

Technical Assistance to State Governments in India

In the early 2000's, while certain Indian states like Andhra Pradesh, Gujarat, and Maharashtra had been experimenting with the use of the public-private partnership (PPP) model in the roads and power sectors, not much was being considered by other states for the provision of basic urban infrastructure services such as water supply, sanitation, local roads, etc. Since 2001 PPIAF has supported six activities to support enabling environment reforms by state governments in India.

West Bengal

The government of West Bengal was interested in developing a PPP strategy and operationalizing PPPs to improve basic urban infrastructure services. The state recognized that learning from experiences in other parts of the country and abroad, and incorporating best practices, were vital components for implementing a successful PPP agenda. As a result, in 2001 the government solicited PPIAF support to review issues in the context of private provision of infrastructure services. PPIAF assistance was sought to: i) bring in key experts involved with successful PPP ventures; ii) hold interactive workshops/seminars with key stakeholders in presence of global experts; iii) undertake field visits by a select group of key stakeholders and policy-makers; and iv) prepare a report on the PPP scenario and provide policy recommendations to enhance private sector participation in key infrastructure sectors in the state. A larger objective of the review was to generate awareness on various issues related to private sector participation in the delivery of basic urban infrastructure services and sensitizing the maximum number of stakeholders, particularly the policy makers and service providers, regarding the complexity of such initiatives.

A two-day workshop was conducted on November 23–24, 2002 in Kolkata with the aim of building awareness about PPPs in various sectors. Fifty eight participants attended the workshop, including key decision-makers, elected public representatives, officials from the government of West Bengal, and representatives from non-government organizations. Subsequent study tours were conducted to Johannesburg, Manila, Hyderabad, and Gujarat from January-April 2003, with the objective of carrying forward the workshop learning and observing the practical aspects and issues related to the implementation of these initiatives. The workshop and study tours were limited to examining issues relating to select infrastructure sectors, namely water supply and sanitation, roads and bridges, and infrastructure development regarding townships and area development (including housing).

At the end of the consensus building tasks, the PPIAF-funded final report, "Private Provision of Infrastructure: Review of Issues in West Bengal," identified key challenges facing private sector participation and issues to be addressed, which included: existing legislation; the absence of a long-term vision, an enabling legal framework, and alternate dispute resolution mechanisms; regulatory framework; lack of political commitment; tariff reforms; project development mechanisms; government support; lack of capacity; risk management skills; securing labor interests; and the protection of poor.

The most important recommendations included locating a PPP cell in the office of the Chief Secretary of West Bengal to oversee the implementation of the various steps in a time-bound plan and institutionalizing a "Champion of Reforms" whose role and responsibility should primarily include managing the transition to a liberalized environment. The state government has since initiated a PPP policy on behalf of the Urban Development Department, and is also examining the scope of strengthening the policy statement to make it more proactive and supportive of facilitating growth in infrastructure. In 2007 the Asian Development Bank provided technical assistance to help set up and build the capacity of a PPP cell within the government.

Results of PPIAF's Activities for Enabling Environment Reform in West Bengal

Category	Outputs
Enabling environment reform	
<i>Analyses/assessments prepared</i>	<ul style="list-style-type: none"> Private Provision of Infrastructure: Review of Issues in West Bengal, June 2003
Capacity and awareness building	
<i>Workshops/seminars</i>	<ul style="list-style-type: none"> Workshop held to sensitize West Bengal government officials on Private Sector Participation initiatives in key sectors, November 23–24, 2002 Study tours with West Bengal government officials to Gujarat, Hyderabad, Manila, and Johannesburg, January-April 2003
<i>Knowledge products disseminated</i>	<ul style="list-style-type: none"> Options for Private Sector Participation in Infrastructure—India, West Bengal, 2003

Category	Outcomes
Enabling environment reform	
<i>Policies adopted, legislation passed/amended, or regulation issued/revised</i>	<ul style="list-style-type: none"> A PPP Policy initiated by the Urban Development Department in West Bengal, 2003
Capacity and awareness building	
<i>Consensus achieved</i>	<ul style="list-style-type: none"> Consensus achieved on key issues for the PPP enabling environment in West Bengal, 2003

