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Sustainably leveraging the blue economy through public private partnerships: a case study of Namibia’s port development

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SUSTAINABLY LEVERAGING THE BLUE ECONOMY THROUGH PUBLIC PRIVATE PARTNERSHIPS:

A Case Study of Namibia's Port Development

By

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Declaration

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

(Signature): **...**

(Date): **24 September 2019**

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Abstract

Title of Dissertation: **Sustainably Leveraging the Blue Economy through Public Private Partnerships: A Case Study of Namibia's Port Development**

Degree: **Master of Science**

Traditionally ports are considered key drivers for socio – economic development and trade facilitation, but budget deficits, lack of resources and the call for quality infrastructure and services, amongst other reasons, have given impetus to the need for Namibia to use Public – Private Partnerships (PPPs) to close infrastructure gaps and achieve value for money in sustainably delivering development projects.

Every mega Namibian port development project has the potential of being procured under Namibia's Public – Private Partnership ("PPP") legislative and regulatory framework and the extant literature on PPPs suggest that most PPPs fail in the absence of the application of critical PPP success factors and sound governance principles.

Applying a legal normative approach, this dissertation explores whether Namibia's said PPP framework is sound and effective based on a comparative legal analysis of the PPP framework of South Africa, Australia as well as a case study of the Port of Melbourne.

The work describes the universe of PPPs and the Blue Economy, highlights key development policies and best practices for successful PPPs. It also considers how best Namibia can use PPPs to attract private sector investment and realise its national and socio – economic development goals under the vista of the Blue Economy.

The analysis reveals that not every project is suitable for PPPs and despite the complex nature of PPPs, successful PPP outcomes can be maximised with the adoption of a multi – faceted approach, robust decision making processes, the consistent application of sound governance systems and involving civic society and non – state actors throughout the life cycle of a PPP project as well as including such actors in environmental and sustainability matters as part of social value creation.

KEYWORDS : Blue Economy, Private – Public Partnerships, Port Development, Sustainability

Table of Contents

Table of Figures

List of Tables

Table of Legislation

Australia

Freedom of Information Act No. 3 of 1982

Port Management Act No. 82 of 1995

Namibia

Environment Management Act No. 7 of 2007

Namibian Ports Authority Act No. 2 of 1994

Namibian Public Private Partnership Act No. 4 of 2017

Promulgation of Public Private Partnership Act No. 4 of 2017

Regulations made in terms of Public Private Partnership Act No. 4 of 2017

South Africa

Broad. – Based Black Economic Empowerment Act No. 53 of 2003

Municipal Finance Management Act No. 56 of 2003

Municipal Systems Act No. 44 of 2003

Preferential Procurement Policy Framework Act No. 5 of 2000

List of Abbreviations

Aarhus Convention	United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters
AIMS 2050	2050 Africa's Integrated Maritime Strategy
AU	African Union
APPPF	Australian National PPP Policy framework
CSR	Corporate Social Responsibility
EIAs	Environmental Impact Assessments
EMA	Environment Management Act No. 7 of 2007
FOIAA	Freedom of Information Act of Australia of 1982
HPP	Harambee Prosperity Plan
NDPs	National Development Goals
IPAN	Investment Promotion Act of Namibia No. of 2016
MET	Namibian Ministry of Environment and Tourism
NAD	Namibian Dollars
Namport	Namibian Ports Authority
NEEF	National Equitable Empowerment Policy and Bill
PDNs	Previously Disadvantaged Namibians
PoM	Port of Melbourne
PPP	Public – Private Partnership
PPPs	Public – Private Partnerships
SADC	South African Development Community
SAIMI	South African Maritime Institute

SANPAA	South Africa’s National Port Authority Act
SEA	Strategic Environmental Assessment
SMEs	Small and Medium Enterprises
SDGs	Sustainable Development Goals of the United Nations
TNPA	Transnet National Port Authority
UN	United Nations

Chapter 1 Introduction

1.1 Background

Public – Partnerships (“PPPs”) are widely considered to be a valuable tool to stimulate socio – economic development (Demirag, 2011). Previous literature suggests that many PPPs have failed with reasons such as inefficiencies (European Court of Auditors, 2018), cost overruns (Bianchi, 2017) (National Treasury South Africa, nd), (Alonso, 2015), mismanagement and lack of sound governance principles (Xiong, 2019) being recorded as some of the root causes. The aforesaid shortcomings demonstrate that the successful delivery of PPPs is typically a complex problem, however, PPPs have on the whole been considered successful (Sambrani, 2014).

1.1.1 Blue Economy: A Global and Namibian Approach

1.1.1.1 Numerous studies investigate whether PPPs are an ideal alternative to traditional procurement methods and the reality is that PPPs have received mixed reviews, being equally criticised (Osborne, 2000) and celebrated as a sustainable development tool (Boardmen, 2015), but despite the said reality, PPPs are widely known for delivering quality infrastructure, lower – cost services, increased efficiencies and most significantly achieving value for money (Schwartz, 2008).

1.1.1.2 In conjunction with the continual pursuit to develop ocean economies, the quest for sustainable development emerged in the 1980s (Osborne, 2000) and the 21st century saw the incessant appeal for ocean sustainability being labelled as the blue economy during or about 2008 (Commonwealth Secretariat, 2016) and the last decade has seen a shift towards public participation, social value creation and more attention being given to sustainability (Vecchi, 2019).

1.1.1.3 The blue economy can loosely be defined as maximising the potential of oceans in a sustainable manner so as to preserve it for future generations (United Nations Economic Commission for Africa, 2016) (Commonwealth Secretariat, 2016), with the emphasis as aforesaid having shifted towards sustainability as compared to yesteryear economic exploitation ambitions that was not so much concerned with sustainability, but rather exploitation.

1.1.1.4 Wenhai *et al* and van Wyk in their studies assert that sustainability in the context of the blue economy is about uplifting the socio – economic condition of a country (Wenhai, 2019) (van Wyk, 2015). Sanni and Hashim draw similar conclusions for PPP infrastructure development projects (Sanni, 2014) and Bari and Frina in examining the opportunities and challenges of the blue economy emphasised the need for economic sustainable development (Bari, 2017). However, like many other studies on PPPs and the blue economy, it suffers from the limitation that human element and social value notions as part of good PPP governance are barely discussed in significant detail.

1.1.1.5 The aforesaid argument is supported by Keen who rightfully criticises the blue economy concept for not meeting intended objectives by observing that the importance of multiple – actors engagement and implementation processes remain unclear (Keen, 2018) Soma et al in a recent study also recognised that "inclusion, cooperation and trust is required for long – term sustainable blue growth" (Soma, 2018) (Wenhai, 2019), which notions will be further unpacked in the succeeding chapters.

1.1.1.6 From a commerce and trade perspective, blue economy sectors embraces the full maritime value chain (Voyer, 2019) and is relevant to all countries globally (United Nations Conference on Trade and Development, 2018), which without limitation includes, port infrastructure, maritime transport and services, shipbuilding and repairs as well as the cruise industry (United Nations Economic Commission for Africa, 2006).

1.1.1.7 It must be stressed that Namibia already has an established ocean economy (Remmert, 2018) with many other resources and markets remaining largely unexplored (Remmert, 2018). There has not been much private sector engagement in Namibia in the said sectors, with the exception of the fisheries industry that is highly regulated and well managed albeit some challenges remaining unaddressed (Chiripanhura, 2016).

1.1.1.8 To further authenticate what is recorded in paragraph 1.1.1.7 above, Figure 1 below represents the components and sub – sectors of the Namibian blue economy. As will be seen therefrom, port infrastructure and services are well established with the most mature industries in Namibia including fisheries, shipping, tourism and energy (Remmert, 2018).

Table 1: Components of the Blue Economy

Type of activity	Sector sub-activity	Established industries	Emerging & new industries
Harvesting of living resources	Seafood	Fisheries	Sustainable fisheries
	Marine bio-tech		Aquaculture
	Coastal biological resources	Seaweed, kelp & guano	Pharmaceuticals, chemicals
Extraction & use of non-living resources; generation of new resources	Minerals	Seabed, onshore & coastal area mining	Deep-sea mining
	Energy	Oil & gas	Renewables
	Freshwater		Desalination
Commerce & trade in and around the ocean	Transport and trade	Shipping & logistics	
		Port infrastructure & services	
	Tourism and recreation	Tourism	Eco-tourism
	Coastal development	Construction & services	Green construction
		Manufacturing	
Responses to ocean health challenges	Ocean monitoring and surveillance		Technology & R&D
	Carbon sequestration		Blue carbon
	Coastal protection	Habitat protection, restoration & mining area rehabilitation	
	Waste disposal	Wastewater treatment & solid waste disposal	Recycling, assimilation of nutrients from waste

Figure 1: Components of the Blue Economy (Remmert, 2018)

1.1.1.9 One of the four different competing narratives that are presently shaping the debate on the blue economy globally is the narrative that reaffirms the fact that PPPs are recognised as an essential and preferred tool to sustainably unlock ocean economies (Remmert, 2018).

1.1.1.10 One of the gaps and shortcomings identified in Remmert's work, is that according to him key players under the blue economy only include "businesses, multinationals, industry coalitions and governments" (Remmert, 2018). It is not a surprise that Remmert excludes civic society[1] as key actors and this observation ties in well with the finding that such actors are more often than not overlooked and/or the importance of the role of such actors are not sufficiently addressed in the considerable body of PPP literature available (Aerts, 2014).

1.1.2 Sustainable Development Goals under the vista of PPPs

1.1.2.1 Globally speaking, Goal 17 of the United Nations ("UN") Agenda for Sustainable Development relates to Partnership for all the Sustainable Development Goals of the United Nations ("SDGs")[2].

1.1.2.2 Target 17 of Goal 17 explicitly "encourages and promotes public, public – private and civic society partnerships, building on the experience and resourcing strategies of partnerships" (United Nations Conference on Trade and Development, 2019), which target amongst other SDGs to be discussed later on in this dissertation, are directly linked to sustainability and development.

[1] Civic society in this dissertation is used to denote all non – state actors such as the public, community individual and groups and corporation representing them or their own interests.
[2] Goal 17 of the UN SDG's is "Partnership for the Goals", which relates to strengthening the means of implementation and revitalises the global partnership of sustainable development.

1.1.2.3 On reflection of target 17 of goal 17, it reasserts the value and benefits that can flow from using PPPs as a vehicle to develop key and quality infrastructure in the race for a prosperous economy. More significantly the said goal recognises the role that civic society play in PPPs which undoubtedly is a key governance requirement for successful PPPs (Singh, 2016), the latter being one of the centerpieces of this dissertation.

1.1.2.4 This dissertation in part intends to investigate how best Namibia can use PPPs to deliver the much needed port development infrastructure and attract private sector investment as part of Namibia's prosperity, development and technological strategies.

1.1.3 The Role of Ports and Port Development

1.1.3.1 It is widely accepted that seaborne trade is in the region of 90%, (United Nations Conference on Trade and Development, 2018) and Africa's import and exports following an almost identical trend (Sagga, 2017).

1.1.3.2 Ports are crucial links to the global maritime transportation value chain (Dwarakish, 2015) (Brooks, 2007) (United Nations Conference on Trade and Development, 2017). Recent years have seen a surge in port development projects globally (Montwill, 2014), as many states have commenced or intend to fast track the development of their port infrastructure and/or improve existing infrastructure as part of remaining relevant on the one hand and on the other realising their national development, strategic and logistics hub goals.

1.1.3.3 In readiness to become the preferred sea hub port in Southern Africa and as part of investing ahead of expected demand, Namibia through its Ports Authority undertook an expansion of its existing port facility at the Port of

Walvis Bay, which despite unforeseen and *force majeure* delays was commissioned on 26 August 2019[3].

1.1.3.4 The below Figure 2 is an artistic impression of one of Namibia's strategic future port facility projects to be spearheaded by the Namibian Ports Authority ("Namport"), measuring 13,300 hectares of land[4] and has been valued at NAD 60 billion (or 39 billion USD[5]).

1.1.3.5 The said port to be developed North of Walvis Bay will be a multi – purpose bulk port with mainly bulk cargoes handling, including oil and gas dry and liquid bulk (Namibian Ports Authority, nd). A mere glimpse of Figure 2 illustrates the magnitude of the investments that will be required and reasserts the need for Namport to partner with private financiers for the development of Namibian ports.

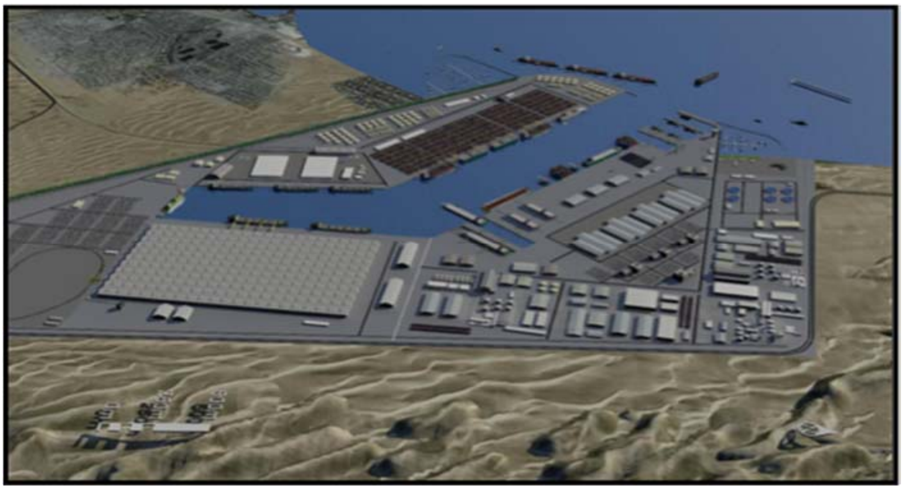

Figure 2: Future Port of Walvis Bay Terminal
(Namibian Ports Authority, nd)

[3] Delays experienced were mainly being beyond the control of the Namibian Ports Authority.
[4] The construction of a new tanker jetty facility by the Namibian Government on this port land and valued at approximately USD 370 million was also embarked on.
[5] In 2019 United States Dollars.

