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Conflict of interest: how corporations that profit from privatisation are helping write UN standards on PPPs

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Introduction

Despite growing evidence of systemic problems with public-private partnerships (PPPs), the UN Economic Commission for Europe (UNECE) continues to try develop and promote global standards for private sector participation in public infrastructure and services. The UNECE's PPP Roster of Experts and Business Advisory Board are largely comprised of individuals representing corporations which have profited heavily from PPPs, corporations that advise on tax avoidance, corporations convicted of corruption and bribery, consulting and law firms that benefit from privatisation transactions, and more.

Advocates for PPPs hold one clear assumption: there is not enough funding for public provision. Yet this has not come about by chance but rather as a result of political decisions. Across the world, policy makers have slashed corporate tax rates while institutions such as the World Bank and IMF have restricted government ability to raise revenue and imposed privatisation. And many corporations engage in tax avoidance practices, including using tax havens, to avoid paying their fair share.

Estimates put the amount of wealth held offshore at over $25 trillion:[1] enough to end global poverty more than five times over.[2] While Africa receives $19 billion annually in aid, over $60 billion is extracted from the continent via illicit financial flows, with corporate tax avoidance making up a significant share of this sum. If the UN and its member states were serious about funding public services and infrastructure and achieving the Sustainable Development Goals, then tackling corporate tax avoidance and evasion would be the perfect place to start. Instead, many of the very companies at the heart of this problem are invited to the UN to help write the privatisation and PPP agenda.

However, this process is not without dissenting voices. UN Special Rapporteur Philip Alston describes the UNECE's promotion of 'People-first PPPs' as " impossibly optimistic, given that few, if any, profit seeking corporations see the provision of social justice and accessible essential services for all without any restriction to be their role or goal."[3] Others within the UN system share these concerns.[4] The Civil Society Financing for Development Group has sent [two letters] calling for an end to the UNECE PPP process.

At a time when communities around the world are pushing for remunicipalisation, quality public services and an end to outsourcing, the UNECE should be considering real alternatives to the privatisation agenda rather than attempting to polish and repackage the failed PPP approach.

Overview

The UNECE Working Party on PPPs is attempting to create guiding principles and international standards on PPPs. With this in mind, the UNECE established a Roster of PPP Experts, "open to PPP practitioners with relevant experience in delivering PPP programmes"[5] to serve as advisors and enablers for the process.

An analysis of this Roster conducted by PSI found that:

- Of the 360 "Experts" named on the roster, over 190 come from the private sector.[6]
- Civil society representation is virtually non-existent. Workers and unions, who have first hand experience in dealing with PPPs and face the consequence of failures, are entirely missing from the list of experts and advisory functions.
- Over 35 of the Experts are employed by companies which have been named in the Offshore Leaks; a collection of data from offshore tax havens which includes the Paradise Papers, Panama Papers and Bahamas Leaks.[7]
- A third of the private sector experts are from the UK, despite the UK's history of failed PPPs and PFIs.
- A number of the Experts represent companies which have faced charges ranging from tax avoidance,[8] to fraud and market manipulation,[9] race discrimination [10] and breaching health and safety laws resulting in worker deaths.[11]
- All Big Four accounting firms are represented among the experts, including PwC, the firm at the center of the LuxLeaks, recently accused by the UK House of Commons' Public Accounts Committee of promoting tax avoidance by major multinationals "on an industrial scale"[12], and KPMG which in 2005 admitted criminal wrongdoing after creating tax shelters which deprived the US treasury at least $2.5 billion in unpaid taxes.[13]

The UNECE Business Advisory Board

A major player influencing the UNECE PPP process is the Business Advisory Board, made up of representatives from corporations which profit from privatisation. Nearly a third of these corporations are named in the Offshore Leaks database. No such advisory board exists for civil society or unions.

The Chairman of the UNECE PPP Business Advisory Board, James Stewart, describes how he was previously the "centre of the UK Government's thinking on PFI (Private Finance Initiative)", in his previous post as Chief Executive of Partnerships UK.[14] PFI has been denounced across the UK political spectrum. The UK Office for Budget Responsibility said the schemes were a "source of significant fiscal risk to government"[15] and a parliamentary report found no basis for "claims that PFI is worthwhile for any reason, apart from the fact that it takes debt off the balance sheet."[16] In October 2018, the Conservative Chancellor of the Exchequer Philip Hammond announced that PFI would be unilaterally abolished.[17]

Western states writing global standards?