Tamil Nadu

By 2006 the government of Tamil Nadu had already undertaken a number of reform initiatives to catalyze greater private participation in infrastructure service delivery and was committed to the PPP approach. Examples of the government's commitment to working with private sector partners include the: Tirupur Water Supply Scheme, Alandur Sewerage Scheme, revenue-backed bond financing of the Madurai Inner Ring Road, unique financing and concession structure of East Coast Highway, and use of pooled financing for water supply and sanitation for 15 municipalities by the Tamil Nadu Urban Development Fund. Whilst these initiatives put the state far ahead of others in India in terms of leading successful and innovative PPPs, they fell short of providing a systematic approach and an enabling framework for scaling up PPPs in a substantial way. To that end, the government requested PPIAF technical assistance in 2006 to support the development of a policy framework to create an appropriate enabling environment for PPPs.

The resulting PPIAF-funded study began by looking at the current institutional framework and found that while the state had well-developed "one-stop" processes for obtaining permits and authorizations for major investment projects, there was no central agency with overall responsibility for reviewing and approving proposed PPPs, and no obvious value-for-money test. The study analyzed eight key issues for the development of a PPP framework, namely: i) the necessity of a cross-sectoral PPP law; ii) the need for a cross-sectoral agency; iii) the provision of financial support to PPPs; iv) the types of project development modes to apply; v) managing unsolicited bids; vi) contract management; vii) dispute resolution; and viii) the role of independent regulatory agencies.

In each case the study defined the issue, identified various options for the government, assessed each option, and made recommendations. The major recommendations of the study included establishing a cross-sectoral PPP unit within the Department of Finance, enacting a multi-sector PPP infrastructure law,

and establishing a new multi-sector fund to support project development and implementation. The report also recommended developing clear policy guidelines for project implementation funding and managing unsolicited bids by competitively tendering them and incentivizing the original proponent. A stakeholder workshop on the draft recommendations was held in April 2006. A PPP unit was established within the Tamil Nadu Department of Finance. A bill will be introduced in the coming Budget Session of the state Assembly for the formation of the Tamil Nadu Infrastructure Development Board for the implementation of critical infrastructure projects. A separate Infrastructure Development Fund will also be constituted by the government in this regard.

Results of PPIAF's Activities for Enabling Environment Reform in Tamil Nadu

Category	Outputs
Enabling environment reform	
<i>Analyses/assessments prepared</i>	<ul style="list-style-type: none"> Tamil Nadu, India: Development of PPP Policy Framework, 2006
<i>Policies prepared or legal or regulatory changes recommended</i>	<ul style="list-style-type: none"> Draft Law: The Tamil Nadu PPP in Infrastructure Act, 2006
Capacity and awareness building	
<i>Workshops/seminars</i>	<ul style="list-style-type: none"> Diagnostic workshop, July 2005 Stakeholder workshop to discuss the draft recommendations of the report, April 2006

Category	Outcomes
Enabling environment reform	
<i>Institutions created or strengthened</i>	<ul style="list-style-type: none"> PPP unit established within the Tamil Nadu Department of Finance, 2007
Capacity and awareness building	
<i>Consensus achieved</i>	<ul style="list-style-type: none"> Key stakeholders agreed on some of the Tamil Nadu, India: Development of PPP Policy Framework study's recommendations, including to establish a PPP unit, and the need for a regulatory panel, PPP law, and framework for dealing with unsolicited proposals, 2006

Bihar

During the eleventh five-year plan period (2007–2012), the government of Bihar set a target to achieve an annual growth rate of 8%. Recognizing that top-quality infrastructure was one of the critical requirements to achieve faster growth, the government decided to prioritize investment in infrastructure development. As one of the poorest states in India, with the third largest population, access to infrastructure in Bihar is severely limited, and service levels are among the lowest in the country. The government wanted to utilize the PPP approach to address this lack of infrastructure and to leverage the financing capabilities of the private sector to achieve its goals. As a first step, the government enacted the Bihar State Infrastructure Development Enabling Act in 2006 and established the Infrastructure Development Authority.

Against this backdrop, the government of Bihar requested PPIAF support in 2008 to help create a legal, institutional, and regulatory environment to encourage private sector participation in infrastructure service provision. Specifically, the technical assistance was requested to: i) review the existing legal framework;

ii) formulate a PPP policy for the state; iii) develop an institutional development plan for the Infrastructure Development Agency; and iv) organize stakeholder consultations.

