

IMPROVING THE LEGISLATION ON PUBLIC-PRIVATE PARTNERSHIPS IN ENVIRONMENTAL PROTECTION IN THE BRICS COUNTRIES

VALENTINA KVANINA,

South Ural State University (National Research University)
(Chelyabinsk, Russia)

EKATERINA KOVALENKO,

South Ural State University (National Research University)
(Chelyabinsk, Russia)

GALINA VYPKHANOVA,

Kutafin Moscow State Law University (Moscow, Russia)

<https://doi.org/10.21684/2412-2343-2023-10-3-106-121>

The Concept of Sustainable Development is one of the basic principles of the modern world. An increasing number of fields are coming under regulation governed by this concept. Recent updates to the environmental agenda have resulted in growing demands for increased environmental responsibility on the part of states and businesses. The global nature of environmental problems, their diversity and scale, and, at times, the irreversibility of the consequences of the negative environmental impact of the economy often provide for the consolidation of efforts by the state and business, particularly, through the implementation of public-private partnership (PPP) mechanisms. This article focuses on the pros and cons of legislation in the BRICS countries in the area of PPP practice in general and in environmental protection in particular. The data and PPP practices have been collected from the World Bank, UNCITRAL, and other official national sources related to PPP. An analysis of the legislation on PPPs in the BRICS countries indicates a lack of uniformity in the legal regulation of the relationships arising from this partnership, as well as a lack of specific legislation on PPPs specifically addressing environmental protection. The analysis shows that only those BRICS countries using the common law system (South Africa and India) have the instruments available to allow potential investors to fully assess the PPP model as it currently exists in a particular country. This practice developed as a result of a more flexible approach to the regulation

of public relations. Undoubtedly, one of the many advantages of this approach is the ability to adjust the PPP system and model all of the known forms and types of PPPs in accordance with the specific needs of society and the state. The lack of flexibility, for example, of the Russian legislation on PPP regulation, has led to the limited forms or types and objects of PPPs, which is inconsistent with the modern needs of society and the state to achieve the UN Sustainable Development Goals.

Keywords: public-private partnership; sustainable development; BRICS countries; environmental protection.

Recommended citation: Valentina Kvanina et al., *Improving the Legislation on Public-Private Partnerships in Environmental Protection in the BRICS Countries*, 10(3) BRICS Law Journal 106–121 (2023).

Table of Contents

Introduction

1. Research Method

2. Results

2.1. The Brazilian PPP Model

2.2. PPP Instruments in South Africa

2.3. China's PPP Legislation

2.4. India's PPP Legal Regulations

2.5. Russian Federation: Laws on PPP and Environmental Protection

Conclusion

Introduction

Modern challenges and threats from the ongoing pandemic, climate change, and rising natural hazards require the optimization and wider application of existing mechanisms as well as the introduction of new mechanisms in order to reduce anthropogenic pressure. The majority of environmental protection challenges are largely attributed to and interconnected with economic and social problems. At the same time, the environment serves as the primary habitat for people, flora, and fauna.

At the 48th session of the United Nations (U.N.) General Assembly (1993–1994), U.N. Secretary-General Boutros Boutros-Ghali noted:

The environment, like the world, economy, society, and democracy, permeates all aspects of development and affects all countries, regardless of

their development level. Development and the environment are not separate concepts, and problems in one of these areas cannot be successfully solved in isolation from the other. The environment is a source of potential resources for development. Its condition is an important criterion, and its preservation is the subject of constant attention in the development process. An environmentally sound policy is needed for successful development.¹

This policy is being implemented, among other things, through the concept of sustainable development, which is a key vector for a way out of the global crisis. The concept of sustainable development is defined by the U.N. World Commission on Environment and Development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Since 1987, it has been a yardstick for assessing the environment. The significance of this concept has only increased with time. In 1992, Program 21, which identified the main areas of sustainable development, was approved at a conference in Rio de Janeiro.² In 2002, the Declaration on Sustainable Development³ was adopted in Johannesburg, which became the foundation for the development and adoption of a new plan – “Transforming our World: The 2030 Agenda for Sustainable Development” (hereinafter the Concept of Sustainable Development) in 2015 in New York.

The Concept of Sustainable Development acts as an alternative to the long-standing consumerist attitude towards nature and extensive use of natural resources, which has existed for a long period of time and resulted in irreversible natural processes and unfavorable socio-ecological consequences. The conceptual approaches and principles of sustainable development focused on overcoming contradictions and achieving a balance between economic, social, and environmental interests, predetermine the need for a systematic and integrated approach when choosing a set of regulators and effective means to move towards the goal of “sustainability” of social order.

This fully applies to the ecological element of sustainable development, which is an equally important component of both the economy and social well-being. On the one hand, the solution to environmental problems lies within the scope of the state environmental policies that are implemented in different countries, and, on

¹ U.N. General Assembly, Report of the Secretary-General, *An Agenda for Development*, A/48/935, 6 May 1994, cl. 68, 69 (Jun. 2, 2023), available at <https://undocs.org/ru/A/48/935>.

² United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3–14 June 1992 (Jun. 2, 2023), available at <https://www.un.org/en/conferences/environment/rio1992>.

