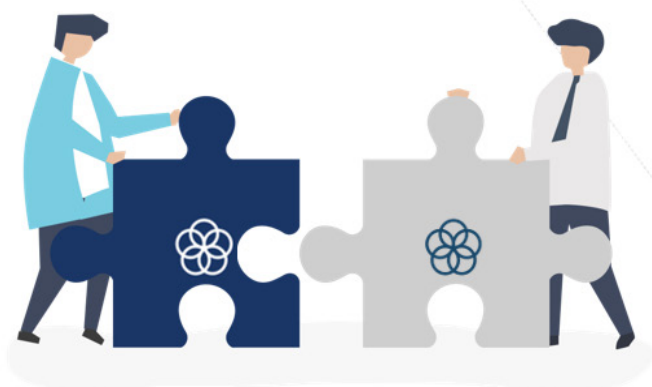


# Public-Private Partnership in Land Administration





UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

# **Public-Private Partnership in Land Administration**

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## I. Background

The ECE Working Party on Land Administration discussed about utilizing public-private partnerships during its tenth session. The Bureau of the Working Party was approached by the Commission 7 of the International Federation of Surveyors (FIG) to establish a joint task force<sup>1</sup> to explore the current situation of public-private partnerships (PPPs) in land administration. The members of the task force agreed that the existing principles (HBP/WP.7/2005/8) should be compared with the current situation and, if needed, be reconsidered due to new trends in land administration. Thus, the objective was to evaluate the existing principles of PPPs in land administration to help land administration authorities to familiarize themselves with the best practices of ECE member States and develop their strategies for the future.

The Working Party and FIG are working together to develop principles to support and guide United Nations member States wanting to work in partnership with the private sector to improve land administration infrastructure and services. In this regard, the task force is looking for information on current and previous experiences of PPPs in the land sector so that lessons learnt are better incorporated in the recommendations of the study.

## II. Introduction

Traditionally, performing tasks and using tools related to land administration falls under public administration. However, during the last decades, partnerships between public and private parties have gained attention especially as means to create or strengthen land registration and land administration systems. There is a consensus among academics and practitioners that the future of land administration will include private contractors in some kind of form in the continuum of public-private and centralized-decentralized extremes of land administration.<sup>2</sup>

In land administration, the PPP solutions have thus far been rather conservative, focusing on only one function of land administration or only technical infrastructure or tasks. The conservative approach is reasonable considering the fundamental role of land and property rights in the society and economy through stimulating investments, encouraging economic initiatives, alleviating poverty, enhancing land markets and making credit accessible. This role, supported by land registration, is seen the most fundamental task of land administration. The prevailing paradigm is, however, increasingly challenged by the leapfrogging solutions arising in countries with economies in transition and the general pressures to provide public services more efficiently. Therefore, a better understanding of how different solutions for PPPs could benefit the society to perform better land administration functions is needed.

It became evident that discussion about definition of public-private partnership in the context of land administration is needed. First, the Task Force discussed about the scope of tasks related to land administration. The Task Force defined land administration to include all tasks related to updating and maintenance of the cadastre, land registration, and other land management systems. The Task Force, in their discussions, has identified the PPP contract duration, along with the shared risk between contracting parties, as one of the most significant features of defining whether there is a PPP in place. The Task Force developed a questionnaire on PPP in Land Administration and agreed to include all PPP contracts

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<sup>1</sup> The following national experts were designated members of the Task Force for the preparation of the study: Kirsikka Riekkinen, the Chairman of the Task Force, Daniel Paez, the Secretary of the Task Force, external expert Peter Creuzer. Other members of the Task Force were Richard Baldwin, Uchendu Chigbu, Ismail Dursun, Orhan Ercan, Teimuraz Gabriadze, Elene Grigolia, Teng Chee Hua, Søren Brandt Pedersen, Ian Rose and Gerda Schennach.