1.4.1 Definition and Development of PPPs: A Global and Namibian Approach

1.1.4.1 In turning to deal with the issue of PPPs, many scholars have maintained that the main purpose of PPPs is to drive infrastructure development (Wenhai, 2019) (Osborne, 2000) and it therefore follows that any legal framework regulating PPPs should be aligned to that objective, which view was echoed by the World Bank (World Bank, nd).

1.1.4.2 In relying on the World Bank's description of a PPP framework, it refers to the "policy procedures, institutions, and rules that together define how PPPs will be implemented, more particularly that is, how they will be identified, assessed, selected, budgeted for, procured, monitored and accounted for" (International Bank for Reconstruction and Development/ The World Bank Group, 2017).

1.1.4.3 From a PPP policy agenda point of view, the Namibian Government confirmed that it wants to focus on PPPs "as a means to deliver improved services and better value for money through appropriate risk transfer, innovation, asset utilisation and integrated project – life management, underpinned by private financing" (Namibian Ministry of Trade and Industry, nd).

1.1.4.4 An important element of a PPP framework are the definitions and having considered some authoritative views on what constitutes a PPP or PPP project, the following synthesised elements emerged from existing literature.

1.1.4.4.1 public sector and private sector partner by concluding a PPP contract[6] (International Bank for Reconstruction and Development/ The World Bank Group, 2017);

[6] To achieve an identified goal agreed to such an infrastructure project or public service delivery.

1.1.4.4.2 the parties agree on who is best placed to take on and manage risks so identified or anticipated[7] (Service Works Global, nd), and

1.1.4.4.3 agree on what the profit – sharing margins will be (Osborne, 2000).

1.1.4.5 The legislative definition of a PPP in Namibia is:

"an agreement between a public entity and a private entity, in terms of which the private entity provides public infrastructure assets or services for use, either directly or indirectly, by the public; investments are made by or management of the infrastructure asset or service is undertaken by the private entity for a specified time; risk is optimally shared between the private entity and the public entity; and the private entity receives performance linked payments" (Government Gazette of the Republic of Namibia, n.d.) (Namibian Ministry of Trade and Industry, nd).

1.1.4.6 Most literature consulted confirms that there is not one universally accepted definition of what constitutes a PPP (Osborne, 2000) (Arimoro, 2018), as PPPs have different "institutional arrangements and conceptual understandings" (Medda, 2013) (United Nations Conference on Trade and Development, 2019). For the said reasons, one finds numerous definitions of what actually constitutes PPPs (Marsilio, 2011), which differs from one jurisdiction to another.

1.1.4.7 As previously mentioned, various studies have successfully demonstrated that PPPs do not always deliver infrastructure faster compared to traditional procurement methods or results in cost savings or value for money (O'Shea, 2018).

[7] Risks transferred to a private party normally include technical, financial and operational risks, but ultimately risk allocation will be negotiated by the parties with every PPP contract concluded.

1.1.4.8 A similar pattern of results was obtained by Petersen who, in recognising the limitation of empirical evaluations, opined that international PPPs are typically more costly and provide almost the same value for money as compared to traditional procurement methods (Petersen, 2019)

1.1.4.9 Albeit a great number of authors discussing failed PPPs (World Bank, 2015), more and more the world over governments have continued to call upon PPPs for the development of infrastructure (Garg, 2016) (Roehrich, 2014) and in turn its economies (Economic Commission for Africa, n.d.)

1.1.4.10 PPPs should not necessarily be about speed, be cost driven or because private sector financiers have the potential to provide cushioning for recurring budget deficits and budget containment measures. However, the Namibian Government can with successful PPPs instead focus on the myriad of issues on its policy agenda, other national strategies and maximise private sector investments that brings with it the much needed technical expertise and skills transfer to locals (Arimoro, 2018).

1.1.4.11 From a cost – benefit analysis and value for money standpoint, PPPs will allow Namibia the opportunity of opening markets that would otherwise not be accessible in the port sector, but most importantly the benefits of PPPs can be invaluable for civic society and truly uplift a nation and her people (Singh, 2016), if managed on sound governance principles.

1.2 Problem Statement

1.2.1 It has been observed that critical success factors for PPPs and involvement of civic society and non – state actors have not been extensively tested under a critical lens in Namibia. Accordingly, this dissertation intends to add to that body of knowledge by carrying out an examination of the adequacy or otherwise of Namibia's PPP framework for the envisaged medium to long – term port development projects of Namibia.

1.2.2 Furthermore, other than identifying limitations and shortcomings in Namibia's PPP framework, this research will recommend how best to attract and retain PPP private sector investments through good governance practices based on the comparative legal analysis alluded to hereinbelow.

1.3 Rationale, Aims and Objectives

1.3.1 Rationale

1.3.1.1 The research topic is worthy of investigation because it has a direct impact on the socio – economic growth and development of Namibia. It is therefore essential that Namibia succeeds in sustainably unlocking the port development leg of its blue economy ambitions, which it is believed can be achieved with a robust PPP framework and through consistent application of good PPP governance principles and PPP best practices.

1.3.1.2 Most of the academic literature available on PPPs focuses on economic and administrative components of PPPs (Diaz, 2012) (Grimsey, 2004) and for the most part does not focus on one of the main drivers of PPPs, which is to improve the quality of lives of citizenry.

1.3.1.3 Given issues such as cost overruns (Shimete, 2017), lack of skills, resources, budgetary constraints and mismanagement many key development projects have either been shelved, delayed or put on the back burner (The Namibian, 2015). The aforesaid state of affairs provides scope and opportunities for the Namibian government through public bodies such as Namport to partner with private entities in order to address development gaps.

1.3.1.4 In view of the fact that PPPs in Namibia is an academic area that remains largely unexplored due to its PPP framework being in its infancy stages reaffirms the need for research to be conducted on Namibia's PPP framework in relation to port development projects and ultimately any blue economy project embarked upon by the Namibian Government.

1.3.1.5 The main justification for selecting South Africa and Australia for comparative purposes is for the following reasons:

1.3.1.5.1 South Africa:

1.3.1.5.1.1 is one of the most developed maritime nations in Africa (van Wyk, 2015);

1.3.1.5.1.2 has one of the biggest economies in Africa (Signé, 2018);

1.3.1.5.1.3 in formulating its framework took its unique circumstances into consideration[8] (Bruchez, 2014), which circumstances are similar to that of Namibia (Arimoro, 2018);

1.3.1.5.1.4 is at a very advantaged stage in its PPP journey (Arimoro, 2018), as compared to many other African states that share the similar socio – economic conditions to that of Namibia, and

1.3.1.5.1.5 is known for having good quality available data (Kodongo, 2016) and has over twenty years of PPP experience and practice (National Treasury South Africa, nd).

1.3.1.5.2 Australia:

1.3.1.5.2.1 is a developed country with a very mature, advanced and sophisticated PPP market (KPMG, 2015) (Yescombe, 2007);

1.3.1.5.2.2 has recorded a myriad of successful PPP projects compared to other countries (Bianchi, 2017) in its thirty plus years of PPP experience (Wernek, 2015), and

1.3.1.5.2.3 is known to have a very transparent reporting and governance system in place (Sharp, 2005).

[8] Circumstances stemming from the then apartheid rule, which led to historically disadvantaged citizens.

1.3.2 Aims and Objectives

1.3.2.1 The overall objective of this research is to critically analyse the adequacy of Namibia's current PPP framework as well as to highlight and make recommendations for Namibia based on the said analysis in order to maximise successful PPP outcomes under the port development leg of the Namibian blue economy.

1.3.2.2 As far as writer hereof is aware, no study to date has examined the PPP framework of Namibia on a legal normative basis and this research is aimed at closing that gap. To illuminate this unchartered area, the purpose and foundation of this research includes making recommendations on what critical success factors, best practices and key governance principles Namibia can apply in maximising successful PPP outcomes.

1.3.3 Limitations of this Study

One of the limitations identified is that the literature was limited to the publicly available information on PPPs. Be that as it may, every effort has been made to obtain a global representation of literature and the research methodology in this study is tailored to utilise the available data to effectively address the research questions herein.

1.4 Research Questions and Methodology

1.4.1 The following questions will guide this research:

1.4.1.1 What are the key differences in the PPP framework of South Africa and Australia in comparison to Namibia?

1.4.1.2 Is Namibia’s current PPP framework and other relevant legislation considered adequate to response to Namibia’s port development needs?

1.4.1.3 To what extent do sound governance requirements consider social value creation and the involvement of civic society in the environmental management of PPPs;

1.4.1.4 Is there a need for a review of the current legislative and regulatory PPP framework of Namibia based on the comparative legal analysis of South Africa and Australia and the Port of Melbourne (“PoM”) case study?

1.4.1.5 what are the critical success factors and good governance principles for maximising successful Namibian port development PPP outcomes based on the said legal comparative analysis and PoM case study?

1.4.2 Research Methodology

1.4.2.1 This dissertation utilises the legal normative method of research, which is deemed appropriate for this dissertation.

1.4.2.2 Considerable literature is available on the various PPP frameworks, but the literature for Namibia was very limited and/or generally not considered very effective in identifying pitfalls, shortcomings and critical success factors for successful PPP outcomes.

1.4.2.3 In order to fulfil the aim of this dissertation, the research was solely based on the analysis of secondary data obtained from journals, published research, text books, internet materials, media reports, existing literature from scholars and experts in the field, papers delivered at conferences or seminars, which research methodology approach is deemed appropriate to achieve the objectives of this research.

Chapter 1.5 Dissertation Outline

1.5.1 This dissertation consists of the following chapters:

1.5.1.1 Chapter 2 provides an overview of PPPs, the blue economy, other key concepts such as Namibia's economic outlook as well as the PPP, port, environmental legislative and regulatory framework in Namibia;

1.5.1.2 Chapter 3 will draw comparisons and/or similarities between the PPP framework of South Africa and Australia, as compared to Namibia, as well as provide critical success factors and recommendations for Namibia as well as for South Africa and Australia;

1.5.1.3 Chapter 4 will focus on a case study of the PoM lease and draw good governance lessons and experiences therefrom that Namibia can learn from;

1.5.1.4 Finally, conclusions, key findings, recommendations and further research will be provided in Chapter 5.

Chapter 2 PPPs and Blue Economy Drivers

As part of setting the tone for the comparative legal analysis that subsequently follows in Chapter 3 and 4, this Chapter 2 will, amongst others, feature policy decisions that drove the establishment of Namibia's PPP framework, provide a brief overview of the global PPP and blue economy universe as well as a succinct overview of Namibia's PPP and other legal machinery.

2.1 Namibia: Connecting the Dots through Policies

2.1.1 Namibia is very well located geographically and from a commerce perspective has direct corridors to South Africa, Angola, Zambia, Zimbabwe and the Democratic Republic of Congo.

2.1.2 Despite being a modest economy in comparison to other bigger Africa economies (International Monetary Fund, 2019) (Commonwealth Secretariat, 2016), it is considered to be a gateway to South African Development Community ("SADC") countries and key maritime trade routes such Europe, Asia, the Americas and other key international maritime transport routes (Namibian Ports Authority, 2018).

2.1.3 At an African continental and regional integration level, more particularly, as a member of the African Union ("AU"), Namibia has endorsed numerous strategies on the AU's policy agenda, the most notable for purposes hereof being the 2050 Africa's Integrated Maritime Strategy ("AIMS 2050").

2.1.4 AIMS 2050 has as its vision to "foster increased wealth creation from Africa's oceans and seas by developing a sustainable thriving blue economy in a secure and environmentally sustainable manner" (African Union, 2012).

2.1.5 Another key policy document is Agenda 63 of the AU, which has been coined as Africa's blueprint and strategy for sustainable development (Africa Union, 2019). This strategic proposal has a direct linkage to and relationship with all seventeen SDGs of the United Nations ("UN") (Africa Union, 2019), which includes SDG 17 and SDG 14. The latter SDG effectively being a 'blue economy' goal, because it relates to conserving and sustainably using the seas and marine resources for sustainable development (United Nations, 2019).

2.1.6 Namibia's Vision 2030, which is akin to the AU's Agenda 63, has it purpose economic emancipation and the improvement of the quality of life of all Namibians (Namibia Planning Commission, nd). It is similarly closely linked to the SDGs and recognises that the blue economy will not only bolster, transform, and develop the maritime transport and shipping industry in Namibia, but all the available and untapped resources that the ocean economy of Namibia has to offer (Remmert, 2018).

2.1.7 Since the crafting of Vision 2030, Namibia has developed five National Development Plans ("NDPs") as part of implementing the objectives set out in its Vision 2030 agenda, with the last two NDPs, being number 4 (Bank of Namibia, 2014) and number 5 respectively[9].

2.1.8 Most of the intended NDPs desired outcomes and targets of NDPs have not been realised and deferred to later dates with the most prominent justifications including budgetary and capacity constraints (Office of the President of Namibia, 2019).

[9] Commonly known in Namibia as NDP4 and NDP 5.

2.1.9 The gravamen of NDP5, amongst others, is economic progression and sustainable environment with various desired strategic outcomes including the implementation of a blue economy governance and management system by 2022[10] (Government of the Republic of Namibia) (Remmert, 2018).

2.1.10 One of the concerns identified on the perusal of the NDP5 implementation plan (National Planning Commission of Namibia, 2018) is that it hardly makes mention of specific pipeline or planned projects in connection with sustainable development, environmental management or the blue economy (National Planning Commission of Namibia, nd), albeit same being directly hinged to the blue economy.

