solutions and tools to track, investigate and prosecute corruption, complementing existing frameworks (United Nations, 2021). The OECD stipulates the simplest way to measure a country's progress in implementing the Convention is to look at the country's level of law enforcement activity (OECD, 2014). This includes the number of criminal investigations and proceedings and the related administrative and civil proceedings, which, although insufficient in implementing the Convention, provide additional information (ibid). Complementary to this statement and on the UN's 75th anniversary, a new 'International Rule of Law package' has been announced, focusing on enhancing global governance capabilities. This includes support for international judicial training and strengthening both the jurisdiction and legitimacy of the International Criminal Court and International Court of Justice.

Of most significance for this paper and in recent innovations by the UN, a proposal for a United Nations Anti-Corruption Court to strengthen the international rule of law has gained momentum with many nations in support. In June 2021, over 100 Nobel laureates, former presidents, high court justices, business leaders, and other prominent leaders from over 40 countries signed a Declaration in Support of the Creation of the IACC (Integrity Initiatives, 2021). If implemented, the establishment of the ACC could markedly transform judicial processes in corruption cases providing better accountability and compliance within the International community and strengthening the efforts towards Goal 16 for Peace, Justice and Strong Institutions and resolutely, Target 16.5 for the prevention of corruption.

Other patterns of change are also forming within the International Financial Institutions. The World Bank recognises that much of the world's costliest forms of corruption could not happen without institutions in wealthy nations: the private sector firms that give large bribes, the financial institutions that accept corrupt proceeds, and the lawyers, bankers, and accountants who facilitate corrupt transactions (World Bank, 2020). In two out of the three case studies presented, corruption was borne from advanced, developed states where each company enjoyed significant development and profits. Regulations and laws were in situ, and both countries were signatory to the obligations designed to protect against corruption. Despite these incentives, Sweden and Germany were responsible for some of the most prominent bribery cases in the world. This suggests that despite efforts, the International community still does not have the capacity to manage such prevalent malpractice.

Nevertheless, action to prevent corruption which grows ever sophisticated, has its allies. The World Bank operates an independent sanctions system where public complaint mechanisms are built into projects, and companies are debarred from World Bank where misconduct is proved (World Bank, accessed 2021). In the fiscal year 2020, the World Bank Group debarred or otherwise sanctioned 49 firms, and to date, the Bank has public debarred or otherwise sanctioned more than 1000 firms and individuals (World Bank, accessed 2021). The World Bank recognises that institutional systems, credible deterrence, accountability, and enforcement mechanisms to identify corruption within PPPs. The Global Procurement Partnership Multi-Donor Trust Fund (GPP MDTF) is a seven-year program that aims to support innovative activities for procurement reforms at the global and country-level (World Bank, accessed 2021). The Fund provides the World Bank and



its partners the space to initiate conversations on the vital role that public procurement has in spurring better development outcomes for a country (ibid). The motivation behind this is significant. In the report, the World Bank conceives an uneven and absence of global standards within procurement, especially in countries with specific socio-political situations and regulations. The Fund, which has 44 projects in 30 countries, lists three main aims. These include: to embrace the development of global public goods (tools that can be adapted broadly and create standards that meet the needs of a wide range of countries); to support the improvement of procurement systems by identifying challenges and indicating recommendations for reform actions through detailed diagnostics and finally, to promote systematic and evidence-based research on the impact of effective reform approaches (ibid). For the World Bank, a strong advocate of PPPs to have designed such a program lends weight to public procurement's prominence to support service and infrastructure delivery globally.

Both these steps forward in the International Governance and International Financial Institutions are pivotal in recognising that active change-making transforms paths where Goal 16 can truly anticipate success. The lack of authority and influence explains much criticism regarding the frigidity of movement within IO's exerted over the perpetrators of corruption. Nevertheless, with recent accords from the UN, the UN Security Council and other notable IO's, the international community is heading for change. As Ben Franklin once posited, "How few there are who have courage enough to own their faults or resolution enough to mend them" Benjamin Franklin, Valens Research, accessed 2021). As recognition is the first step towards change, these realistic movements propagate methods towards combatting corruption and corruption in PPPs in the right direction.