<sup>2</sup> Pauliina Krigsholm, Kirsikka Riekkinen and Pirjo Ståhle, "Pathways for a future cadastral system: A socio-technical approach", *Land Use Policy*, vol. 94, 104504, J.A. Zevenbergen, ed. (May 2020); and Fredrik Zetterquist, "Transforming land administration – a scenario study on future land administration", a presentation at the FIG Working Week, Hanoi, Vietnam, 22-26 April 2019.

regardless of duration in the questionnaire. This will allow inclusion of a wider variety of PPPs in land administration. One significant characteristic that defines PPP in land administration is continuity of task execution. The task should be a continuous administrative task related to land administration. This means that other tasks such as hiring a private contractor to execute a certain task (e.g. design a software) are not necessarily defined as PPP.

The study is based on a questionnaire prepared in 2020 and disseminated to 56 ECE member States in the middle of the COVID-19 pandemic. Responses came from 21 of the member States, representing a response rate of 38 per cent.

For countries which have not adopted any type of PPP in their land administration, the results of the survey showed that the fundamental reason for this lies in the manner the law has organized land administration tasks of public entities. To adopt PPPs in these countries, a change in legislation is needed.

Out of the 21 respondents:

- (a) Approximately 75 per cent indicated that they are currently using some type of PPP arrangement in organizing their land administration;
- (b) Majority used private contractors for tasks: related to cadastral procedures (8 countries) and/or supporting tasks such as mapping and data production (11 countries);
- (c) Nearly 2/3 of the countries (11 countries) reported that they are utilizing PPPs, there is a specific legislation for PPPs in land administration; other countries apply general PPP legislation;
- (d) The practices of risk division vary largely; and
- (e) There were four respondents that answered that their PPP contracts have more than 20-year duration.

This study includes a review of the current status of PPPs in land administration, followed by reasoning to utilize the arrangement and possible benefits for public administration or citizens, then presents issues related to the operation of PPPs, such as existing legislation, models for risk sharing and contract term. Responses from countries about the future of PPPs are shortly presented, and conclusions from the survey results discussed. Finally, the existing guiding principles for PPPs are listed, and additional guiding principles that are seen relevant are suggested.

## **A. Current status of public-private partnerships in land administration**

Land administration covers fundamental functions of a society, providing tools for implementing land policies and land-related strategies. Its core functions relate to securing ownership and other rights related to land; supporting land markets and transactions; and providing infrastructure for land development.<sup>3</sup> The objective of a well-functioning land administration system is to promote the goals of sustainable development. A land administration system comprises cadastral data, register of rights, such as ownership rights, and the processes related to the continuous updating of different information.<sup>4</sup> The tools of land administration support several essential functions of societies both in developing and developed economies, by supporting land tenure security, land value and valuation, land use planning and development.<sup>5</sup>

Land administration-related tasks cover several functions, and for this study, the Task Force decided to follow the division of tasks presented in the 2005 publication *Guiding Principles*

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<sup>3</sup> Ian Phillip Williamson, Stig Enemark, Jude Wallace, and Abbas Rajabifard, *Land administration for sustainable development* (ESRI Press, 2009).

<sup>4</sup> Jaap Zevenbergen, "A Systems Approach to Land Registration and Cadastre", *Nordic Journal of Surveying and Real Estate Research*. vol. 1, No. 1 (February 2004), pp. 11-24. Available at <https://journal.fi/njs/article/view/41503>.

<sup>5</sup> Stig Enemark, "Land Administration Systems – Managing rights, restrictions and responsibilities in land", paper presented at the Map World Forum, Hyderabad, India, 10-13 February 2009.

for *Public-private Partnerships (PPP) in Land Administration*<sup>6</sup> in the Guiding Principles the tasks were divided into core tasks, supporting tasks, and associated tasks. Core tasks relate to updating and maintaining the cadastre. They also relate to land registration, either directly through the registration process itself, or indirectly (e.g. through notaries). Associated tasks relate to services provided directly to customers (e.g. front-desk services), or tasks enabling these services (e.g. providing IT devices or applications). Supporting tasks are those needed to update and maintain an accurate land administration system and are often related to data production for topographical mapping or surveying.

The most common core task of PPP in land administration in this study relate to private partners executing cadastral procedures [Armenia, Austria, Denmark, Georgia, Greece, Canada (Saskatchewan), and Switzerland]. Some countries also consider the role of notaries in land registration as a core task and have introduced the inclusion of private parties in land registration [Greece, Canada (Saskatchewan), Switzerland]. From the associated tasks, some related services are provided in countries like Bulgaria, Cyprus, and Georgia, and IT providers are private parties from Finland and Kyrgyzstan. Supporting tasks for mapping and/or surveying are executed by private parties from Armenia, Finland, Greece, United Kingdom (Scotland), and Slovenia.