2.1.11 The said excluded critical information should have been included to whet the appetite of any potential private investors looking to invest in Namibia and to disclose as part of transparency reporting for stakeholders and civic society.

2.1.12 One of the most recent and well received accelerated development programmes of the Namibian Government is the Harambee Prosperity Plan ("HPP") with its five pillars including effective governance, economic advancement, infrastructure development and international relations and co – operation.

2.1.13 According to the most recent HPP Progress Report, projects appears to be on track for the most part albeit some delays and due to budgetary controls development projects will have to be reassessed and/or downscaled (Office of the President of Namibia, 2019). The aforesaid report is a possible confound because with the greatest of respect, if projects under both the HPP and NDPs were on track they would have been rolled out as planned, but clearly that is not the case.

[10] That sustainably maximises economic benefits from marine resources and ensures equitable marine wealth distribution for all Namibians.

2.1.14 In considering all other associated policies of the Namibian Government, it is clear that the PPP and blue economy drive is undoubtedly part of the development strategy of the Namibian Government, but the reality is that the available financial resources are simply insufficient to follow through on all envisaged projects (Office of the President of Namibia, 2019) (National Planning Commission of Namibia, nd) under NDPs and HPP.

2.2 Economic Strengths and Weaknesses of Namibia

2.2.1 Other than what was mentioned in the preceding paragraphs, understanding the economic strengths and weaknesses of Namibia is an essential component against the backdrop of the development strategies of the Namibian Government.

2.2.2 Namibia has a very strong transport and logistics system and trade facilitation network developed in parallel with the Namibian Government (Walvis Bay Corridor Group, 2019) and key facilitators such as Namport and the Walvis Bay Corridor Group vigorously market and promote Namibia for transport and trade prospects, infrastructure development opportunities and trade facilitation whether directly or indirectly (Walvis Bay Corridor Group, 2019).

2.2.3 The United States Agency for International Development quite concisely highlighted Namibia's strengths (United States Agency for International Development, 2019), as enumerated in Figure 3 below.

Figure 3: Namibia's Strengths for Economic Trade and Benefits
(United States Agency for International Development, 2019)

2.2.4 One of the main reasons for highlighting the strengths in paragraph 2.2.3 above is because it reaffirms that ports are key strategic assets for Namibia and in fact all other strengths referred to therein impact the port business either directly and/or indirectly.

2.2.5 From a weakness's standpoint, despite having experienced strong and stable economic growth, there has been an obvious slowdown in the Namibian economy (Ministry of Finance Namibia, 2019) and despite numerous interventions and initiatives by the Namibian Government, there are fiscal budgetary constraints to fund large capital projects linked to national development goals and growth strategies (International Monetary Fund, 2018).

2.2.6 Kodongo and Ojah in their examination of linkages between infrastructure and economic growth concluded that economic growth is directly linked to quality infrastructure and suggested that infrastructure gaps for economic growth and development must be carefully nuanced (Kodongo, 2016).

2.2.7 The very low levels, if not, negligible foreign direct investment in Namibia as reported on by United Nations Conference on Trade and Development in its World Investment Report of 2018 (United Nations Conference on Trade and

Development, 2018) is a cause for concern, as it has a direct impact on Namibia’s economic growth and development potential.

2.2.8 Namibia has in addition to the above experienced a slowdown in economic activity and the continued negative fiscal deficit or economic blows experienced may further erode Namibia’s economic outlook (Ministry of Finance Namibia, 2019). The reality is that similar curtailed budget are seen in many developing countries and emerging economies (World Bank, 2018), which in turn gives impetus for private sector investment and PPPs,

2.2.9 What research has illuminated is that the path to development envisaged by Namibia’s Vision 2030 largely depends on private sector investment (Connoy, 2011), but guaranteeing policy and legal certainty (Reyes-Tagle, 2018) (Prais, 2019) is an equally important factor to incentivise private sector investments (Reyes-Tagle, 2018).

2.2.10 Taking into account the time it takes to recover from an economic slowdown, is all the more reason for Namibia to ensure that its PPP framework is an enabler that stimulates the Namibian economy through mega port and infrastructure development projects (Saussier, 2015) (Nazemzadeh, 2012) by securing the much needed private sector investments.

2.3 Public Private Partnerships : An Overview

2.3.1 The SADC region comprises of sixteen countries in the Southern part of Africa of which Namibia is a part (SADC, 2019), and all of whom, like other countries globally are pursuing, *inter alia,* their development and economic progression agendas[11] (Sustainability, 2019), which includes fast tracking their port development and other blue economy projects.

[11] As well as broadly speaking, peace, security and regional integration.

2.3.2 As ambitious and genuine as PPPs and infrastructure development project agendas may be, the reality is that port development and infrastructure projects expenditure from a global perspective have in most cases simply been too exorbitant for either port authorities themselves or their governments[12] to solely carry on their balance sheets as – it – were (Osei-Kyei, 2015) (Osborne, 2000).

2.3.3 Taking into account the heavy investment requirements for port development, the need to secure investments from the private sector was identified (Shaik, 2011) and as is the case in Namibia (in parallel with the rest of the world) PPP policies and in turn laws have since been developed, passed and in some cases enforced.

2.3.4 There are a myriad of factors and key drivers (United Nations Conference on Trade and Development, 2019) (World Bank Group, 2015) (Osborne, 2000) to be taken into account and considered as part of ensuring the success of PPPs. More particularly, in understanding the PPP landscape, it is important to take into account a list of possible advantages and disadvantages of PPP projects, which are synthesised in Table 1 hereunder.

[12] In most cases as main shareholder, not all.

Advantages	Disadvantages
proper risk allocation /transfer	limited influence of public authority over the investment
value for money	increase of prices charged to the users of public authorities
increased competition	reduction of bargaining position of public authorities
leverage limited public funds through private sector participation	high transaction costs
capped liability exposure	poorer quality of the services
fast development time, maintenance, quality and technologies	decrease of employment in the public sector
streamlined construction or other process	limited accessibility to the services
new sector generates public sector revenue with no government investment or future obligations in some cases	financial and/or opportunity and/or political risk for public partner
customer – orientation, ownership mentality	

Table 1: Advantages and Disadvantages of Public – Private Partnerships (Organisation for Economic Co-operation and Development/International Transport Forum, 2013) (Pârvu, 2009)

2.3.5 Other advantages and disadvantages of PPPs are listed in Table 2 below.

Advantages	Disadvantages
Attracting private capital and additional revenue streams for government	PPPs are not suitable for all types of projects
Realisation of efficiency gains through improved project delivery, operation and management	Structural complexities of PPPs may create high transactional costs
Possible reduction of life cycle costs that would otherwise be associated with an asset	There may be a lack of capacity and expertise to manage a project by public bodies or governments
Higher quality and timely provision of public services	Political and social sensitivities may hamper a PPP project

Table 2: Advantages and disadvantages of PPPs

2.3.6 Mindful of the fact that advantages and disadvantages may differ depending on the PPP model, design, structure and financing model selected by the contracting parties, what Table 1 and 2 reiterates is that PPPs are complex ventures (United Nations Conference on Trade and Development, 2019), requires long term capital investments (Brooks, 2007) (Meersman, 2014) and a sound PPP framework and governance structure must be in place to spark private sector's appetite for investment in the development of port infrastructure and services. Of particular note is the recognition that PPPs are not suitable for all types of projects.

2.4 Namibia's PPP Framework and Namport's PPP Readiness

PPPs have been deemed to be pivotal to the development of a country like Namibia as cemented and confirmed by the Namibian Government's policy on PPPs (Namibian Ministry of Trade and Industry, nd), which policy has since been translated into legislation and operationalised.

2.4.1 Namibian PPP Policy

2.4.1.1 During the period between 2009 and 2010, the Namibian Government embarked on a consultative PPP scoping study, which policy ultimately formed the design for Namibia's PPP legislation.

2.4.1.2 The Government of Namibia in its PPP Policy confirms that:

> "using PPPs as an approach to project development in Namibia can offer a dynamic and efficient way to deliver and manage infrastructure and project development….to support the country's economic and social development towards ensuring modern services, economic equality, improved standards of living and reduced poverty" (Namibian Ministry of Trade and Industry, nd).

2.4.2 Namibian PPP Act

2.4.2.1 Approximately eight years later after the drafting of the Namibia PPP Policy, the Namibian Public Private Partnership No. 4 of 2017 (“PPP Act”) came into operation on 1 December 2018.

2.4.2.2 The objects of the PPP Act set out in section 2 thereof appears to be aligned to the general purposes of PPPs (International Bank for Reconstruction and Development/ The World Bank Group, 2017), which includes oversight and governance of PPP projects, adequate institutional capacity for regulating PPPs, developing guiding procedures throughout the lifecycle of PPPs and the promotion of private sector participation in public services.

2.4.2.3 The Namibian PPP Act was operationalised on 18 December 2018, being the date that the Regulations thereto were published in the Namibian Government Gazette (Government Gazette of the Republic of Namibia, 2018), which Regulations were quite terse and quite disappointing because it mainly deals with the PPP administration and procurement processes (Government Gazette of the Republic of Namibia, 2018) and not much is said about the actual governance and management of PPPs.

2.4.3 Namibian Ports Authority Act

2.4.3.1 Namport who is at the helm of port development in Namibia, is a public body established and registered as a body corporate in terms of its enabling legislation the Namibian Ports Authority Act No. 2 of 1994, as amended (hereinafter “Namport Act”).

2.4.3.2 As the national port authority and regulator, Namport has a core mandate to manage and control all the ports in Namibia[13] and it does so in terms of the objects of its enabling legislation, being section 3(1) of its enabling legislation that requires Namport to provide facilities and services normally related to a functioning of a port and to conduct its business in accordance with sound and generally accepted business practices.

2.4.3.3 Namport is further subject to the obligation[14] to conduct and operate its business so as to ensure that the maximum usage of the said facilities and services at competitive process that will yield a profit[15] to it.

2.4.3.4 An important point to mention is that the Government has alongside Namport entered into bilateral agreements with surrounding landlinked countries Botswana, Zambia and Zimbabwe. The said countries have dry ports within the Port of Walvis Bay, which is certainly an added strategic advantage for Namibia and once fully operational will positively contribute to an increase in the overall throughput volumes of Namibian ports.

2.4.4 Namport's PPP Readiness

2.4.4.1 The Namport Act and South Africa's National Port Authority Act ("SANPAA") are similar in many respects. Be that as it may, one of the main dichotomies is that section 56(1) of SANPAA expressly makes provision for PPPs and gives South Africa's National Port Authority, namely Transnet National Port Authority ("TNPA"), the right "to contract with private terminal operators to design, build, rehabilitate, develop, finance, maintain and operate port terminals or facilities".

[13] Section 3(1) of the Namport Act.
[14] Except where otherwise required in national interest.
[15] Fair and responsible profits.

2.4.4.2 In contrast, the Namport Act does not have a similar provision. What the Namport Act does have is a cloudy provision under section 19 that allows Namport to conclude a contract with any person or entity to render a particular service for or on behalf of Namport as long as it is not inconsistent with the objects of the Namport Act. The SANPAA has an almost identical provision under section 56(4)[16].

2.4.4.3 No information on the rationale of section 19 could be found, but in reading the Namport Act as a whole, it is safe to assume that it relates to outsourcing of services in the normal course of port business such as stevedoring, security and waste removal services.

2.4.4.4 In considering the rules of statutory interpretation in interpreting section 19, it is not clear whether a PPP qualifies as acting for and on behalf of Namport and/or meets the objects of the Namport Act.

2.4.4.5 Extending the Namport Act to include PPPs as defined in the PPP Act alluded to hereinabove, may be stretching it on the thin edges of the law, simply because section 19 seems to be open to interpretation and/or misconstruction.

2.4.4.6 Given the possible limitations and uncertainty of section 19, there is quite clearly a need for an express and "avoidance of doubt" section along the lines of the South African section 56 provision. If regard is had to concession trends in ports worldwide (Monias, 2015), the Namport Act must be aligned to current realities seen in port reform in recent years, mindful that no comprehensive review of the Act was done since the Namport Act entered into force.

[16] Section 56(4) states that "the Authority may enter into agreements in terms of which it contracts out any service which the Authority is required to provide in terms of this Act."

2.4.4.7 It is important to underscore that PPPs cannot be treated as a one size fits all approach and many other factors, moreso sector specific conditions and dynamics will need to be considered when evaluating whether designated port development projects should be subject to Namibia's PPP framework because PPPs are not suitable for all types of projects (Krawchenko, 2011).

2.5 Namibia's Economic Outlook

2.5.1 Albeit the ambitions of the Namibian Government to use PPPs as the golden key to unlock Namibian sustainable development door, it is important to have regard to an independent assessment of Namibia's economic outlook.

2.5.2 Reports on Namibia's infrastructure – to – GDP ratio is indicative of the fact that a boost in infrastructure investment is required to bolster the economic growth of Namibia (Bank of Namibia, 2014), which view is further amplified by the fiscal deficit concerns raised by the Ministry of Finance in it tabled 2019/20 budget (Ministry of Finance Namibia, 2019).

2.5.3 The African Development Bank, from an economic viewpoint reaffirmed the aforesaid position and reported that the "Namibian Government, as part of its fiscal and debt sustainability aims to lower its fiscal deficit to 2.7% GDP by 2022" (African Development Bank, 2019), which plan to be implemented will include, *inter alia*, the promotion of PPP's for envisaged infrastructure developments.

2.5.4 To further reinforce what is recorded in the above paragraph 2.5.2 and 2.5.3, Reuters advised that according to the Bank of Namibia, the economic growth of Namibia will be led by transport and construction (Reuters, n.d.) and Fitch Ratings also referenced future development factors that can result in Namibia's outlook being either upgraded or downgraded (Fitch Ratings, 2017).