The PPIAF-funded report “Review of Existing Legal Framework Governing PPPs” identified constraints to private sector investment in the present legal framework, such as the lack of clarity in the functions of the Infrastructure Development Agency and the need to harmonize legislation, especially policies with references to incentives for PPPs. Other constraints identified by the report included the failure to specify which approvals are required for projects, the absence of a framework for the management of the infrastructure development fund in the 2006 enabling act, and the lack of clarity in risk sharing, lender rights, and securitization. The report’s main recommendations were to develop a PPP policy to harmonize the existing legal framework and lay down clear institutional structure for the smooth implementation of PPP projects. Additional support was requested by the government to draft some of the rules and regulations recommended by the report. These included the Bihar Infrastructure Development Enabling Act, Bihar Council Board Rules, Bihar Municipal (PPP Project) Rules, Land Bank Rules, Bihar State Guarantee Rules, Bihar Conciliation Rules, and International Development Authority Fund Regulations.

In addition, PPIAF provided funding for a PPP policy study and institutional development plan for the Infrastructure Development Authority. The final report provided recommendations for strengthening the institutional and regulatory framework for developing PPPs, a draft PPP policy, a PPP process guidebook and an institutional development plan for the authority. The report also provided recommendations on the way forward for the Infrastructure Development Authority, namely to: i) harmonize the policy framework beginning with the approval of the PPP policy and issuing rules, regulations, and guidelines to streamline the PPP development and approval process; ii) appoint core authority staff; iii) finalize a mechanism for financial support to PPP projects; and iv) provide training and capacity building measures for staff.

The draft PPP policy provides guidance on assessing the suitability of the PPP model for projects, articulates the PPP project development process, and lays out the principles of regulation, risk sharing, and levying of user charges. The draft policy also provides guidance on the provision of land for PPPs and sets out a dispute resolution framework. The PPP process guidebook presents a systematic approach for entities in Bihar to identify, plan, and implement PPP projects. A stakeholder consultation workshop to discuss the findings and recommendations of the report were held in July 2009 and attended by 20 senior government officials from various infrastructure departments.

Results of PPIAF’s Activities for Enabling Environment Reform in Bihar

Category	Outputs
Enabling environment reform	
<i>Analyses/assessments prepared</i>	<ul style="list-style-type: none"> • Review of Existing Legal Framework Governing PPPs and Suggested Improvements, 2008
<i>Policies prepared or legal or regulatory changes recommended</i>	<ul style="list-style-type: none"> • Draft PPP Policy for Bihar, 2009 • Revised Infrastructure Development Enabling Act (removal of Difficulties Order), 2009 • Draft Rules for Infrastructure Investment: i) Bihar Infrastructure Development Authority Conciliation Board Rules; ii) Bihar Municipal (PPP Project) Rules; iii) Bihar State Guarantee Rules; iv) Bihar Infrastructure Development Rules; v) Infrastructure Land Bank Rules; and vi) Bihar Infrastructure Project Fund Regulation, 2009
<i>Plans/strategies prepared</i>	<ul style="list-style-type: none"> • Infrastructure Development Plan for Bihar and Institutional Strengthening Plan for the Infrastructure Development Agency, 2009 • PPP Process Guidebook, 2009

Capacity and awareness building	
<i>Workshops/seminars</i>	<ul style="list-style-type: none"> Stakeholder consultation workshop to discuss the recommendations of the final report, July 2009

Category	Outcomes
Capacity and awareness building	
<i>Technical capacity enhanced</i>	<ul style="list-style-type: none"> Technical capacity of the Infrastructure Development Authority enhanced, 2009
<i>Consensus achieved</i>	<ul style="list-style-type: none"> Consensus achieved on the report's recommendations, which subsequently led to a follow-up request from the government of Bihar for additional support to help implement them, 2008

Maharashtra

To address infrastructure constraints in the state, the government of Maharashtra has been encouraging private sector participation in infrastructure development. The Maharashtra Urban Infrastructure Development Company Ltd. (MUIDC) was established in 2002–2003, with the primary objective of acting as the fund manager of the Maharashtra Urban Infrastructure Fund. In 2008 the government of Maharashtra sought assistance from PPIAF to assess the potential of MUIDC in becoming a multi-sector project development entity to catalyze the design and implementation of infrastructure PPP projects.

