

# **Legal and institutional frameworks for Public Private Partnerships in Africa: a new tool developed by the ALSF to compare them**

## **Full Description**

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There is an unprecedented interest among African countries in attracting private investment in infrastructure and services to meet the growing national demand. However, while public procurement regulation is well established globally, the development of modern and secure legal and institutional PPP frameworks to facilitate private investments in infrastructure is progressing gradually throughout the continent.

The responsibility of establishing legal and institutional PPP frameworks also rests with governments, which must be capable of identifying and selecting suitable projects, conducting transparent tenders, structuring robust contracts, and implementing checks to ensure the proper execution of PPP projects.

Against this backdrop, the African Legal Support Facility (ALSF) has developed PPP country profiles to assess the progress of PPP legal frameworks' development in each African country.

The ALSF has also collected data and performed a comparative analysis of existing legal and institutional PPP frameworks in Africa. The recently published ALSF PPP Frameworks Survey is the result of this comparative analysis.

The ALSF PPP Framework Survey is primarily addressed to African governments that have already included or are considering including PPPs as a method for delivering public assets and services. National authorities and legislative bodies may also refer to this survey when developing PPP legal frameworks or assessing the effectiveness of existing ones. International financial institutions and private sector investors who wish to gain a better understanding of how legal PPP frameworks operate across various African jurisdictions may also benefit from this survey.

The ALSF PPP Frameworks Survey reveals, for instance, that out of the 54 countries in Africa, 42 have enacted legislation on PPPs. Out of these 42 countries, 24 follow the civil law tradition, 13 have a common law legal system, and 5 have a bi-jural system.

In the 42 countries that have enacted laws for PPPs, some regional variations emerge. Western and Central Africa have the highest percentage of economies that have enacted specific PPP laws. Indeed, except for The Gambia and Equatorial Guinea, all countries in the Western and Central Africa regions have enacted such laws.

On the other hand, countries in Eastern and Southern Africa have enacted the least specific PPP laws. Out of the 12 countries that make up the Southern Africa region, four remain without a PPP law including Botswana, Lesotho, South Africa, and Eswatini. Other countries in Africa that have not enacted specific PPP laws include Comoros, Eritrea, Seychelles, and South Sudan in East Africa, as well as Algeria and Libya in North Africa.

In terms of trends in enactment on a yearly basis, the period between 2015 and 2017 saw the highest rate, with 16 countries enacting PPP laws over the three-year span. The first African country to enact a specific PPP law was Mauritius in 2004, while the most recent is the Republic of Congo in 2022.

To ensure the effective implementation of PPPs, most countries in Africa have a PPP Unit. PPP Units may be set up as departments within government ministries or agencies and are essentially composed of government teams focused on PPPs. According to the data collected and analyzed by the ALSF, 42 of the jurisdictions surveyed have one or more dedicated PPP Unit. Some PPP Units are independent institutions with full legal

personality akin to other government departments. In other cases, PPP Units are either attached to Ministries of Finance, within Prime Ministers' offices, in Presidents' offices or other technical ministries.

The ALSF PPP Frameworks Survey also offers a comparative analysis of the criteria used to define PPPs in Africa, the main benchmarks considered in the preparation of PPP projects, the different procurement methods employed in Africa, the contractual arrangements for PPPs, and the approach for addressing dispute resolution mechanisms in the legal frameworks assessed.

Finally, it is widely known that just as the signing of a PPP contract is not an end, but rather the beginning of a new endeavour, the adoption of a PPP framework will not directly translate to increased deal flow. 42 countries in Africa have already implemented PPP legislation. However, the number of financially closed PPP projects on the continent has been relatively limited so far. The PPP market in Africa is also concentrated in a handful of countries, including South Africa, Morocco, Nigeria, Egypt, and Ghana. These countries account for more than half of all PPPs in Africa by value. It is therefore evident that African governments need to take decisive actions to establish credibility and significance for their PPP frameworks.

The ALSF's PPP Frameworks Survey emerges as an important tool for ensuring that adopted PPP laws effectively promote a pipeline of bankable projects likely to attract investors. This survey not only offers a comprehensive assessment of existing PPP frameworks but also serves as a platform to advance the reflection and propose legislative solutions that contribute to addressing the increasingly complex challenges facing states, including climate change and energy transition. The survey aims to contribute to the development of innovative PPP frameworks, paving the way for socially responsible and successful projects.

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## Notes about the authors

***Andrea Stucchi** is a solicitor licensed to practice law in England and Wales. Andrea offers legal services in support of PPP infrastructure financing including project preparation and transactions, project structuring, preparation of bidding documents, PPP agreements and legal due diligence in the context of feasibility studies. Andrea specializes in enhancing the legal and institutional frameworks of countries to support infrastructure investments, including establishing PPP Units at Ministerial level and working on legislation which is conducive to private sector infrastructure investments. He has worked on legal and institutional PPP framework projects for The World Bank, the African Legal Support Facility, USAID, and the US Government.*

***Maude Vallée** is Division Manager & Head of Operations at the African Legal Support Facility (ALSF), an international organization hosted by the African Development Bank, which comprised 53 member countries.*

*Maude Vallée joined the ALSF in April 2012. She leads a team of 25 lawyers, which provide legal and transaction advisory support to African countries. She oversees the implementation of more than 120 projects and capacity building programs in the areas of natural resources and extractive industries, infrastructure, and Public-Private Partnerships (PPP), and sovereign finance, across over 45 countries (USD 100 billion worth of transactions). She regularly advises senior government officials on negotiation strategy, project structuring, and related legal issues. She also assists with the development of strategies and management of partnerships with key institutions and organizations.*

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