2.5.5 As much as the factors mentioned above may positively or negatively impact Namibia's economic outlook, there are certainly many other factors, too many to mention here, that may have a bearing thereon and/or that may not have been taken into account when the above assumptions were made.

2.5.6 There are many variables, including social and political issues, that may impact Namibia's economic progression and by extension its port development projects. It is therefore critical that:

2.5.6.1 structures and clear governance criteria must be put in place to not only attract and retain (Beuve, 2018) (Grimsey, 2004) the much needed investments (World Bank, 2009) into Namibia, but also absorb or set off any unexpected market or economic shocks, and

2.5.6.2 policy and legal certainty (Reyes-Tagle, 2018) (Prais, 2019) (as previously highlighted) be provided through sound legislative, regulatory and governance frameworks for PPPs as part of baiting and/or boosting private investor appetite for port development projects.

2.5.7 As previously emphasised, private sector investment and partnership is fundamental to Namibia's socio – economic development plans and in that regard specific reference is made to the Investment Promotion Act of Namibia No. 9 of 2016 ("IPAN") that supports that drive, as IPAN has as its object:

"…the promotion of sustainable economic development and growth through the mobilisation and attraction of foreign and domestic investment[17] to enhance economic development, reduce unemployment, accelerate growth and diversify the economy" (KPMG International, 2016).

[17] Concessions and unsolicited bids are also well catered for.

2.5.8 According to the World Bank who carried out extensive research on private investment in infrastructure, some of the reasons for the possible reluctance for private investors to tap into the PPP markets of developing countries include imbalance of the risk spread, past experience, track records and lack of well – prepared and structured infrastructure projects (World Bank, 2018).

2.5.9 One of the weaknesses of the above – mentioned World Bank Report is that it was based solely on the database records investment commitments for infrastructure projects. Additionally, it would have been more useful if comparisons and analogies were drawn between developed, developing and emerging markets to have a clearer understanding of overall private investment appetite and to draw out guidance on how and to what extent designated countries have attracted more investment than others.

2.5.10 Robert and Chan provide specific solutions for enhancing private sector investment, which include political support and acceptability for PPPs, government positive attitude towards private sector investments and political stability as key factors (Robert, 2017).

2.5.11 Another possibility to consider under Namibia's economic outlook should the extended continental shelf claim of Namibia be approved by the United Nations Commission on the Limits of the Continental Shelf[18] (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, nd) it will more than double Namibia's territorial jurisdiction and in turn double the economic opportunities and potential of Namibia's blue economy (van Wyk, 2015).

[18] Namibia in short submitted to the Commission on the Limits of the Continental Shel and application to extend the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

2.5.12 Despite all that potential port development and blue economy growth potential, the fiscal evidence alluded to hereinabove supports the view that Namibia will clearly not be able to unlock those huge investments on its own balance sheet whether or not the budget deficit issue is resolved, which further justifies pursuing PPP as a viable option to so do.

2.6 PPPs Rationale and Types : A Global and Namibian Approach

2.6.1 Since the emergence of PPPs more than two decades ago, the rationale for PPPs included the belief in short that infrastructure gaps (Bruchez, 2014) will be closed by partnering with private entities and using their expertise, funding, technology and other contemporary approaches to improve public service delivery, infrastructure and operational efficiencies (World Bank Group, 2015) (Osborne, 2000).

2.6.2 Other than the foregoing observations, having a general understanding of the different types, variations, models, forms and, contracts of PPPs is also important and Figure, 4 and 5 below crisply depicts same.

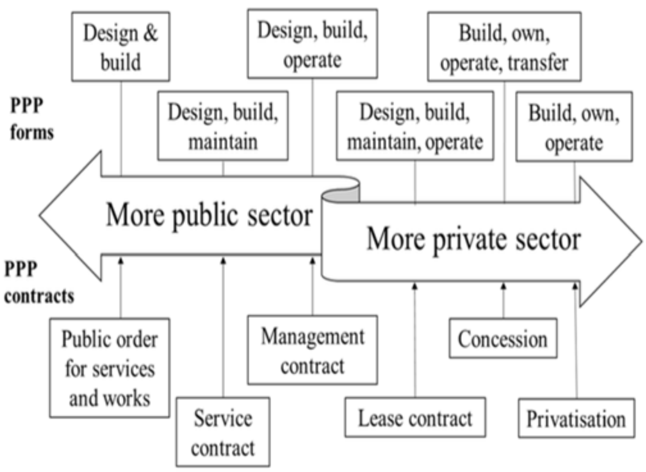

Figure 4: PPP Forms and Contracts (Wokewnik - Filipkowska, 2019)

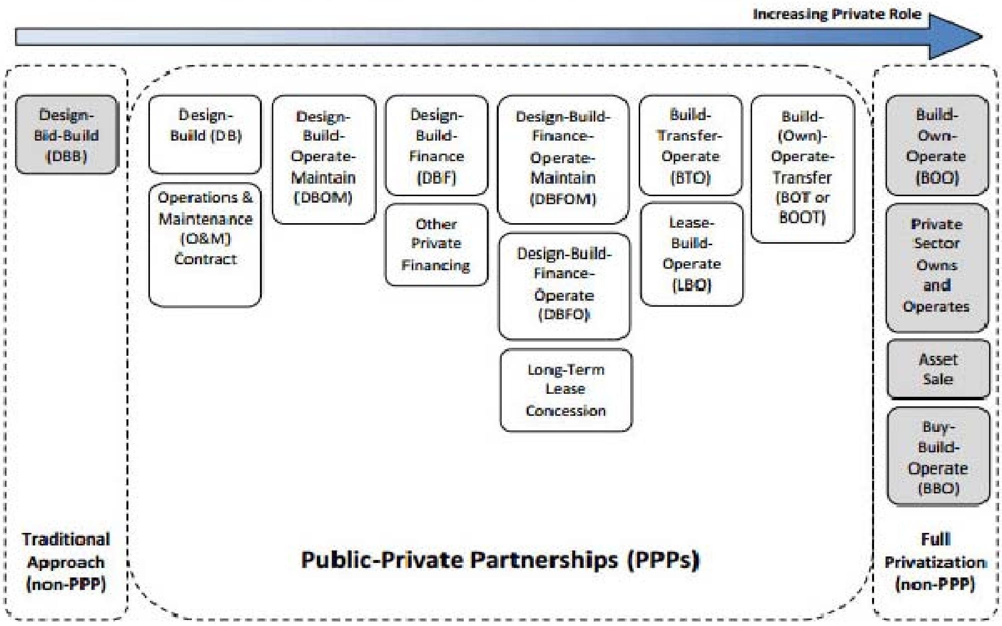

Figure 5: Continuum of private sector involvement in PPPs

(National Conference of State Legislature, 2017)

2.6.3 The PPPs referred to in Figure 4 and 5 hereinabove above are of course very broad categories of the most common PPP forms contracts, types, variations and models (Farrell, 2010). Nevertheless, every PPP contract concluded will most certainly be *sui generis* with the extent of private sector participation varying to different degrees.

2.6.4 Furthermore, the design, form and structure of PPPs will depend on numerous variables, but one commonality that every PPP model listed in the figures above have in common is that it moves far beyond institutional capacity, but requires, management, evaluation and monitoring at all stages of the PPP cycle (Osborne, 2000) (Shaik, 2011).

2.6.5 Having had regard to PPPs internationally, it is important to consider what PPP forms and/or contracts are envisaged for Namibia. As will be seen from the below it is closely aligned to the most common PPP forms and types found internationally (Higuchi, 2019) (Yescombe, 2007) and as highlighted in Figure 4 and 5 above.

2.6.5.1 Service, maintenance and/or management contracts;
2.6.5.2 Leases;
2.6.5.3 Build – Lease – Transfer (BLT);
2.6.5.4 Build – Transfer – Lease (BTL);
2.6.5.5 Build – Operate – Transfer Annuity (BOT);
2.6.5.6 Design – Build – Finance – Operate – Transfer (DBFOT);
2.6.5.7 Build – Own – Operate – Transfer (BOOT);
2.6.5.8 Build – Own – Operate (BOO), and
2.6.5.9 any other PPP form approved by the portfolio Ministry for PPPs.

2.6.6 It needs be mentioned that PPPs should not be confused with Government's business as usual collaboration with private entities. It must especially be understood that a project, activity or the like will only be regarded as a PPP if it meets the statutory or equivalent definition so in cases where it does not an agreement or arrangement cannot be said to be a PPP (Arimoro, 2018)

2.6.7 Other than the form of PPPs, the most important and often overlooked factor as mentioned hereinabove is the human element or role of civic society. Stakeholders have a central role to play in PPPs (Howard, 2018) (Bull, 2007) and the next section is dedicated to providing a succinct overview of relevant stakeholders in Namibia.

2.7 PPP Stakeholders: Namibia

2.7.1 Embarking on a PPP, regardless of its form, type and variation will require collaboration, co – operation and engagement. As such, various actors and stakeholders must be considered, consulted, and where required, have a role to play at all PPP stages, that is, from planning, inception, feasibility study procurement, development/implementation to delivery/exit stage (Grimsey, 2004).

2.7.2 Following a diligent search, writer hereof could not retrieve a document making reference to stakeholders under the Namibian PPP framework. Albeit same, the following non – exhaustive list of actors and/or stakeholders[19] are deemed relevant for Namibian PPP related projects and will be relevant to any port development project being undertaken on a PPP basis:

- 2.7.2.1 Government and (portfolio and key) Ministries (e.g. labour, health, fisheries, environment and trade);
- 2.7.2.2 parastatals/public bodies (e.g. road, rail, aviation);
- 2.7.2.3 other regulators (competition, telecommunications etc.);
- 2.7.2.4 maritime administrations;
- 2.7.2.5 non – state actors (e.g. non – governmental organisations, international organisations regional organisation and media);
- 2.7.2.6 trade unions;
- 2.7.2.7 port users/customers;
- 2.7.2.8 consultants /advisors/technocrats;
- 2.7.2.9 public, civic society and the surrounding community;
- 2.7.2.10 private sector;
- 2.7.2.11 financiers;
- 2.7.2.12 internal stakeholders such as employees, and
- 2.7.2.13 specialised Government agencies.

[19] It is important to note that the list is not in order or preference or rank.

2.7.3 Aerts et al made an important contribution by examining the multi – actor perspective on critical success factors for PPP port infrastructure, by highlighting the "diverging opinions of stakeholders" in relation to the importance of critical success factors (Aerts, 2014) and the Ocek study on critical success factors of PPPs suggest that having a deeper understanding of problems associated with PPPs is essential for overcoming same (Ocak, 2017).

2.7.4 A number of authors have recognised that stakeholders play an indispensable role in ensuring the success and/or failure of PPP projects (Xiong, 2019) (Nederhand, 2017) so much so that many a failed PPP project has been linked to public opposition (Cui, 2018). The foregoing finding by Cui supports the argument that a failure to include, communicate to, consult and/or involve in civic society and key stakeholders in decision – making prior to embarking on a PPP venture and at all relevant stages of a PPP project may be a deal breaker or cause undue delays and this aspect will be further amplified in the next chapters.

2.8 Sustainability and the Namibian Environmental Management Act

2.8.1 Two other inseparable pillars under the blue economy is sustainability and environmental management, which is linked to SDG 14 as well as other SDGs linked to the environment, being decent and economic growth[20], sustainable cities[21] and communities, responsible consumption[22]climate change[23]and life on land[24] (International Labour Organisation, 2019).

[20] SDG 8 .
[21] SDG 11.
[22] SDG12.
[23] SDG 13.
[24] SDG 15.

2.8.2 Namibia has passed numerous legislation related to the environment, the most relevant for purposes hereof being the Environment Management Act No. 7 of 2007 ("EMA") that in short has its purposes, "to promote the sustainable management of the environment and the use of natural resources"**.**

2.8.3 In addition thereto, the Namibian Ministry of Environment and Tourism ("MET") intends to make limited amendments to the said Act as well as issue revised Environmental Impact Assessment Regulations and new Strategic Environmental Assessment ("SEA") Regulations, but no mention is made of civic society's role or their right to access environmental information.

2.8.4 The objective of the SEA Regulations is to support the overarching objective of the EMA and to regulate the procedures and criteria for a SEA as required by the EMA[25]. As part of monitoring and reporting requirements, Namport will be expected to submit bi – annual reports to MET, which compliance requirement will have to be built into any PPP or other contractual arrangements with a private investor.

2.8.5 Part of optimal risks sharing is the management of environmental risks, which includes foreseeable and unforeseen impacts on the environment as a consequence of the use of the facility, service or infrastructure (Alonso, 2015). This is an important finding by Alonso (Alonso, 2015), because it further supports the need for consistent and transparent public information sharing and multiple – actor involvement in Namibia. In fact, Namibian public bodies should be reporting on their compliance therewith in the report to MET referred to in the previous paragraph.

2.8.6 From a global perspective, the UN has a number of international Conventions and Agreements that are directly pegged to the SDGs. (United Nations, nd).

[25] Part VI.

2.8.7 In that regard, specific reference is made to the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters that was signed in Aarhus on the 25th of June 1998 (hereinafter referred to as "the Aarhus Convention") (United Nations Economic Commission for Europe, 1998) and its Protocol on Pollutant Release and Transfer Registers, which empowers people, as part of environmental democracy, with "the right to access information, participate in decision making and to seek justice" (United Nations Economic Commission for Europe, nd).

2.8.8 Transparency, accountability and involving all key stakeholders in decision making and/or matters impacting them directly is crucial for sustainability and environmental management (Hueskes, 2017) (Steets, 2010).

2.8.9 As much as no African country has to date ratified the Aarhus Convention, one cannot divorce sustainability and environmental impact issues from the blue economy, moreso because the African Chapter of Human and People's Rights enshrined the right to "a satisfactory environment" (African Commission on Human and People's Rights, nd) and in the case of Namibia environmental sustainability is a key theme found in all Namibian NDPs.