## Conclusion

*"Civilisation is a hopeless race to discover remedies for the evils it produces."*

*Rousseau, 1775*

The debate to which Public-Private Partnerships are the panacea for sustainable development is relative to the corruption that systemically governs their production. The rationale for this research lies in the context of a dramatic shift in ambition which has placed sustainable development at the top of the global Agenda and requires essential discussion regarding the best method of procurement funding to support implementation. The principal aims for this research were to review the discourse on PPPs to understand if the model is fit for purpose for the ambitions of sustainable development, the United Nations 2030 Agenda for Sustainable Development Goals, and specifically through the lens of Target 16 for Peace, Justice and Strong Institutions. Within the evaluation, the contextualisation of corruption pervasive to PPP use was integral to assessing whether this was a barrier to sustainable development. The motivations of this study aimed to provide an in-depth study of academic, theoretical, empirical and qualitative analysis to frame a response to the question "Is corruption in PPPs a barrier to Sustainable Development?". Further discussion points include the failures of PPP administration, the various dynamics of relationships surrounding the execution and governance of PPPs and the governance frameworks in existence that support anti-corruption, and how innovation and improvements support those aims. In response, the paper offered four main sections. The first took a comprehensive review of the relevant academic and theoretical literature. The second part examined the relationship dynamics between state and non-state, national and international and state and global governance institutions within the theoretical context of the Principal-Agent theory to understand the imbalances of power involving each actor's role in corruption. The following chapter used a qualitative study of three case studies, Siemens, Ericsson and Odebrecht, to provide evidence of PPPs as a barrier to sustainable development through grand corruption on a global scale. The final part assessed the support mechanisms that can guide progress through regulation, innovation, and strengthening within the international community to provide better sanctions against state corruption. The research found that scholars, public officials, and proponents for global governance have questioned the legitimacy of PPP use from the outset. The risk of hidden and high costs and delaying overall payment and the burden of debt on to future

governments negates the attainment of 'Value for Money and 'Value for Future' even without corruption. Further, the validity of PPPs incorporating 'Value for People' is jeopardised where the propensity for bribery, money laundering and illicit funds siphoned for private gain, erodes trust and removes essential service and infrastructure for society negating sustainable development. Regardless of the additional distortion of corruption within PPPs, the general failure of PPPs through poor quality infrastructure and mismanagement explain the lowly statistics of just 15–20 per cent of PPPs used in the developing world for infrastructure investment (World Bank, 2014). This indicates their inherent failure to meet the requirements needed for the SDGs.

The critical headline messages from the analysis this paper expounds are divided into three sections: Public-Private Partnerships, Sustainable Development and Global Governance.

### **Public-Private Partnerships:**

The Public-Private Partnership in its current format is not fit for its purpose. The promotion of PPPs within the neo-classical period has been underscored by notions of advanced growth, free competition, private sector risk and low regulation. This is in contrast with the Keynesian philosophy of public sector management to curb the monopolistic, free reign of private firms to exhaust the funds of a society. Within PPP governance, financial controls demonstrate the weakest link. The critical justifications of 'Value for Money' proved invalid as an off-balance application of PPPs increase debts on future governments and societies. The findings illustrated the failures to properly audit and benchmark PPP costs leading to inflated prices, risk of renegotiation (also to accommodate bribes) and cost failures with the additional loss of public funds attributed to bribery. Weaknesses in compliance both within the public and private sector have allowed many loopholes for corruption to eventuate. The public and private sectors do not sufficiently risk-assess projects, and as a consequence, unforeseen costs can jeopardise the sustainability of projects. Risk assessments should be managed alongside method statements to ensure private firms supply forecasting against possible problems based but also integral plans for dealing with future issues. The design of the PPP operating model must implement compliance functionality and encompass methods for clear transparency and accountability with a separation of fiscal control from political influence. Each