PPIAF supported a study that assessed the underlying market circumstances and prepared a strategy and business plan for MUIDC. To complete the assessment, it was necessary to define the institutional role of the MUIDC in the context of the PPP landscape in Maharashtra, elaborate on potential revenue sources of MUIDC, and suggest organizational, governance, and capital structure models for MUIDC.

In the first phase of preparing the business plan, a market assessment of capacity building needs was carried out to identify the roles critical to the development of PPPs in Maharashtra and map these roles against the existing institutional structure. The critical roles identified included funding PPP project preparation, PPP project-related advisory support, PPP market development, and PPP-specific knowledge development. These critical gaps were discussed and ratified by key stakeholders during subsequent discussions.

The activity then analyzed the possible institutional positioning of MUIDC and, based on a review of PPP units in India and abroad and interim discussions with key stakeholders, it was concluded that MUIDC should be positioned closer to project implementation entities as an entity supporting project preparation processes in urban local bodies, specifically for PPPs in urban infrastructure.

The business plan further defined the corporate structure based on the future roles for MUIDC envisaged by the government. The plan proposed two separate business units for the MUIDC's initial years of operation: the first to manage the services of project development funding, as well as project and policy advisory, and the second to manage the business of *suo-moto* preparation and procurement of PPP projects. The plan further recommended that once MUIDC was able to identify unaddressed opportunities for project preparation and procurement, it should consider splitting off the second business unit into a separate company or a set of single-sector companies. The scope of the review was later extended to include experience of municipal development funds and the possible role for MUIDC to be set up as a development fund.

Overall, the report assisted the government to strengthen the role of MUIDC to assist cities with developing PPP projects and building capacity. MUIDC is now assisting several cities, through project development fund and advisory support, to develop PPP projects.

In 2009, at the behest of the government of Maharashtra, PPIAF supported another activity to assess the options to improve the institutional framework for managing PPPs in the post-award phase. The scope of the work included an assessment of the present legal and regulatory framework as well as of institutional mechanisms governing PPPs during the implementation stage, and a review of domestic and international experiences with regard to similar institutional arrangements for regulation, dispute resolution, and contract renegotiation.

The assessment of the existing concession agreements in Maharashtra and stakeholder consultation highlighted two critical aspects. First, the prevailing arrangements for dispute resolution usually comprised either a two- or three-tier process, including mutual negotiation, mediation (in some cases), and arbitration. Second, the main limitation of the existing arrangements was the lack of provisions/mechanisms for resolving the disputes in a time-bound manner, leading to continuation of disputes for an indefinite period. Furthermore, there was no uniform mechanism for monitoring the performance and management of PPP projects, although some parameters were common in most of the concessions. The arbitration provisions across concessions were inconsistent and did not provide for time-bound adjudication, sharing of costs, qualifications of arbitrators, and the exclusion of the courts' jurisdiction. This clearly established the need for the government of Maharashtra to evolve a common baseline for adjudication of disputes between the grantor of the PPP concession and the concessionaire.

In order to address the limitations outlined above, the study recommended the establishment of a multi-disciplinary expert body ("authority"), through the enactment of a suitable legislation. The remit of such an authority should include adjudication of disputes related to or arising from the implementation and scope of a PPP contract in the infrastructure sectors where no other quasi-judicial body currently exists for carrying out that function. As of now, such sectors in Maharashtra include water, solid waste management, and state highways and other modes of transport that are not within the ambit of the central government (e.g., bus rapid transit systems, mass rapid transit systems, and minor ports).

Keeping in view the authority's envisaged role as an independent, expert body for adjudication of disputes in the context of PPP projects, the study further recommended that it should have a permanent bench comprising of at least one person with financial experience and one person with legal experience. The study also recommended that the bench include a technical member with requisite expertise for resolving any sector-specific disputes. In addition, the report provided indicative guidance on other critical aspects related to the authority's establishment, recruitment, and removal of members, powers for effectively carrying out its mandate, autonomy for making its own rules and procedures, and funding and accountability vis-à-vis the state's administration. This activity was recently completed and it is too early for any outcomes. PPIAF will continue to monitor for future outcomes.