The UNECE was originally founded to promote the economies of western nations, predominantly in Europe and North America. Its members do not include any African, East Asian, Caribbean, Latin American or Pacific States states. However the UNECE is determined that its work on PPPs should become "International Standards," adhered to globally.[18]

Decisions on international standards can only be legitimately taken within global, democratic and inclusive intergovernmental settings – where all countries have an equal seat at the table – and with the meaningful participation of civil society. However, with the UNECE this is not the case. There is a high risk that UNECE's standard-setting process on PPPs is being used by western governments to promote a risky model at international level, to the benefit of their national corporate interests.

The strong support of the European Union for the promotion of PPPs globally is particularly ironic given the European Court of Auditors (ECA) recently found the EU's use of PPPs led to "widespread shortcomings and limited benefits."[19]

The report also found that PPPs require "considerable administrative capability" and "institutional and legal frameworks" which exists only in "limited number of EU Member States." Such an assessment raises serious concerns about the suitability of PPPs for developing countries.[20]

PPPs: a UK domestic failure, made for export

The UK was one of the earliest proponents of PPPs and continues to be a vocal advocate for their use around the world, despite widespread failings at home. A recent study conducted by the Jubilee Debt Network[21] found that UK PPPs:

- Cost government more than if it had funded the public infrastructure by borrowing money itself
- Led to large windfall gains for the private companies involved, at public expense
- Enabled tax avoidance through offshore ownership
- Led to declining service standards and staffing levels

PPPs are also hugely unpopular in the UK, with 68% of respondents to a survey in England saying they should be banned.[22] A recent report by the National Audit Office found the UK public incurred billions of pounds in extra costs for no clear benefit by using the private finance initiative (PFI) to build much of its infrastructure.[23]

Even the fiscally conservative Cato Institute has a negative assessment of PPPs in the UK ,which they describe as: "associated with high lifetime costs for taxpayers, not least arising from badly negotiated bundled contracts with private contractors. Many hospitals face huge deficits. Any benefits arising from the privatization of risk and on-time and on-budget delivery of projects was eclipsed by higher borrowing costs coupled with the costs of consultants and lawyers in drawing up the contracts. Furthermore, the opacity of the liabilities for taxpayers has proved very unpopular, with significant attempts to renegotiate contracts."[24]

Largely as a result of these widespread failures, the number and value of new PPP projects has been falling since 2008, reaching its lowest level since the mid-1990s in 2014.[25] However, the UK government and corporations continue to promote PPPs around the world. For example, the UK Foreign Office recently ran a project funded with aid money to "use UK experience of Public-Private Partnerships in the health sector to develop the PPP framework and tendering process for health projects in Peru."[26]

In a recent speech, UK International Development Secretary Penny Mordaunt explained how the UK Government was "getting our funding to work twice as hard by benefiting the national interest more explicitly."[27] The amount of the UK aid budget spent and delivered through private contractors has almost doubled since 2010 from 12% to 22%, to the benefit of UK based corporations.[28]

Brief case studies

A series of brief case studies on the practices of companies represented on the UNECE Roster of PPP Experts and Business Advisory Board, examining their past involvement in PPPs and analysing aspects of their financial practices:

John Laing
Sector: Major public works contractor, infrastructure projects, healthcare
Represented by: Peter Ward
John Laing is one of the largest private infrastructure providers in the UK, having been involved in over 50 UK Private Finance Initiative projects.[29] PFI has been a particularly controversial funding mechanism, with widespread failures and long-term liabilities, recently abolished by the Conservative Government.

John Laing was part of a consortium which extracted a windfall profit of over £80m from a PFI with the NHS for a hospital rebuild. Tory Member of Parliament Edward Leigh chaired the House Public Accounts Committee which prepared a report of the case, said John Laing PLC along with its consortium partners represented "the unacceptable face of capitalism." The report revealed how the consortium refinanced the hospital deal to ensure that the benefits from the refinancing deal were enjoyed disproportionately by investors, and the extra risks were experienced disproportionately by the NHS (the public).

Up until recently, John Laing was wholly owned by a holding company based in the offshore tax haven of Jersey.[30] Many of John Laing's Netherlands-based subsidiaries appear to be named after their PPP and PFI contracts. For example, John Laing recently engaged in PPPs related to the Melbourne Metro and stadium construction in Perth Australia. John Laing now has two Dutch companies named John Laing Investments (Melbourne Metro) and John Laing Investments (Perth Stadium).[31] Netherlands based subsidiaries are often used in tax-dodging schemes such as the notorious *Double Irish with a Dutch Sandwich*.[32]

John Laing's use of offshore tax havens is not unique to the sector. Research by the European Services Strategy Unit found that 12 offshore infrastructure funds had equity in 547 UK PFI/PPP projects (74% of the total number of projects).[33]