2.8.10 It is of course ideal for a country such as Namibia to ratify the Aarhus Convention and in doing so it will be a step close to realising its Vision 2030, NDPs and HPP goals, with the latter including a target for Namibia to be the most transparent African country. The same recommendation is made for South Africa.

2.8.11 Taking into account the pending and long list of Conventions that have been ratified and yet to be implemented in Namibia it appears that Aarhus Convention may, in the absence of political will to fast track ratification, have to take a back seat for now.

2.8.12 It does not mean to say that Namibia must wait to ratify and adopt the Aarhus Convention as domestic law before applying the access, transparency, accountability and reporting governance requirements as contained in the Aarhus Convention and it is for that reason recommended that Namibia incorporates the said Aarhus Convention principles into its PPP framework without delay.

2.8.13 Moreover, if the Aarhus Convention and other key International Maritime Organisation and UN instruments linked to the environment and sustainability concepts are not ratified and enforced, then there are limits to enforcing such prerequisites. Further, in the absence of having mandatory transparency and stakeholder engagement platforms in place means difficulties will in all probability arise when attempts are made to implement such governance principles, hence the need for explicit legislative framework providing for same.

2.8.14 Neither Namibia, South Africa or Australia (Wilson, 2012) have as at date of this dissertation ratified the Aarhus Convention (United Nations, 2019). Unlike, the two former countries, the PPP Guidelines of Australia recommend liaison with public interest groups and other relevant bodies that may affect or sway the value for money analysis (Wernek, 2015).

2.8.15 One of the problems with the said Australian approach is that it is merely a recommendation and not a minimum compliance requirement, as it should be and this aspect will be further qualified in the next chapters.

2.9 Summary

2.9.1 This Chapter 2 in a nutshell gives a concise overview, rationale and structure of different PPPs and the blue economy both globally and within the Namibian context.

2.9.2 The study of PPPs is well documented and have been discussed by a great number of authors in literature, however, the majority of research and studies on PPPs are one – dimensional focused relate to financial (Petersen, 2019) (Bennett, 2006) with research on stakeholder, civic society and social value aspects being scarce. Where said issues are discussed, literature pertaining to civic society and stakeholder collaboration seem to suggest that the low rate of collaborations are due to a myriad of so – called justified reasons (Rossi, 2014).

2.9.3 Sustainability dovetails into environmental management, information sharing and transparency. For that reason, a holistic systems and synergies approach is required to ensure that port development PPPs or any PPP linked to SDGs prosper.

2.9.4 There is a dire need for more participatory and inclusive approaches for civic society and other key stakeholders as a critical success factor for PPP management (Hueskes, 2017), which includes environmental and sustainability matters.

Chapter 3 PPP Framework of South Africa and Australia

3.1 Background

3.1.1 Cognisant of the differences in socio – economic conditions and financial positions of every country (International Bank for Reconstruction and Development/ The World Bank Group, 2017) and mindful of the various PPPs across jurisdictions, this Chapter 3 examines the PPP framework in South Africa and Australia in comparison to that of Namibia, as the said countries are known to be on the forefront of PPP infrastructure projects (International Bank for Reconstruction and Development/ The World Bank Group, 2017).

3.1.2 In undertaking the comparative legal analysis herein attention will be drawn to the lessons that Namibia can learn from South Africa and Australia as part of improving Namibia's PPP framework, which includes probing into what the critical success factors and/or pitfalls of PPP[26] projects are based on the experience of the said countries so far.

3.1.3 As much as Namibia does not have the same PPP track record like South Africa and Australia that have much bigger economies (Bruchez, 2014), it is pertinent at the outset to mention that prior to the passing of the Namibian PPP Act the three below – mentioned PPP projects were concluded in Namibia with only two projects presently being tested for feasibility (Namibian, 2019).

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[26]The term Public Private Partnerships (PPPs) in this dissertation does not refer to any specific contract type and is used to describe the wide range of PPP contract types generally.

3.1.4 Since the Namibian PPP Act came into operation, no PPP contract has been concluded to date, however, Namibian PPP projects concluded prior to the PPP Act being operationalised include Nampower's[27] 14 5MW and one 35 MW independent power producer projects that were signed by NamPower, the Emona hostel of the University of Namibia and the Goreangab wastewater reclamation plant (Namibian, 2019).

3.2 South Africa: Policies, Laws and Ocean Development Strategy

3.2.1 South Africa's Operation Phakisa and Port Development Projects

3.2.1.1 South Africa, being one of the two largest African economies (Signé, 2018), is one of the few African countries that has amassed the greatest number of PPP projects in Africa (Shaik, 2011) and in the 2018 South African Treasury Budgetary review it was reported that thirty – three PPP projects was as at that date undertaken by South Africa since 1998 (National Treasury South Africa, nd) (BRICS South Africa, 2018).

3.2.1.2 Operation Phakisa is South Africa's blue economy strategy that was rolled out in 2014. There are eighteen development initiatives under the marine transport and manufacturing focus area of Operation Phakisa, of which eight are being spearheaded by TNPA who manages the current eight commercial ports in South Africa.

3.2.1.3 Examples of the main strategic and prioritised projects of TNPA include an oil and gas private operator concession, refurbishing existing facilities, a floating dock in Richards Bay and a boat building cluster in East London (Transnet National Port Authority, nd).

[27] NamPower is the national power utility company of Namibia.

3.2.1.4 What all eight TNPA port and related development projects have in common is that they are very ambitious multi – billion dollar projects with very ambitious targets (Transnet National Ports Authority, nd) and as such potential PPP projects, because private sector capital will in all probability have to be sourced to fund the said projects.

3.2.1.5 What stands out from TNPA's blue economy drive under the aegis of Operation Phakisa are some of the good governance processes being followed by TNPA. In particular, the transparent stakeholder consultative and progress reporting in Operation Phakisa project updates (Transnet National Ports Authority, nd).

3.2.1.6 It cannot be confirmed with certainty to what extent the transparency and accountability undertakings made by TNPA have actually been met implemented, but it seems that TNPA takes stakeholder relations very seriously.

3.2.1.7 TNPA for instance successfully piloted a project known as 'relational proximity model', whereby, independent interviews focused on the relationship with TNPA stakeholders and included answering questions regarding "communication, knowledge, commonality of purpose, power, continuity, trust and reciprocity, and a shared sense of purpose and values…" (Network for Business Sustainability, nd).

3.2.1.8 Additionally, when it comes to Environmental Impact Assessments ("EIAs"), key stakeholder sessions are held before the release of draft scoping reports, stakeholders are also provided with the environmental impact assessment reports, the public has thirty days to review the draft scoping reports, and focus group meetings are held in connection therewith (Transnet, nd).

3.2.1.9 Despite the transparency and accountability approaches followed by TNPA on its EIAs and business as usual stakeholder engagements, the Oceans Economy Review Workshop of Operation Phakisa facilitated by the South African Maritime Institute ("SAIMI") raised concerns regarding lack of communication with the private sector and communities and called for heightened stakeholder engagements (South African Maritime Institute, 2016). Similar concerns were also listed in other independent reports on good practices for PPPs (BRICS South Africa, 2018).

3.2.1.10 In order to close the governance gaps identified, outcomes from the SAIMI workshop included securing an effective institutional arrangement, speeding up policy decisions, deepened leadership involvement and improved access to opportunities (South African Maritime Institute, 2016).

3.2.1.11 The foregoing concerns from a legal perspective justifies the importance of ratifying and adopting as domestic law the Aarhus Convention and other key accountability instruments. Similar to what was recommended for Namibia hereinabove, South Africa need not adopt the Aarhus Convention before applying access, transparency, accountability and reporting governance requirements and can simply include same in its PPP framework.

3.2.1.12 Despite all the benefits that Operation Phakisa has to offer, the bottom line is that it was from its inception a very ambitious project and was thought to be a silver bullet. However, approximately fifteen years since its adoption, there has not been much progress made.

3.2.1.13 One of the main microeconomic reasons normally offered for such a situation is the economies of scale factor that makes doing business in Africa much more expensive, however, as evidenced by the SAIMI workshop from an external and internal stakeholder standpoint there are still numerous governance issues and gaps that must be addressed (South African Maritime Institute, 2016), which have nothing to do with the economies of scale.

3.2.1.14 Further, another issue with Operation Phakisa is that its main motivation is economic and other than targeted increases for jobs and the normal Corporate Social Responsibility ("CSR") programmes (Transnet SOC Group, nd) not much information on social value development or environmental strategies were found on the available literature, which are critical factors to socio – economic development other than employment creation (van Wyk, 2015) and CSR programmes.

3.2.1.15 Sanni and Hasim conclude their examination of a case study of South Africa by arguing that lack of capacity, policy direction, high participation costs, delays in negotiation and poor performance" (Sanni, 2014) are among challenges facing PPPs in sub – Saharan Africa, which seems to be a common problem in Namibia as well (Shimete, 2017). One way to overcome the said challenges is the consistent application of governance principles developed through PPP best practices and critical success factors, as will be further discussed hereinbelow.

3.2.1.16 Concerns such as these reveals the necessity for countries such as Namibia, South Africa and Australia to legislate the rights of civic society to access information, moreso it underpins the argument that ratification of the Aarhus Convention will assist not only in that regard, but will cement the right of all actors within the maritime and PPP value chain to be involved in environmental and sustainability decision making and to seek recourse against public bodies that fail to comply with such requirements.

3.2.2 South Africa's PPP Framework

3.2.2.1 As regards the PPP framework in South Africa, the Public Finance Management Act of 1999 governs PPPs. All national and provincial public entities in South Africa[28] are subject to Regulation 16 of the South African Treasury Regulations, which in the main governs PPPs in South Africa[29] (National Treasury South Africa, nd).

3.2.2.2 Regulation 16 of the South African Manual stipulates that a PPP in South Africa can only be said to exist where a private entity (Davey, 2017):

3.2.2.2.1 performs an institutional function on behalf of the public institution;

3.2.2.2.2 acquires the use of state property for its own commercial purposes;

3.2.2.2.3 assumes substantial financial, technical and operational project risks in connection with the performance of the institutional function or the use of state property;

3.2.2.2.4 receives a benefit for performing the institutional function or from utilising the state property.

[28] Listed in schedule 3 of the Preferential Procurement Policy Framework Act No. 5 of 2000.
[29] Including the South African Constitution, the Municipal Finance Management Act No. 56 of 2003 and the Municipal Systems Act No. 44 of 2003.

3.2.2.3 Most notably PPPs in South Africa must comply with three regulatory tests prior to Treasury approval of any proposed PPP being, (1) value for money, (2) whether the proposed project is affordable and (3) whether there is a transfer of project risks to the private entity (Arimoro, 2018) (National Treasury South Africa, nd).

3.2.2.4 The aforesaid approach ties in well with the United Nations Commission on International Trade Law Model Law on Public Procurement (United Nations Commission on International Trade, nd), but it would have been more interesting for South Africa to also include compliance with environmental, sustainability and social value requirements.

3.2.2.5 Namibia's PPP framework does not have specific regulatory tests other than its PPP Policy that talks about value for money, but alas the aforesaid and other essential governance elements were not incorporated into the Namibia's PPP framework.

3.2.2.6 Having compared the Namibian definition of a PPP as set out in Chapter 2 with the South African position on PPPs, it would appear that the Namibian definition is somewhat rigid, as it seems to envisage very limited forms of PPPs albeit the Namibian PPP Policy[30] mentioning a more holistic approach to PPPs, as mentioned in Chapter 2.

3.2.2.7 It means that any port project that would otherwise be considered a PPP for all intents and purposes may not necessarily meet the definition of PPP as per Namibian legislation and would therefore have to be go through traditional procurement structures[31], which may not be desirable because of the agile nature of the port business, possible red tape and undue delays that are customary under traditional procurement methods.

[30] Ibid, p42.
[31] Namibian Procurement Act No. 15 of 2015.

3.2.2.8 From a regulator of PPPs perspective, the National Treasury in South Africa initiates, approves regulates and manages PPPs (National Treasury South Africa, nd), however, it is still unclear to what extent the PPP Unit division within the Namibian Ministry of Finance will regulate and monitor PPPs.

3.2.2.9 One criticism of both the Namibian and South African PPP frameworks is that it fails to take into account all the actors involved in a PPP relationship (National Treasury South Africa, nd)., as no mention is made about engaging civic society and non – state actors

3.2.2.10 Other than the South African PPP Manual[32] that must be read together with other standardised PPP provisions[33], Treasury has also catered for differences in relation to technical and other specifications, penalties, payments, risk allocations and other issues specific to the different types of PPP projects or PPP activities (Davey, 2017), which differences are absent in the Namibian PPP framework.

3.2.2.11 Moreover, in stark contrast to South Africa's PPP framework, Namibia's PPP framework appears to be very generic and does not provide for detailed rules or guidelines on how PPP contracts will actually be carried out.

3.2.2.12 It is of course appreciated that the Namibia's PPP framework is less than a year old, but one would have expected some regulations, policies or directives being issued by either the PPP Unit or Ministry of Finance in Namibia since the Act came into force and it is still unclear at what point it will be done.

[32] Modules relate to (1) Regulations for PPPs, (2) Black Economic Empowerment (BEE) in PPPs, (3) PPP inception, (4) PPP feasibility study, (5) PPP procurement, (6) managing PPP agreement, (7) auditing PPPs, (8) regulates accounting treatment for PPPs and (9) the introduction to project finance

[33] Practice Note Number 01 of 2004.