## **B. Benefits of public-private partnerships in land administration**

The prevailing paradigm of land administration being organized and governed by public authorities is constantly challenged by new models of utilizing private actors in land administration. The PPP solutions, especially in developed countries, have thus far been rather conservative, focusing on only one function of land administration or only on technical infrastructure or tasks.<sup>7</sup> Several factors could explain this but it is mainly driven by the need to provide better services for citizens (67 per cent of the respondents) and at the same time the urge to reduce public costs is driving the activities of the land administration organization (53 per cent of the respondents). Also, 27 percent responded that the possibilities to utilize more skilled people is driving the move towards PPPs in land administration.

Public administration is often regarded as slow and not very agile in its processes. This applies also to hiring new people. Some public authorities have noticed that utilizing private service provider makes the process faster and more flexible. Centralized governance and making services available to citizens in more remote areas, thus bringing services close to people, were reasons to create PPPs. Also, having organized front desk services in a more efficient way, PPPs have helped to reduce processing times and queues. Some of the respondents also noted the increased use of modern technology after introducing PPPs in land administration. In contrast, some countries replied that they are utilizing PPPs only because the law requires it or that it has been the tradition for more than 150 years already.

## **C. Practicalities regarding the public-private partnerships**

### **(a) Existing legislation**

There is a consensus among the respondents that drafting and utilizing PPPs should be legislated. Two-thirds of the respondents said that they have a specific legislation for utilizing

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<sup>6</sup> UNECE (2005): *Guiding Principles for Public Private Partnerships (PPP) in Land Administration* (HBP/WP.7/2005/8), available online from <https://unece.org/housing-and-land-management/publications/guiding-principles-public-private-partnerships-ppp-land>

<sup>7</sup> See: Ercan Orhan and Mert Yasin Öz, “Public Private Partnership Applications and Cost Recovery in Cadastre Establishment, Turkey Experience”, paper presented at the Land and Poverty Conference 2019: Catalyzing Innovation, Washington, DC, March 2019. Available at [https://www.researchgate.net/publication/337274993\\_PUBLIC\\_PRIVATE\\_PARTNERSHIP\\_APPLICATIONS\\_AND\\_COST\\_RECOVERY\\_IN\\_CADASTRE\\_ESTABLISHMENT\\_TURKEY\\_EXPERIENCE](https://www.researchgate.net/publication/337274993_PUBLIC_PRIVATE_PARTNERSHIP_APPLICATIONS_AND_COST_RECOVERY_IN_CADASTRE_ESTABLISHMENT_TURKEY_EXPERIENCE); and Kari Leväinen and Willem Korthals Altes, “Public Private Partnership in Land Development Contracts—A Comparative Study in Finland and in the Netherlands”, *Nordic Journal of Surveying and Real Estate Research*, vol. 2, No. 1 (2005), pp. 137-148. Available at <https://journal.fi/njs/article/view/1680>.

PPPs in land administration, and 1/3 said their country is following generic legislation for PPPs in public administration. However, considering the fundamental task of land administration, including land registration, legislative guidance must be in place if one or more of the core tasks are transferred to private parties.

**(b) Risk sharing**

One of the core characteristics of PPPs is the element of risk, whether financial, legal, or something else. The distribution of the risk among the parties of the PPP contract should be defined, if not already in the legislation. The financial risk-sharing varied from being non-negotiable (when risk sharing is defined in the legislation) to case-by-case negotiation depending on the contract agreement. In some countries, the private party always bears the financial risk while in other countries, the risk is borne by the State. The financial risk (and benefit) is often shared together with the tasks. For example, the State could be responsible for the registration of land and collecting the fees for registration and the private party for carrying out the cadastral measurements and collecting the corresponding fees.