Serco
Sectors: Private detention, outsourcing
Representative: Marc Wolfman

Serco is an embattled outsourcing and private detention corporation whose consistent poor standards and human rights controversies have led to the company being removed from a range of contracts around the world.[34]

Serco's use of offshore holding companies in tax havens was revealed in the Paradise Papers.[35] Appleby, the offshore law firm at the heart of the scandal, considered Serco a "high-risk client" because of their "history of problems, failures, fatal errors and overcharging." Among Appleby's concerns about Serco were allegations of fraud, the cover-up of detainee abuse, and the mishandling of radioactive waste. Serco has pleaded guilty to breaching workplace safety rules resulting in worker death.[36]

Ferrovial
Sector: Road works, transport
Represented by: Asif Ghaafor, Amey (A Ferrovial subsidiary)

Ferrovial is a major roading and transport contractor. After winning a contract for a highway in Toronto, Canada, Ferrovial's company accounts reveal a Netherlands-based holding company named "407 Toronto Highway."[37] The group also appears to have a Dutch holding company linked to Brazil. BFK, a Ferrovial joint venture in the UK, pleaded guilty to two separate breaches of safety at work regulations after a worker was killed on the job.[38]

Veolia
Key sector: Water, waste services
Represented by: Dominique Gâtel

Veolia is one of the world's largest and most controversial private water service providers. Two former Veolia managers and Veolia's Romanian Subsidiary Apa Nova currently stand accused of buying influence, bribery, privacy violations, tax evasion, and money laundering.[39] Romanian investigators suspect that Apa Nova paid more than €12 million in bribes to win contracts between in 2008 and 2015. The damage caused to the state through tax evasion is estimated at €5.5mn, while the damages from money laundering are valued at €17.3mn.[40] The price of water in the Romanian capital has soared 125 percent since 2008.[41] Veolia representatives also currently stand accused of bribery in Armenia.[42]

A recent report by the Green Party at the European Parliament found that: "...Veolia is taxwise in deficit in France for years, while it is making profits on an accounting basis… The average effective tax rate applied to VEOLIA's tax base is 10 to 12 points below the nominal French corporate tax rate."[43]

Veolia is also facing a lawsuit over its alleged role in the Flint Water Crisis, in Michigan, USA. Veolia was contracted by Flint to conduct a water quality survey which claimed the water was safe to drink. The report did not mention lead contamination, which was already identified as a serious hazard by the time it was published.[44] A complaint by Michigan's Attorney General claims Veolia "totally failed to identify the problem, made no effort to understand the root cause, and recommended measures that made the situation far worse."[45]

The Big Four
Sectors: Accounting, Contract negotiation, consultancy
PwC, KPMG, Ernst & Young and Deloitte dominate PPP consulting across the world and take large fees for contract negotiation and advisory services. Less than half of their global income now comes from providing traditional auditing services.[46] This reliance on other contracted services, often from the same companies being audited, has led to calls for these firms to be broken up.[47]

These same companies also profit from government advisory contracts on outsourcing - yet this advice has often found to be biased. A recent study by the Canadian Auditor General on PwC's comparison between the public option and PPP option for a bridge infrastructure project found the company's "analyses were of little use to decision makers because they contained many flaws favouring the P3 [PPP] model."[48] The companies set to win PPP bids are often among the Big Four's major clients.

A report from the European Investment Bank estimates PPP transaction costs, which firms such as the Big Four profit from, "amount on average to well over 10 percent of the capital value of the project."[49]

A UK Parliament Committee investigating the failure of outsourcing company Carillion found that Carillion's accountant, KPMG, played a role in the collapse, saying: "in failing to exercise – and voice – professional scepticism towards Carillion's aggressive accounting judgments, KPMG was complicit in them."[50]

The Committee Chair Rachel Reeves said: "KPMG, PwC, Deloitte and EY pocket millions of pounds for their lucrative audit work - even when they fail to warn about corporate disasters like Carillion. It is a parasitical relationship which sees the auditors prosper, regardless of what happens to the companies, employees and investors who rely on their scrutiny."[51]

Of even further concern is the strong influence and revolving door between the "Big Four" and government regulatory departments the world over.[52] As former Tax Inspector Richard Brooks writes: "Their alumni control the international and national standard setters, ensuring that the rules of the game suit the major accountancy firms and their clients."[53]

About the publisher:
Public Services International is a global trade union federation representing 20 million working women and men who deliver vital public services in 163 countries. PSI champions human rights, advocates for social justice and promotes universal access to quality public services. PSI works with the United Nations system and in partnership with labour, civil society and other organisations. See www.world-psi.org for furhter information.

For information about other Organisations who have raised concerns about the UNECE PPP process, see: https://csoforffd.org/about/

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