3.2.3 Empowerment Provisions: South Africa and Namibia

3.2.3.1 The historical ties and social reality of Namibia and South Africa are quite similar and consequently so too are its socio – economic conditions, which includes strategies to redress inequality and discriminatory past practices by bridging the inequality gap for historically disadvantaged citizens. South Africa passed legislation to that effect (Government Gazette Republic of South Africa, 2004) and Namibia presently has the National Equitable Empowerment Policy and Bill ("NEEF") (National Assembly Republic of Namibia, nd) that has received a lot of backlash and is under advisement.

3.2.3.2 The South African Treasury Manual contains Broad Based Black Economic Empowerment (B-BBEE) Policy[34] provisions that must be applied throughout the PPP cycle as well as information on how to apply said policy in each phase of the PPP project cycle based on a balance scorecard.

3.2.3.3 In juxtaposing, Namibia's PPP framework does not have detailed empowerment provisions, save for section 25 of the PPP Act tersely mentioning the prerequisite that at the stage of a request for proposal, evaluation criteria must include a preference for the protection and advancement of Previously Disadvantages Namibians (PDNs) and Small and Medium Enterprises (SMEs).

3.2.3.4 It means that the Namibian section 25 empowerment provision dealing with PDN evaluation criteria is left to the individual public body or government institution to decide on PDN and SME evaluation criteria.

[34] Preferential procurement policies such as B-BBEE have been used to promote substantive equality through the application of preferential treatment to previously disadvantaged designated groups when awarding Government contracts.

3.2.3.5 Furthermore, the Regulations to the Namibian PPP Act does not contain any reference to so – called empowering provisions and is at best an extension of the procurement evaluation criteria set out in the PPP Act.

3.2.3.6 Be that as it may, NEEF if passed will contain similar provisions to that of South Africa in that it contains clauses that facilitate PPPs in Namibia and criteria for designated sectors in the Namibian economy (National Assembly Republic of Namibia, nd).

3.2.3.7 In the absence of PDN compliance and monitoring, it may expose a public entity to fronting and the risk of no real value being added or skills transfer taking place. It is therefore absolutely vital that Namibia's PPP framework be aligned to the NEEF machinery.

3.2.3.8 Any empowerment provisions linked to Namibian NEEF and/or PPP framework must, akin to South Africa contain information on how to apply such provisions in each phase of the PPP project cycle, moreso based on a balance scorecard that must be applied throughout the PPP cycle[35].

3.2.3.9 As a side and very important note, the Namibian PPP Act also appears to be silent on the issue of possible conflict of laws bearing in mind that other laws may possibly overlap or be in conflict with the PPP framework.

3.2.3.10 It is recommended, if not done already, that further research be undertaken to determine whether there are any conflicts or overlaps and most importantly to ensure that there is a clear delineation of laws and 'avoidance of doubt' provisions contained across all interconnected Namibian laws.

[35] A PPP life cycle phases generally consists of inception, feasibility, procurement, development, delivery and exit.

3.2.4 Criteria for successful PPPs: A South African Best Practices Approach

3.2.4.1 Namibia cannot successfully pursue its NDPs, which includes PPPs, and its blue economy goals in a fragmented and piecemeal manner and an integrated governance and systems approach is required (National Academy of Sciences, 2013).

3.2.4.2 At this juncture it is opportune to deal with the issue of best practices and critical success factors for successful PPPs.

3.2.4.3 Bruchez undertook an extensive literature regarding the suitability of PPPs for the long – term development of infrastructure in South Africa. He concluded that that the criteria listed in Figure 6 below must be taken into account not only as part of ensuring the success of PPPs, but also as a long – term tool for infrastructure development in South Africa. (Bruchez, 2014), which serves as a good yardstick for developing a PPP critical success factors checklist for Namibia when considering the PPP route.

Criteria	Details
PPPs undertaken for good reasons	• For their intrinsic qualities. • Not only to evade budget constraints. • Not only an "easy", "glorifying" project.
Favourable environment	• Capacity on both public and private sides. • Active political commitment to PPPs. • Understanding of political processes on private sector's side. • No political pressure, fraud and corruption. • Well-equipped private entities to deal with possible political tumults. • Low macroeconomic risk.
Competition among credible bidders	• Selection of the right partner. • High competition in the PPP market.
Well-designed contracts	• Transparency, no ambiguity. • Clear determination of responsibilities, service quality and dispute resolution mechanisms. • Public sector shouldn't want to transfer too much risk to its private partner. • Private entities shouldn't abuse the public sector's role of "provider of last resort". • Adequate level of income stream assured for the whole life of a project. • Clear definition of public guarantees.
Good communication with stakeholders	• Active communication with the diverse stakeholders of a PPP, especially Trade Unions.
Not too complex PPP legislation and processes	• Finding the right balance between a too poor and a too complicated PPP legislation.
Active and efficient PPP Unit	• Active promotion of PPPs. • Support for public departments.

Figure 6: Criteria for successful PPPs (Bruchez, 2014)

3.2.4.4 As succinct as the stated PPP success criteria referred to by Bruchez is, the importance of civic society inclusion was overlooked and excluded as a critical success factor.

3.2.4.5 As much as most comparative studies such as the Bruchez study (Bruchez, 2014) provides great insights, they are for the most part one – dimensional and focus on very specific issues, which view was also held by Beuve et al who dealt with theoretical and empirical developments of PPPs (Beuve, 2018) and Roehrich et al who found that the systematic review of literature simultaneously dealing with policy, practice and PPP outcomes is very limited and remains mostly fragmented (Roehrich, 2014).

3.2.4.6 Moreover, other than the said critical success factors alluded to by Bruchez, what classifies a PPP as successful or unsuccessful is relative and will depend on the socio – political – economic and legal environment and many other circumstances in a country (Chou, 2015) and the Australian PPP framework discussed in the next section and chapter will provide further insights.

3.3 Australia: PPP Framework and PPP Experience

3.3.1 Prior to discussing some of the PPP experiences of Australia, it is important to mention that Australia is a federal and state government (Wernek, 2015) comprising of six states each having its own Constitution and Parliament, but in the event of conflict of law situation, its federal legislation take precedence.

3.3.2 Australia does not have any PPP legislation, but adopted a country wide approach to PPPs in 2005 through the issuance of a PPP Policy and Guidelines (Wernek, 2015). The definition of PPPs has evolved in Australia since the concept was first introduced, with the latest definition being:

"…a proven infrastructure procurement method that in the appropriate circumstances can make the best use of the resources of both the public and private sectors" (Australian Government, 2015), which definition does not necessarily have to incorporate the elements of private sector investment, risks transfer and the design, construction, maintenance and/or other services in order for a project be classified a PPP (Bianchi, 2017).

3.3.3 Figure 7 below gives a snapshot of Australian PPP investments in terms of value and transactions for the period 2000 to present date[36] (Infrastructure Partnerships Australia, 2019).

[36] Figure 7 shows the total value and number of projects that has occurred each year, divided into jurisdictions. The column chart shows the value of projects against the left hand side axis and the number of projects is shown using the dotted line which refers to the right hand side axis. All project values are in constant prices (Infrastructure Partnerships Australia, 2019).

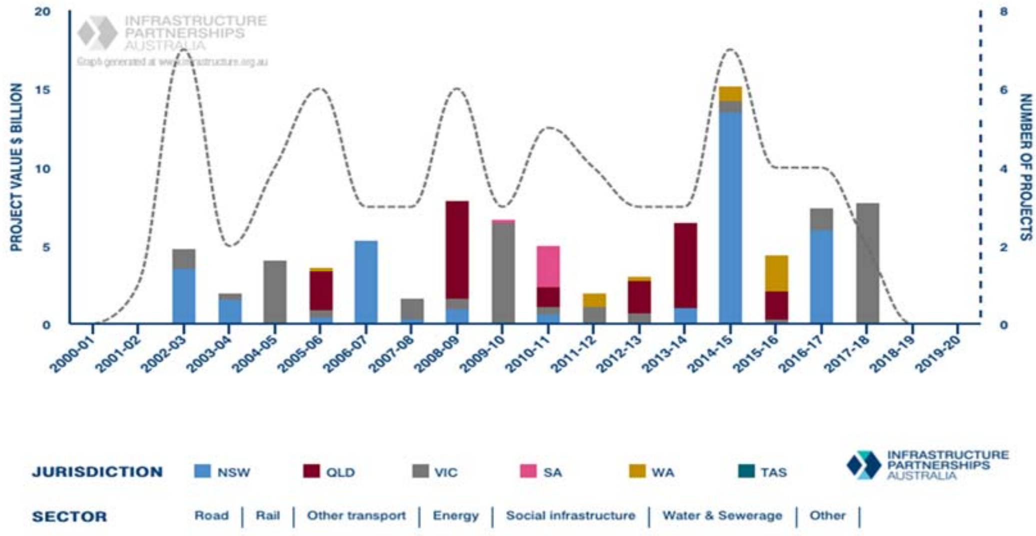

Figure 7: Market Analysis based on volume and value of PPPs per year in Australia (Infrastructure Partnerships Australia, 2019)

3.3.4 What stands out in Figure 7 is that:

3.3.4.1 economic cycles occur every ten years on average (Investopedia, 2019), PPPs are cyclical either because of fluctuating economic conditions such as funding and investment risks and/or the scope of projects themselves which is further evidenced by the economic recession of 2008/2009, which saw a decline in investments globally, but it was also almost the same time that the concept of blue economy emerged, whereafter PPP projects saw an increase;

3.3.4.2 not every Australian state uses PPP projects every year, with on average only two states using PPPs for its infrastructure development;

3.3.4.3 New South Wales on the whole enjoys greater PPP investments as compared to other states.

3.3.5 The Australian National PPP Policy Framework ("APPPF") has as its purpose the delivery of improved infrastructure and service delivery as well as better value for money (Public - Private Partnership Legal Research Center, 2018). (Australian Government Department of Infrastructure and Regional Development, 2015).

3.3.6 What was quite interesting from the literature available on Australian PPPs, was a study conducted by Bianchi et al that focused on problems encountered with infrastructure projects where financial losses have been disclosed to the public and recommendations on the reduction of complexities in connection with infrastructure and PPP investment decisions (Bianchi, 2017). After having examined 155 PPPs for the period 1986 to 2016, Bianchi et al (Bianchi, 2017) deduced the following:

3.3.6.1 there is a one 20% to 25% probability that PPPs fail as a consequence of unexpected financial losses ;

3.3.6.2 risks associated with PPP projects are dependent on costs structures and not only associated with revenue streams;

3.3.6.3 most private entities who concluded a PPP arrangement had no mandatory financial or related reporting obligations and/or their information were not available in the public domain.

3.3.7 Bianchi et al in their study further demonstrated that only approximately 11% of Australian PPPs studied were considered problematic or failed PPPs. A similar pattern of results from a cost perspective was obtained by Petersen who revealed that PPPs are on average 11.4% cheaper in comparison to traditional procurement methods (Petersen, 2019).

3.3.8 The main limitation of the Bianchi et al study is that the data set considered was mainly limited to financial data and there are of course many other factors that contribute and have been proven to contribute to the PPPs in question failing (Price Waterhouse Cooper, 2017) or succeeding as highlighted above and as will be examined further.

3.3.9 Two apparent limitations of the Petersen study, as identified therein, is that it does not include evidence on value for money or quality of infrastructure (Petersen, 2019), which would assist in truly understanding the intrinsic value of Australian PPPs.

3.3.10 Australia applies best practices for PPPs, which have more stringent risk assessments and management outputs to its traditional procurement and other contracting methods (Price Waterhouse Cooper, 2017).

3.3.11 Despite having a sound PPP Framework with by and large "on time and within budget" PPP contracts (Price Waterhouse Cooper, 2017) (Bianchi, 2017), the states within Australia are not very trigger happy to conclude PPP Projects.

3.3.12 The PPP data available for Australia, including Figure 7 above, seems to suggest that it has in recent years relied more and more on traditional procurement methods as opposed to PPPs (Bianchi, 2017).

3.3.13 The foregoing assumption is not necessarily true for all infrastructure projects, as just two years before the Bianchi et al study (Bianchi, 2017) Werneck and Saadi opined that unsolicited proposals have become more popular because of the incentives including lower tender lower costs in comparison to traditional procurement (Wernek, 2015), but it can be assumed that it depends on the type of private investor or sector.

3.3.14 A “public interest, public benefit and public policy” test is applied in Australia when deciding on a PPP delivery method (Wernek, 2015). It appears that the test applies after approval of the PPP route and therein lies the weakness of the test, as a better test would be to apply the test prior to PPP approval, that it when considering whether or not to use PPPs.

3.3.15 One pioneering approach of Australia is that albeit some projects falling below the required value threshold, if they are proven to have significant value for money, they will be treated as PPPs, alternatively projects are pooled together to meet the required threshold (Wernek, 2015). The said impressive approach would be ideal for the Namibian port or maritime industry, moreso given the multi – model transport approach adopted by modernised ports worldwide (Serdjo, 2012).

3.4 Lessons Learnt from South Africa and Australia

3.4.1 South African Experience

3.4.1.1 This section is dedicated to further recording lessons Namibia can learn from the experience of South Africa and Australia

3.4.1.2 One of the commendable approaches to PPP monitoring and evaluation by the South African Treasury and presently absent in Namibia’s PPP framework is that the PPP Unit of South Africa’s has the following compliance requirements and standards in place:

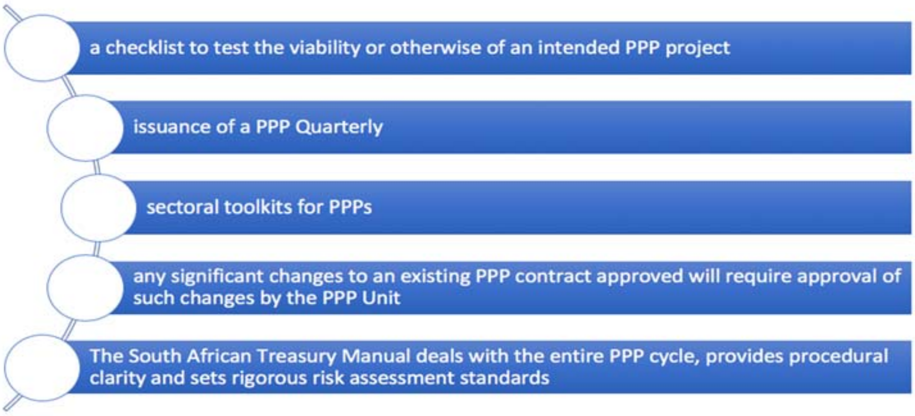

Figure 8: South African Treasury Governance and Compliance Standards and Requirements (Arimoro, 2018) (National Treasury South Africa, nd)

3.4.2 Australian Experience

3.4.2.1 Australia is known for having a very transparent reporting system and in line therewith, the transparency approaches and practices listed of the Australian Government in Figure 9 serves as a good yardstick for Namibia's consideration.