Government interested in applying PPPs should integrate a policy framework that assesses the value of PPPs set side by side with public procurement, PDPs or other forms to provide a balanced and critical justification of its use. To ensure accountability to future PPPs this paper highlights all fiscal activity pertaining to bids, pricing, renegotiation, and long-term contract agreements should be overseen by an independent compliance body. Where feasible, procurement procedures should be brought online with a chain of communication with the procurement department as well as financial, legal and compliance personnel. Pertaining to PPP pricing, all contracts should be capped in line with government spending for the fiscal year and future government fiscal capabilities. Using Laffont and Tirole's Menu of Contracts would allow for more control from the Public Sector on Private Sector pricing models. To attain the SDGs as illustrated within this study, other models such as public procurement, re-municipalisation, loans using current or future tax revenues, public donor partnerships, and public financial management can support alternatives to PPPs. Where the Private sector remains heavily ungoverned and unaudited, improvements to accountability would help.

### **Sustainable Development**

The correlation between corruption, and inequality and poverty has been evidenced within this paper. A diversion of funds creates gaps in services and infrastructure and education and welfare programmes designed to improve societal improvements. Addressing corruption is critical to supporting the United Nations 2030 Agenda for SDGs. The UN 2030 Agenda using the modus operandi of governance through goals is insufficient to support its implementation. Challenges remain with limited government action especially in developing nations, slow progress reporting through VNRs, a lack of member coordination of trade transactions (e.g., China's BRI initiative) and policymaking. There is sufficient evidence that corruption in PPPs damages the environment and impacts long-term sustainable development. The costs of corruption through bribery in PPPs remove vital funds that lower the quality of services and infrastructure. State members need to apply a percentage to all PPPs that will provide positive contributions within the clauses relevant to the service or infrastructure for sustainable development in line with the UN 2030 Agenda and sustainable development goals. The evidence is inconsistent with regards to the nature of corruption as an enabler to growth, which appears only relevant for short-term gains and discards the broader evidence that long-term effects damage civil

society's democracy and economic stability. As evidenced in Brazil, corruption in the public sector undermines trust in the state and can contribute to civil unrest and violence. The role of civil society is critical to the goal of Peace, Justice and Strong Institutions. Having a collective voice against corruption is essential to reiterate government responsibility and accountability to its citizens. However, better mechanisms that allow constructive dialogue supporting anti-bribery such as those mentioned in the paper, are imperative to aiding transparency. Of importance are those mechanisms that support oversight of public expenditure on services and infrastructure, especially within PPPs.

### **Global Governance**

Soft control mechanisms regarding the leniency with which the International Organisations apply PPP regulation fail in supporting the control measures available to prevent corruption in their execution. Current adherence to both the regulations and laws surrounding Anti-Bribery and Corruption is low in developed and developing nations. As discussed, criminalising foreign bribery would support deterrent measures against political and high-level figures. Corruption is well documented and theoretical studies are available concerning the developing world. Further analysis is required to address the issues pertaining to the developed world where a democratic state with a strict rule of law and supposed good governance fails to ensure against corruption and bribery in PPP practice. Also, there is not enough evidence or study to determine if legally applied monitorships are sufficient in length to determine future compliance within private firms. Anti-corruption mechanisms are not sufficient in the Public Sector nor the law to criminalise the activity of high-level figures in Government (e.g., Sweden). Until States are ready to take accountability, the burden of corruption will remain a blight on every civil society development. Both International Organisations and governments are not creating enough frameworks to incentivise local competition. States need to encourage competition in procurement bidding and maintain a strict regulation on monopolistic behaviour. Where States obligated to anti-corruption conventions and treaties remove essential laws pertaining to those treaties within their governments, urgent communication and mediation must be applied to determine future sustainability within the United Nations member groups. Cultural diplomacy is critical but remonstrations from the international community is vital to support prevention of flagrant disregard of a state's obligations. The different dynamics between actors in the principal-agent relationships between state and non-state,