The responsibility or liability for the legal risk or compensation in case of an error is covered in even more various ways within the respondent countries. The liability may be negotiated and defined in the PPP contract, otherwise, it can be decided in court. There are some institutional structures that could support the liability, such as making a liability insurance a prerequisite for a private surveyor to have it so as not to lose their licence when too many errors in their work are committed. In some cases, the data provider of the private party is liable for errors. If data is provided by a public agency, the agency is held responsible for the errors in the work of the private surveyor. If the data is provided by landowners, the landowner is then responsible for any false or wrong information.

**(c) Contract and its term**

The prevailing definition within PPPs is for the term of the contract to be long. However, several countries define their PPPs from their own starting points, so the Task Force decided to clarify the view of the countries by asking about the duration of the contracts. Half of the countries replied that their PPP contracts are short-term contracts, that is, of maximum 4-year duration. In contrast, 1/3 of the respondents have contracts with duration of more than 20 years. If this majority of respondents consider their PPPs to be short-term, the prevailing paradigm of considering a real PPP to have more than 20-year contract period may have to be challenged.

In addition to the risk sharing and financial aspects, the government and private party should have a mutual understanding of the expectations, end product quality and quality measurement. The agreements should be stipulated in the contract, guided by existing principles.

**D. Future of public-private partnerships in land administration**

Approximately half of the respondents expect the role of PPPs in land administration to increase in the future. This is due in part to cuts in the public administration budget which could force agencies to enter into PPPs or outsource tasks to maintain the service level. The approach to the level of utilizing PPPs varies. Some replied that it is more problematic to contract only a part of a task so they prefer to contract all or nothing. At the same time, another respondent stated that a part of cadastral tasks could be contracted with a private party.

Several respondents seem to have positive experiences in having PPPs in land administration evident in their plans to utilize such arrangements in the future. PPPs have proven to have lowered relevant fees and provided better services for citizens. The attempts towards reducing handling and processing times and producing high-quality data and other products is seen as a benefit for PPPs in the future.

Land administration needs to respond to the changing needs of the society. Not only is the discussion about whether to establish PPPs, but also which technology to utilize for



registration, and especially about data security and privacy. Based on the results of the survey, PPPs may enable a more versatile and efficient use of modern technology, resulting to innovative solutions and models in land administration, such as utilizing blockchains in land registration. Aspects related to data security at several levels need to be addressed. As shown in recent studies (e.g. Krigsholm et al. 2020), data concerning individuals raises questions like who owns the data, whose responsibility is the correctness of the data, and who can decide where to store the data. Formats and protocols of data transfer should also be agreed within the establishment of the PPP. A question that needs to be answered is, what happens to data if the private party goes into bankruptcy? Cyber threat as a national security issue has grown in importance since the publication of the existing guiding principles of PPPs. Whose responsibility is the data protection, especially in cases where private party produces or owns data that is sensitive for national security?

A prerequisite for establishing PPP is a functioning legislation. This may be specific law for PPPs in land administration, or generic law for PPPs in public administration. Overall, this study revealed that in establishing PPPs in land administration, the guiding legislation plays a central role. Survey results show that there are several examples of specific legislation for PPPs in land administration. However, as with many other aspects of public administration, the level of detail of the legislation is something to be considered. A generic PPP legislation in place should be enough to establish PPP in land administration.

## **E. Guiding principles**

In 2005, the Working Party on Land Administration agreed on twelve guiding principles for PPPs in land administration (HBP/WP.7/2005/8).<sup>8</sup> Based on the findings of the survey, the Task Force reviewed the guiding principles and have proposed a modification to a guiding principle 10 as well as proposed a new guiding principle (which is 13).

The twelve guiding principles are as follows:

*Guiding principle 1:* It will usually be necessary and desirable for the private partners to be selected as a result of a properly constructed procurement or tendering exercise. This ensures that competition and other legal requirements are met, and the most appropriate choice of private partner made.

*Guiding principle 2:* Whatever form the private partnership takes the arrangement should be one, which encourages trust and a sense of mutual ownership between the parties. The opportunity for the private partner to be included in the formal governance structure and decision-making processes should be carefully considered.

*Guiding principle 3:* The government and the private partner should make the achievement of the desired outcomes the main focus of their agreement. Both parties should be absolutely clear on how success will be measured.