Figure 9: Market Analysis based on volume and value of PPPs per year in Australia (Infrastructure Partnerships Australia, 2019)

3.4.2.2 The one limitation identified in Figure 9 is that no mention is made of transparency, sustainability and environmental reporting practices and transparency practices appear to be limited to the procurement stage of PPPs.

3.4.2.3 The Freedom of Information Act of Australia No 3 of 1982 (hereinafter "FOIAA") provides a legally enforceable right of access to government documents (Australian Government, 2017).

3.4.2.4 One of the few scholars that critique Australia's transparency structures based on the Aarhus Convention is Wilson who highlights the commercial confidentiality exemption provision of FOIAA that prevents disclosure of environmental information (Wilson, 2012). Although not legislated, Namibia's reality when it comes to disclose of EIAs is similar and falls far short of the South African environmental approaches described above and is therefore strongly recommendation for adoption by both Namibia and Australia.

3.4.2.5 Wilson clearly did not take into account the fact that a lot has changed since 1982, which includes the drive for sustainable development and the blue economy. It is perhaps an opportune time for Namibia and Australia to comprehensively review its approaches to environmental management and sustainability, moreso in light of the fact that "environmental protection is almost absent in the Australian Constitution" (Australian Parliament, nd).

3.4.2.6 A critical and rhetorical question to ask is how environmental activities that may negatively impact the living conditions and/or livelihoods of civic society can be treated as confidential under FIOAA and/or not be provided for in Australia's Constitution because the impact of environmental activities can interfere with human rights that are entrenched in Australia's Constitution to mention but one point.

3.4.2.7 Stakeholders should have the right to any documentation concerning the environment and this gap or vacuum should be addressed in both Namibia and Australia. The TNPA stakeholder inclusivity processes for environmental matters are important lessons for both Namibia (including Namport) and Australia.

3.4.2.8 Not many scholars have challenged the Australian PPPs from a transparency perspective. Jefferies and McGeorge concluded that sustainable PPP procurement methods include extensive stakeholder engagement and greater rewards are provided for the entire community (Jefferies, 2009).

3.4.2.9 The work of Stafford seems to suggest that not all Australian PPP projects are as effective as documented with a number of policy, transparency, accountability and socio – economic concerns having been raised by Australian communities on PPP projects (Stafford, 2017). This is an important finding in the understanding of the vagaries of PPPs.

3.4.2.10 Stafford’s study further supports the argument that one can have world class legislative and institutional structures in place, but civic society is one of the most decisive elements that can be a deal breaker for a PPP project.

3.5 PPP Governance Lessons for Namibia, South Africa and Australia

3.5.1 Despite South Africa being “one of the leading countries in the world in law, policy and systems for public private partnerships” (National Treasury PPP Unit), it has not been immune to challenges with issues such as lack of required skills and resources and corruption (Burger, 2009). The issue of corruption is not limited to South Africa and many an African country including Namibia has fallen victim to alleged and proven corrupt practices under public procurement (Otairua, 2013)

3.5.2 Bearing in mind that PPPs are an alternative to procurement with a very different mandate to that of Treasury who manages South Africa's economic policy, finances and budget (Burger, 2009), South Africa should seriously consider creating a more independent PPP Unit with clear Chinese walls between the two very distinct characteristics to procurement, despite their similarities.

3.5.3 To further support the stated view, according to the Government Procurement Law Review, the main grounds for review of South Africa's procurement include issues of bias, lack of authority, non – compliance with a mandatory and material procedure and condition, procedural unfairness, material influence by an error of law, ulterior purpose or motive, unauthorised or unwarranted influence, unlawfulness, irrationality and failure to take a decision and unreasonable grounds of review (Davey, 2017).

3.5.4 In his thesis, Bruchez looked at South Africa's infrastructure needs versus sectors in which PPPs were most prevalent, which study revealed that only half of all PPPs are implemented in sectors considered as ideal for PPPs, being transportation and generic facilities (Bruchez, 2014).

3.5.5. What can be inferred from the study of Bruchez is that even if South African has so – called world class procurement and PPP frameworks in place, it does not mean to say that all South African PPP projects are successful, because as is the case with any policy or law, it is about consistent implementation and compliance with not only the letter, but the spirit of the law with good governance at the helm.

3.5.6 Cognisant of different contexts and dynamics in different countries, a useful PPP governance study was conducted by Xiong et al (Xiong, 2019), which study identified PPP success factors, that is, after having sieved through 692[37] reviewed articles in leading journals.

3.5.7 The findings of the Xiong et al study, that was not sector or country specific, identified the relationship between governance issues as well as success or failure of PPP outcomes from a contractual, institutional, managerial and organisational point of view, which are important findings in the understanding of critical success factors and best practices (Xiong, 2019).

3.5.8 What Figure 10 reveals is that governance of PPPs are multidimensional and requires the involvement of numerous internal and external actors (Levitt, 2016), but it would have been more relevant if a more detailed study is done on the twenty – one governance issues in the PPP success network of Xiong et al especially the extent of public participation from a social value perspective.

Figure 10: Mindmap of Governance Factors linked to successful PPP outcomes (Xiong, 2019)

[37] The reviewed articles in short contained 122 case studies in 27 countries and 18 sectors.

3.5.9 Xiong et al clearly recognises the crucial role that governance plays in the success or failure of PPPs (Xiong, 2019) and of interest from the said study is the fact that Australia was the top ranking country for successful PPPs. What was also gleaned from the Xiong et al study is that even the United Kingdom that is seen to be the most advanced in terms of PPPs also recorded failed PPPs (Xiong, 2019).

3.5.10 The Levitt and Erikkson study on a governance model for infrastructure development argues that Australia developed working practices and models that address many key governance challenges (Levitt, 2016), but one of the weaknesses of this study is that it fails to identify how the governance challenges are overcome or handled by public and private actors and it would have been better for Levitt and Erikkson to further delve into such practices and models as part understanding the relationship between actors.

3.5.11 The relevance of the foregoing is that it further demonstrates that governance requires more than just sound legislative, regulatory frameworks and management practices (Xiong, 2019) and the true test lies in the application of good governance principles (O'Shea, 2018).

3.5.12 A comprehensive literature review shows that numerous researchers have shifted their attention to investigating and assessing PPP success factors (Osei-Kyei, 2015) given the crucial role that governance places in the success and failure of PPPs (Xiong, 2019).

3.5.13 There exists a considerable body of literature on PPP best practices, moreso numerous scholars have developed governance frameworks and critical success factors for PPPs (Chou, 2015) (Sanni, 2014), which include the following:

3.5.13.1 Roehrich who argued that combining the strengths of public actors such as public accountability, social justice, social responsibility and local knowledge is crucial for delivering successful PPP outcomes (Roehrich, 2014);

3.5.13.2 Osei – Kyei and Chan that revealed that a transparent procurement process is amongst the top critical success factors that must be applied throughout the PPP process. (Osei-Kyei, 2015).

3.5.13.3 the findings of Wu et al in their study of government's accountability in PPPs that "effectiveness of quality services and the efficiency of use of public resources for asset end – users and general population" (Wu, 2016);

3.5.13.4 Garvin that recognised that PPP contracts cannot possibly account for every potential contingency and that contracts should vary across sectors that suit the context of each PPP project (Garvin, 2009);

3.5.13.5 Aerts et al, amongst others, revealed technical innovation, knowledge transfer, open communication and proper stakeholder management are critical for successful PPPs (Aerts, 2014);

3.5.13.6 You et al in their study on uncertainty, opportunity and governance of construction contracts demonstrated the need for contracts to allow for a degree of flexibility to cater for unforeseen circumstances relating to inflation, adverse weather conditions and fluctuation in exchange rates (You, 2018), and

3.5.13.7 Meersman et al argued that the preconditions for successful PPPs include only pursuing PPP projects where there is “a social and economic need”, adequate consultation and communication of benefits procedures, governments commencing with projects most likely to succeed, significant risk transfer to the private sector and PPP projects should be of interest to international private sector investors (Meersman, 2014).

3.5.14 The above suggested governance frameworks and critical success factors recommended by learned scholars are extremely useful, but not conclusive or exhaustive because the extant literature on PPP critical success factors for PPPs is extensive. Be that as it may, the literature referenced herein is reliable and authoritative because the said studies and assessments were based on very detailed and comprehensive research and literature reviews.

3.5.15 Whilst recognising that that there are various approaches to critical success factors (Chou, 2015), the above governance frameworks and critical success factors for PPPs serves as a good yardstick for maximising PPP growth and successes. However a closer look to the literature on critical success factors for PPPs reveals a number of gaps and shortcomings that have criticised for not being all – inclusive. (Johnston, 2007) (Xiong, 2019), which includes the omitting civic society and social value generation (Singh, 2016) from the successful PPP outcomes equations as – it – were, notwithstanding a number of authors actually made valuable contributions in that regard.

3.6 Summary

3.6.1 What the literature review and comparative analysis of South Africa and Australia have demonstrated is that one can have world – class legislative and regulatory compliance requirements, but in the absence of consistent application, implementation, compliance and monitoring mechanisms cemented by sound and comprehensive PPP legal and governance machineries, successful PPP outcomes is reduced, moreso world class legislative and regulatory frameworks become toothless bulldogs, if not futile.

3.6.2 It has also transpired that Namibia's PPP framework quite evidently has limitations and failed to meet one of the critical objectives of its PPP framework, being to provide for principles, frameworks and guiding procedures throughout the lifecycle of a PPP project.

3.6.3 The said analysis has further proven that at its core, PPPs require a conducive environment (World Bank Group, 2015) and a multi – faceted approach (Bruchez, 2014) to flourish, hence the need for Namibia to formulate guiding policies, directives, checklists, toolkits and other governance and compliance documents for PPPs in Namibia.

3.6.4 It is therefore recommended that urgent attention be given to the possible shortcomings identified in Namibia's PPP Framework as part of creating a conducive environment for PPPs to thrive in Namibia.

3.6.5 The application of good governance and PPP critical success factors throughout the lifecycle of PPPs is essential (Higuchi, 2019) and it is specifically recommended that the PPP Unit of Namibia without delay develops a harmonised PPP Policy and Guidelines covering the entire lifecycle of PPPs.

3.6.6 It was further reasoned that in the absence of monitoring PDN and SME performance throughout the PPP life cycle in Namibia will make it difficult to measure what value such empowerment provisions have actually added and will ultimately defeat the purpose of having these empowerment provision in Namibia's PPP framework.

3.6.7 Due to the vagaries and complexities involved in PPPs a thorough assessment (Davey, 2017) and more pertinently the options available to Government must be explored when considering PPP port development projects.

3.6.8 There lies a serious danger in pursuing a PPP merely because it meets a PPP definition and to avert that danger a proper needs analysis must therefore be conducted (National Treasury South Africa, nd).

3.6.9 There must be a shift towards ascertaining what gap, if any, will be closed, how success of the PPP will be measured, what value for money will be achieved, whether a proposed PPP route is viable and what the alternatives to PPPs are (Price Waterhouse Cooper, 2017).

3.6.10 One of the most important findings that emerged from the comparison and literature review is that combining the strengths of public actors such as public accountability, social justice, social responsibility and local knowledge is crucial for delivering successful PPP outcomes.

3.6.11 A very important issue raised is that Namibia, South Africa and Australia need not adopt the Aarhus Convention and can simply include access, transparency, accountability and participation in decision – making as a requirement in their PPP frameworks, but ideally the Aarhus Convention should be ratified and implemented.

3.6.12 The PoM case study to be discussed in the next chapter will further amplify the importance of good PPP governance.

Chapter 4 A Case Study of the Port of Melbourne PPP

This Chapter 4 will focus on a case study of PoM lease in Australia to draw insights and learnings for Namibia's PPP port development endeavours.

4.1 Overview: Port of Melbourne Lease

4.1.1 As previously stated, the selection of this case study was mainly informed by the fact that Australia has a very advanced PPP framework (KPMG, 2015) (Yescombe E. R., 2007). Additionally for the similarities that the PoM shares with the Port of Walvis Bay in Namibia, that is, both PoM and the Port of Walvis Bay are the main commercial and multi – purpose ports handling containerised and non – containerised cargoes.

4.1.2 PoM is one of the busiest container ports in Australia, one of the top sixty container ports in the world[38] with a container throughput of approximately two million containers per annum (Essential Services Commission, 2017). The PoM Corporation, like Namport, is an entity created by statute that has managed, regulated and operated the PoM for years.

4.1.3 Following a Project Blue scoping study conducted by KPMG Australia (KPMG International, 2014) (The Age, 2015), Australia passed legislation to lease the commercial operation of PoM to a private operator for a tenure of fifty years (Essential Services Commission, 2017).

4.1.4 The PoM long – term lease was subsequently awarded to the Lonsdale Consortium[39] for a price tag of USD 9,7 billion (Essential Services Commission, 2017) (ABC News, 2016).