national and international and state and global governance institutions require further review to determine how best to achieve a balance of power within each relationship pursuant to the goals of peace and sustainable development and targets of anti-corruption. Where current indexes on levels of corruption are formulated by expert opinion, there is a lack of qualitative and quantitative evidence to ensure these models are accurate. Both the largest bribery scandals of the last two decades were propagated by two of the top-ranking countries on the globally recognised indexes places doubts on their efficacy. Future statistical data should incorporate corruption between states (especially between the developed and developing nations) to illustrate the growth of corruption in one and the actions of another that exacerbate the problem. This constitutes a significant problem to the role of anti-corruption, where high levels of governance have not deterred the compulsion to bribe. Globalisation presents additional challenges to regulating corruption within PPPs due to increased participants within the corrupt chain which spreads criminal practices on a much broader, global scale. This affects efforts to track money laundering, tax evasion and illicit financial flows that can relate directly to PPPs or the wider global issues of human trafficking and terrorism. Here, anti-corrupt mechanisms should include a much larger framework of monitorship. The UN, EU and other large International organisations have created knowledge-sharing platforms for this specific purpose. It is the action that follows tracking of corruption cross-countries that will serve the difference between data collection and prosecution. Current global legislation to criminalise those that commit grand corruption is insufficient. The most robust judicial processes appear in the United States Department of Justice and the recent upgrade of UK laws. The United Nations International Anti-Corruption Court proposal is a welcome and ambitious contribution to the anti-corruption campaign. The IAAC would help address some of the fundamental issues of impunity that negate high-level political figures' prosecution within their state. International Organisations owe much to the commitments and adherence to their obligations from members. Thus, where this paper has highlighted weaknesses in international structures, this does not negate the responsibilities that member states are failing to administer. Accountability is significantly challenging to enforce. Every state governs its own country based on its political gains. Due to the polarity between the different democracies and autocracies, governance will have other objectives and parameters. Governance appropriate for developed nations may not be simultaneously picked up and transplanted to every developing country. Consequently, future analysis could build on mechanisms to support differing requirements of each state. Further, a

good rule of law and democratic governance does not guarantee anti-corruption. The case studies demonstrated that corruption thrives in environments where the law is weak, and governance is minimally applied. However, good governance is not a complete panacea to the challenge of corruption as this paper observes.

The need to intensify anti-corruption efforts relative to PPPs is vital if used to implement the Sustainable Development Goals. With the UNDP and OECD reporting US\$1 trillion in bribes equivalent to 15-30 per cent of official development assistance, US\$152 billion in illicit flows and the contrasting requirement of US\$420 billion required to fulfil the Sustainable Development Goals, evidence of corruption substantially reduces any opportunity for progress. Prior to implementation, PPPs need a radical reform within a policy framework that encompasses the budget framework, the suitability of PPP implementation benchmarked against other mechanisms, and management accountability throughout the contractual and delivery process. There is neither a quick fix nor one solution that fits all scenarios for the issues of corruption within PPPs. The development of this paper was borne of witnessing high levels of corruption where the current regulations and conventions and the international community were not enough to stop its insipid spread. Additionally, it was borne of witnessing the high level of discrepancies between private and public sector fiscal negotiations and the interest to support governance and sustainable development. There is a plethora of literature that presents the impacts of low governance and the prevalence of corruption. This paper outlines the gaps in the anti-corruption literature. The ultimate challenge of corruption stems from the evidence that a high rule of law and good governance have so far not prevented corruption as a barrier to sustainable development and the goal of Peace, Justice and Strong Institutions. This paper conceives; The international community conceive corruption should be governed at the source. The corruption that originates from developed states already governed by a strict rule of law and a democratic and relatively free market arrangement presents more questions than answers. The international community may apply better examination to understand why these measures do not work and design a framework under which PPPs can be governed to maintain their legitimacy for the ultimate goals of sustainable development.

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