Results of PPIAF's Activities for Enabling Environment Reform in Maharashtra

Category	Outputs
Enabling environment reform	
<i>Analyses/assessments prepared</i>	<ul style="list-style-type: none"> • Market Study Report, 2008 • Concept Note on Funding Role for MUIDC, 2008 • Institutional Framework to Support Management of PPPs in Post Award Phase: Contract Management, Renegotiation, and Dispute Resolution, 2010
<i>Plans/strategies prepared</i>	<ul style="list-style-type: none"> • Business Plan for the MUIDC, 2008
Capacity and awareness building	
<i>Workshops/seminars</i>	<ul style="list-style-type: none"> • Stakeholder consultation workshop, November 21, 2008

Category	Outcomes
Enabling environment reform	
<i>Institutions created or strengthened</i>	<ul style="list-style-type: none"> • Maharashtra Urban Infrastructure Development Company Ltd. strengthened, 2008

Andhra Pradesh

The state of Andhra Pradesh, the fifth largest economy in India, has a 972 km coastline with an immense potential to trigger industrial growth. To brainstorm on key aspects of industrial and infrastructure development of the Visakhapatnam–Kakinada region, a corridor covering around 150 km of the coastline, the government of Andhra Pradesh organized a stakeholders’ consultation workshop at Visakhapatnam from November 28–29, 2007. The workshop brought together key government departments, local bodies, elected representatives from the region, private sector representatives, civil society, media, and experts for intensive deliberations on the region’s key infrastructure requirements and the way forward. It was agreed that an overall “Infrastructure Vision” for the corridor should be developed and should include an action plan and implementation mechanism for key infrastructure projects, including a list of those projects that could be implemented as PPPs.

To that end, in 2008 the Infrastructure Corporation of Andhra Pradesh Ltd. sought assistance from the International Finance Corporation (IFC) to develop an overall infrastructure development strategy for the growth corridor. The government requested PPIAF assistance to support this strategy with an assessment of the plans, policies, and regulatory measures needed to implement projects.

The PPIAF-funded study “Preparation of Infrastructure Development Plan and PPP Strategy for Visakhapatnam–Kakinada Coastal Growth Corridor” included the delineation of the corridor, a location study, an evaluation of the economic base, an examination of the status of existing infrastructure, a conceptual regional master plan, an infrastructure development plan, a preliminary environmental assessment, an assessment of the institutional and PPP enabling framework, and feedback from the key PPP players in the state of Andhra Pradesh.

Specific recommendations of the study included: i) a regional master plan proposing seven development zones in order to retain distinct identities of various aspects of the region and also enable efficient planning and development; ii) an infrastructure development plan to be implemented in a phased manner spread over 30 years; iii) a funding structure based on the nature of the project and the potential for private sector participation; and iv) the preparation of public awareness programs on the benefits of the Visakhapatnam–Kakinada growth corridor project.

The study also recommended undertaking several measures related to the PPP enabling environment, including: i) bundling external infrastructure with the PPP project during the development phase to avoid delays in commission; ii) implementing an attractive enabling social framework to catalyze resettlement and rehabilitation programs; iii) the systematic use of enumeration and household surveys; iv) establishing a zonal office for the state infrastructure corporation to develop the corridor; and v) the government of Andhra Pradesh should disallow changes in land acquisition once a project is notified. IFC Advisory Services is in discussion with the government for follow-up transaction support.

Results of PPIAF's Activities for Enabling Environment Reform in Andhra Pradesh

Category	Outputs
Enabling environment reform	
<i>Plans/strategies prepared</i>	<ul style="list-style-type: none"> • Infrastructure Development Plan and PPP Strategy for the Visakhapatnam–Kakinada Coastal Growth Corridor Project, 2009
Capacity and awareness building	
<i>Workshops/seminars</i>	<ul style="list-style-type: none"> • Stakeholder consultation workshop with local communities, October 2008

Category	Outcomes
Enabling environment reform	
<i>Institutions created or strengthened</i>	<ul style="list-style-type: none"> • Infrastructure Corporation of Andhra Pradesh Limited strengthened, 2009