[38] Based on 2015 results.
[39] Only received three bids mainly from finance consortiums were received Comprising Future Fund, QIC, Global Infrastructure Partners and Ontario Municipal Employees Retirement Scheme.

4.1.5 The statutory regulatory function of Victorian Ports Corporation (previously PoM Corporation) (Melbourne Port Lessor (Pty) Ltd, 2018) as set out in its Port Management Act No. 82 of 1995 remains unaffected post 1 November 2016 when Lonsdale took over (Essential Services Commission, 2017).

4.1.6 Some of the key difference noted in the Australian PPP Framework (Australian Government Department of Infrastructure and Regional Development, 2015), compared to Namibia, and that Namibia can learn from, is that Australia:

4.1.6.1 has an integrated approach to strategic infrastructure planning;

4.1.6.2 applies a rigorous cost – benefit analysis and value for money interrogation before even considering the PPP route as a method for service delivery and infrastructure;

4.1.6.3 employs a value for money approach during the entire lifecycle of a PPP project as well as a capital scarcity and balance sheet approach as part of its value for money approach;

4.1.6.4 ensures that all decisions from evaluation to fruition of the project considers the potential impact on public interest matters such as privacy, accountability, health and safety, consumer rights, public access and equity, and

4.1.6.5 developed a national PPP Policy and Practitioners Guidelines.

4.1.7 The below Figure 11 provides a brief summary of the regulatory regime developed for the PoM by the Commission that is responsible for monitoring and reporting on the economic activities such as the PoM lease awarded to Lonsdale (Essential Services Commission, 2017).

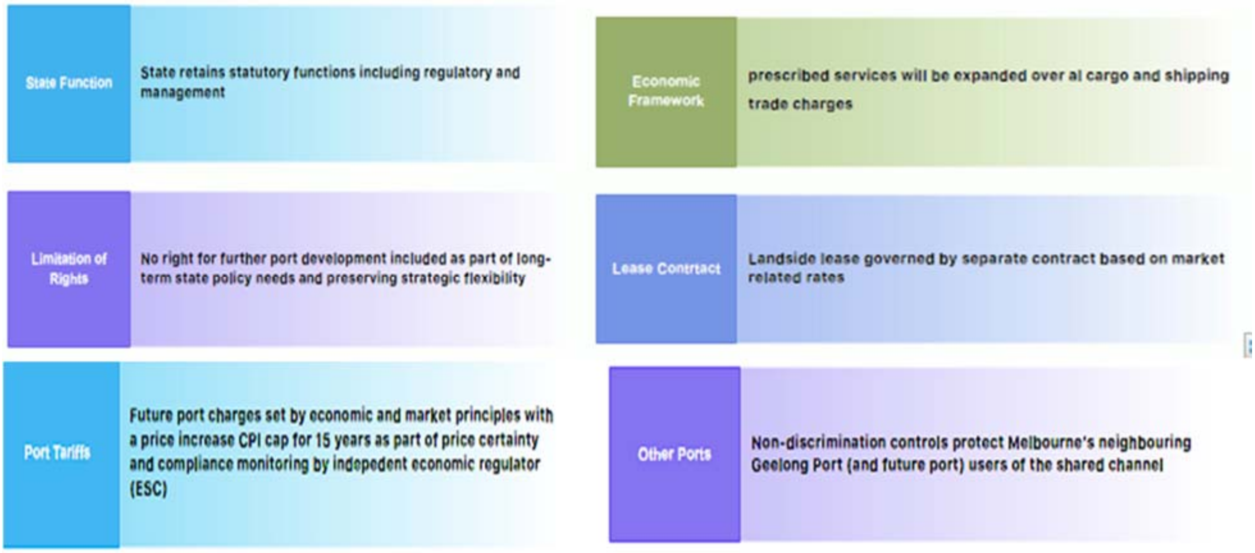

Figure 11: PoM Regulatory Regime (Essential Services Commission, 2017)

4.1.8 As will be seen from Figure 11, safeguards for both contracting parties have been built into the regime, that is protecting the rights of both Lonsdale and the Australian Government. The regulatory regime of PoM would have been more comprehensive to have details on the role that civic society and other stakeholders played in the PoM lease and to what extent transparency compliance requirements, if present, are applied.

4.1.9 A glaring issue raised by Kommalapati is the fact that once the Consumer Price Index cap expires after 15 years, it means Lonsdale will no longer be regulated and it can determine their own port tariffs and may squeeze profit margins to the detriment of port users and he further draws an analogy with the 40% increase seen in Australia's Newcastle port post privatisation (Kommalapati, 2016).

4.1.10 Although not mentioned in the Kommalapatis critique of PoM, the business case of Geelong Port referred to in Figure 11 may also be affected by unilateral decisions taken by Lonsdale after expiration of the 15 years price cap and no evidence could be found showing that the said likelihood may materialise.

4.2 Shortcomings and Pitfalls of Port of Melbourne Lease

4.2.1 It is important to note that despite Australia and State Victoria having a sound PPP legal and regulatory framework, according to media reports, the contract close for the PoM lease was met with resistance both politically and from the public[40] (Maritime Herald, 2016) and not much research or information evaluating the reasons for the resistance could be traced and it would have been interesting to have an in – depth understanding of what the reasons for the resistance were.

4.2.2 Prior to the PoM contract award and close, Kommalapati observed that public opposition to the lease was scant and he argued that selling the profit making PoM was not plausible and once PoM reaches it capacity in 10 to 15 years "residents and commuters will face increased truck traffic and the associated problem of noise, congestion, pollution and road deterioration" (Kommalapati, 2016).

4.2.3 These are important observations and it is unclear whether these contingencies were built into the study conducted by KPMG, but Kommalapatis concerns are further supported by an inquiry of the proposed PoM lease about the port related truck traffic concerns raised by stakeholders from a "congestion, environmental and health perspective" (Parliament of Victoria Legislative Council Port of Melbourne Select Committee, 2015).

[40] All of whom in their bids confirmed that port operations would be outsourced to private terminal operators.

4.2.4 Perhaps one of the most significant insight of the then proposed PoM Inquiry is the finding that stakeholders were incapable of commenting on the possible impact and viability of the PoM lease (Parliament of Victoria Legislative Council Port of Melbourne Select Committee, 2015).

4.2.5 The implication of the above – mentioned finding means that stakeholder consultation will not suffice and stakeholders must be put in a position to speak from a place of knowledge and make meaningful contributions, failing which it will defeat the purpose of involving stakeholders in decision making processes in the first place. This argument further supports writer's recommendation in Chapter 3 that stakeholders' liaison is not enough in guaranteeing access to information and participation in decision making as cemented by the Aarhus Convention.

4.2.6 Other than the foregoing criticism, several questions remain unanswered, that being, whether the legitimate concerns of stakeholders listed in the said PoM Inquiry report (Parliament of Victoria Legislative Council Port of Melbourne Select Committee, 2015) were in fact addressed and whether the stakeholders included all the relevant non – state actors.

4.2.7 The findings supports the notion that having sound governance and PPP framework is not nearly enough. What is particularly important to flag in the Chen et al study on the latest trends, drivers, processes and impacts of Australian port privatisation is that there remains the risk of "undervaluing port assets, increased port charges, impeded port competition, less port investment, and less concern for the public interest in the long term" (Chen, 2016).

4.2.8 As much as all the findings of Chen et al (Chen, 2016) are important to note, special attention is drawn to the issue of public interest, because to sideline legitimate concerns of civic society and relevant non – state actors is tantamount to denying a country its socio – economic development cognisant that socio – economic development is the principal driver of PPPs. One way to overcome that problem and very real risk is to include a deal breaker provision in PPP contracts for Namibia or any country venturing into port development and related PPPs.

4.2.9 Chen et al also acknowledges that the impact of port privatisation cannot following its implementation be gleaned in the short – term and it would therefore be premature to draw conclusions (Chen, 2016). The same rings true for the PoM lease that is still in its infancy stages, which is part of the reason why writer hereof was confronted with the problem that the impact of the PoM lease has not been studied, as yet.

4.3 Summary

4.3.1 The PoM case study demonstrates the importance of taking a long – term view during and beyond the tenure of PPPs is a critical decision making tool in deciding what form a PPP should take and/or whether or not to actually pursue a PPP relationship.

4.3.2 The existing literature on PPPs disappointingly does not to a large extent deal with the extent of the relationship with civic society and other non – state actors.

4.3.2 Moreover, the PoM lease has proven that striking an equilibrium between the rights of both a private entity and a public enterprise is key to enabling successful PPPs, more so as part of finding a fair, equitable and optimal solution for a PPP relationship.

Chapter 5 Summary and Conclusions

5.1 Summary and Conclusions

5.1.1 Ports have a critical role to play in shaping trade, growth and the socio – economic landscape of Namibia, as is the case globally. It would appear that Namibia's PPP framework in its current form is not fit for purpose or adequate to respond to Namibia's port development and blue economy ambitions.

5.1.2 Unfortunately, most studies on the subject of PPPs have mostly been restricted to the economic, financial and administration pillars of PPPs, albeit one of the most important drivers of PPPs, being the social value to civic society. Furthermore, studies revealed that key actors such as civic society tend to be overlooked or sidelined throughout the PPP lifecycle.

5.1.3 Having examined the PPP framework for South Africa and Australia, this research has further concluded that good governance requires much more multifaceted interrogations in deciding whether or not to actually use a PPP to close port infrastructure and service gaps and/or as a tool to attract private sector investment (Beuve, 2018) for the port development leg of Namibia's blue economy.

5.1.4 What was also observed from the research herein is that PPPs are not suitable for all types of projects.

5.1.5 Having world class legislative, regulatory, oversight, monitoring structures are key mechanisms as part of creating a conducive and sustainable environment for PPPs, which it is argued will attract and retain much needed private sector investments.

5.1.6 One of the most important insights is that the main purpose of PPPs is "to provide better infrastructure and services to the population in a way that creates value for money" as part of closing infrastructure gaps due to budgetary controls and deficits (Reyes-Tagle, 2018).

5.1.7 The following additional significant findings and lessons learnt emerged from the comparative legal analysis conducted in chapter 3 and 4:

5.1.7.1 when deciding whether or not to use a PPP for infrastructure development, a detailed business case and needs analysis must be conducted to ascertain whether the PPP will deliver better value for money as compared to other traditional procurement methods;

5.1.7.2 a public interest and public policy test must be conducted when considering PPPs as a means for infrastructure development or service delivery (Wernek, 2015);

5.1.7.3 as part of safeguarding the rights of both parties to a PPP contract, there must be an optimal sharing of risks, that is, to the party best placed to manage the risks so identified;

5.1.7.4 fortifying PPPs as a long term port development solution requires the consistent application of governance principles of transparency, public accountability and reporting, co – operation, fairness, equity, competition and optimal risk sharing;

5.1.7.5 stakeholder engagement and involvement of all actors and stakeholders, alongside transparency and accountability is the golden thread that must run throughout the PPP process;

5.1.7.6 the importance of having an independent PPP Unit in place with the required cross – functional skills and resources is essential;

5.1.7.7 capacity building and in – depth skills development programmes for persons not only in the PPP Unit, but for all focal points employed at various Government bodies and enterprises is key;

5.1.7.8 clearly defined performance measures and targets must be identified and applied, that is beyond financial and administrative functions, as part of defining how success of a PPP will be measured;

5.1.7.9 a long – term view during and beyond the tenure of PPPs is a critical decision making tool in deciding whether or not to actually pursue a PPP relationship and/or the specific form a PPP should take, and

5.1.7.10 regardless of the approach taken, it is ultimately about preserving state assets, protecting civic society and end users, whilst simultaneously balancing the interests of all actors, stakeholders, the state and private entities.

5.2 Recommendations

5.2.1 Cognisant of the socio – political – economic and legal environment as well as other circumstances that may affect port development in Namibia, the five recommendations hereinafter listed are considered realistic and worth pursuing as a matter of priority at this stage of Namibia's PPP journey as part of securing successful PPP outcomes for Namibia's port development, which recommendations will be presented to the Namibian Government's for its consideration and adoption:

5.2.1.1 amend the Namport Act to include a new section that allows Namport to contract with private investors or terminal operators to design, build, rehabilitate, develop, finance, maintain and operate port terminals or facilities;

5.2.1.2 the Aarhus Convention must be ratified and implemented by Namibia and pending same, the Namibian PPP framework to be amended to include civic society having the right to be provided with the right to access to information, participation in decision making and to seek justice concerning sustainability and environmental issues and activities;

5.2.1.3 the Namibian PPP Unit to develop and issue a harmonised PPP Policy and Guidelines for every envisaged sector covering the entire lifecycle of PPPs to be developed;

5.2.1.4 immediate adoption and strict adherence to proven PPP governance principles of transparency, accountability, optimal risk sharing, stakeholder involvement and communication before, during and after the lifecycle of a PPP project, and

5.2.1.5 the development of a blue economy strategy similar to that of Operation Phakisa as a matter of priority, with clear targets that are monitored and feedback loops provided to all interested and affected stakeholders and actor.

5.3 Future Research

5.3.1 A number of realistic recommendations for immediate adoption and implementation have been given, but future research is certainly required to disentangle the complexities of PPPs, governance challenges and to further enhance the understanding of PPPs versus traditional procurement methods.

5.3.2 The observation of possible conflict of laws is an important area for a follow up research on the topic of this dissertation, moreso a systematic and comprehensive review on the various PPP and blue economy sectors within Namibia from a policy, practice and outcomes perspective should be conducted, as part of developing a synergised and integrated oceans strategy, which strategy must examine the socio – economic potential of Namibia's extended continental shelf.

5.3.3 Future research should also study the impact that civic society involvement in decision – making has on PPP projects to understand and justify their importance, moreso the value add such actors bring to successful PPP outcomes and sustainable infrastructure development service delivery to citizens.

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