*Guiding principle 4:* The government and the private partner should be satisfied that their resources and skills are complementary and provide synergies. They should each be satisfied that there are sufficient resources and expertise available to avoid placing reliance on a small number of experts. Whether or not there is scope for any sub-contracting this should be discussed and agreed.

*Guiding principle 5:* The government and the private partner should ensure that there is full mutual appreciation of the risks that accompany the business activities within the partnership and that the financial arrangements are sufficiently robust to carry those risks.

*Guiding principle 6:* The government and the private partner should make clear arrangements about respective benefits and any sharing of revenues. The arrangement must take full account of the rules and guidance provided for government budgetary systems.

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<sup>8</sup> <https://unece.org/fileadmin/DAM/hlm/documents/2005/hbp/wp.7/HBP-WP.7-2005-8-e.pdf>

*Guiding principle 7:* The government and the private partner should have a clear mutual understanding of the knowledge and expertise to be gained during the partnership, and how this might be applied for other specific purposes. Knowledge transfer in both directions should be encouraged.

*Guiding principle 8:* The government and the private partner should mutually guarantee the sustainability of the partnership in order to protect the other party against early break off. It is suggested that the co-operation take place in the framework of a long-term investment commitment of both parties.

*Guiding principle 9:* The government and the private partner should agree on regular reviews of the partnership agreement. This should help avoid an imbalance in the share of risks and benefits and generally ensure that outcomes are as expected.

*Guiding principle 10:* Risk and profit sharing shall be clearly defined. Several models for the sharing may be used. Even in licensing or concessionary arrangements the government will always be held ultimately accountable for performance and liable for (at least in terms of public perception) the consequences of any errors or mistakes. However, private partners should be made fully responsible for their activities, which may include liability for poor performance or mistakes.

*Guiding principle 11:* If the government wants to assign a public task to a third party, it should specify – perhaps by regulation - the requirements that should be met in order to ensure a proper implementation of the public task.

Regulations might comprise:

- Professional standards (education, training, ethical behaviour);
- Exact competencies;
- Indicators for performance measurement; and
- Liability (and any financial penalties) for under performance or mistakes.

These requirements should be included, possibly in a more explicit form: in a license or concession.

*Guiding principle 12:* The government must make appropriate arrangements for monitoring and auditing performance by the private partner. Such arrangements may be included within the licence, concession or statutory regulation. The extent to which the government retains control will need to be carefully examined in light of the specific functions to be carried out. The exercise of ‘hands on’ control by government may provide the necessary assurance, but this might be at the expense of stifling the innovation and initiative that the government is seeking from the private partner.

Land administration activities, unheralded as they often are, nonetheless lie at the heart of good governance. Nations are defined by their land coverage and land represents the source of wealth and the basis for economic prosperity. It is therefore evident that land administration represents key public activities. With proper safeguards and good management, it is possible for some of these activities to be transferred to the private sector under PPP arrangements. There are many examples of this in relation to licences or concessions granted to surveyors. The following additional guiding principles relate to such arrangements.

Based on the survey results, many countries are not sharing the risks as defined in guiding principle 10. It is proposed to modify the guiding principle to: *clearly define risk-sharing in legislation and institutional arrangements (e.g. requirement for a liability insurance to get a licence) and should be in place to ensure the compensation of mistakes.*

*Proposed new guiding principle 13:* The government and the private partner should agree on the security measures of transfer, ownership and storage of data produced within the partnership. The agreement should also cover possible bankruptcy situation of the private partner.

The Working Party is invited to (i) take note of the study on public-private partnership for land administration, (ii) endorse the guiding principles including the modification of guiding principle 10 and the new proposed guiding principle, (iii) request its Bureau to finalize the study and (iv) approve the publishing of the “Public-private partnership in land administration” study as an official publication (in English and Russian, digital and print).

# Public-Private Partnership in Land Administration

This publication is an update to the 2005 study on “Guiding Principles for Public-Private Partnership in Land Administration” (ECE/HBP/WP.7/2005/8). It evaluates the existing principles of public-private partnerships in land administration to help land administration authorities to familiarize themselves with the best practices of ECE member States and develop their strategies for the future. It compares the previous findings with the current situation and considers new trends in land administration to develop principles to support and guide member States wanting to work in partnership with the private sector to improve land administration infrastructure and services.

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