³ World Summit on Sustainable Development, 26 August – 4 September 2002, Johannesburg (Jun. 2, 2023), available at <https://www.un.org/en/conferences/environment/johannesburg2002>.

⁴ United Nations Summit on Sustainable Development, 25–27 September 2015, New York (Jun. 2, 2023), available at <https://www.un.org/en/conferences/environment/newyork2015>.

the other hand, it is directly related to the formation of socially and environmentally responsible behavior in business practices.

The environmental agenda has recently been updated worldwide, which has resulted in growing demands for increased environmental responsibility by the state and businesses. Companies and enterprises that make use of natural resources and follow the principles of environmental friendliness and social responsibility in the course of corporate governance (including in their investment policies) are gaining greater popularity and support. The vast majority of developed economies, primarily those in the European Union, follows and implements the principles of ESG (environmental, social, and corporate governance) investment or responsible investment. These principles are based on factors related to the environment, society, and corporate governance, the impact of which should be assessed in terms of the economic well-being of society, including when considering issues related to environmental protection and the implementation of the Concept of Sustainable Development.

At the same time, the global nature of environmental problems, their diversity and scale, and, at times, the irreversibility of the consequences of the negative environmental impact of the economy often provide for the consolidation of efforts by the state and business, in particular, through the implementation of public-private partnership (PPP) mechanisms.

In global practice, this form of cooperation between the government and the business community (which involves attracting private capital for the implementation of infrastructural, social, and other projects at the national level) covers various areas of activity (transport, healthcare, education, tourism, etc.). According to the World Bank's estimates, in 2020, the total global financing of PPPs totaled 45.7 billion U.S. dollars (252 infrastructural projects).⁵ At the same time, the top five countries included Brazil (7.733 million U.S. dollars), China (6.285 million U.S. dollars), India (5.251 million U.S. dollars), Mexico (4.269 million U.S. dollars), and Bangladesh (2.948 million U.S. dollars).⁶

As of September 2020, Russia had implemented over 3,000 projects worth more than 4.5 trillion rubles, out of which private investments amounted to 3.1 trillion rubles (69%). 63% of project investments were allocated to transport infrastructure, 18% to utilities and energy, 9% to social infrastructure, and 6% to information technology (IT) infrastructure.⁷

⁵ The World Bank, *Private Participation in Infrastructure (PPI): 2020 Annual Report* (2020) (Jun. 2, 2023), available at https://ppi.worldbank.org/content/dam/PPI/documents/PPI_2020_AnnualReport.pdf.

⁶ *Id.*

⁷ Инвестиции в инфраструктуру и ГЧП. Как кредитные рейтинги помогут привлечь новых игроков? [PPP Center, *Investment in Infrastructure and PPP. How Can Credit Ratings Help Attract New Players?*] 33 (2019).

The importance of PPPs in solving global social problems, including those of environmental protection, is evidenced by the adoption of the U.N. General Assembly Resolution – UNCITRAL Legislative Guide on Public-Private Partnerships on 18 December 2019. This Guide highlights the important role of PPPs in environmental protection for the achievement of the U.N. Sustainable Development Goals (SDGs), the significance of which is particularly growing in the conditions of the epidemiological situation (pandemic) and economic recession.

The BRICS countries have also included PPPs and SDGs in their agendas, focusing on the development of modern IT technologies, the power generation sector, and the reduction of greenhouse gas emissions.⁸ An integral part of these and similar projects is the environmental component.

Along with national PPP projects, agreements were reached between the environmental ministers of the BRICS countries within the framework of the BRICS Environmentally Sound Technology Platform (BEST)⁹ created in 2015. The main areas of focus of BEST covered the following programs: Clean Rivers of BRICS (2016), Partnership on Urban Environmental Sustainability Initiative (2017), Cooperation in the Field of Environmental Protection (2018), and the implementation of Best Available Technologies (2019).¹⁰ The importance of PPPs in the environmental sphere (air quality, water, biodiversity, climate change, waste management, and the SDGs) was highlighted within the framework of the Urban Sustainability Partnership.¹¹ Moreover, the New Development Bank, founded by the BRICS group of countries in 2015, also focuses on the development of PPPs for its projects.

The approaches taken by each of the BRICS countries in their understanding of PPPs are very similar to one another.¹² In China, PPPs are understood as an innovative long-term partnership (interaction) between the government and entrepreneurs, aimed at the development of infrastructure, provision of public services associated with obtaining mutual benefits and distributing risks.¹³ In Brazil, public-private partnerships are a form of cooperation in which the government, nonprofit, and

⁸ Leonid Grigoriev, *Sustainable Development Goals – BRICS Countries' Specifics*, International Affairs 60 (2020) (Jun. 2, 2023), available at <https://eng.brics-russia2020.ru/images/39/54/395496.pdf>.

⁹ Environment, BRICS INDIA 2021 (Jun. 2, 2023), available at <https://brics2021.gov.in/environment>.

¹⁰ Joint statement for the 5th BRICS ministers of environment meeting: Contribution of urban environmental management to improving the quality of life in cities (2019) (Jun. 2, 2023), available at http://brics2019.itamaraty.gov.br/images/documentos/PDFBRICS2019_Draft_FINAL_STATEMENT_5th_BRICS_Environment_Ministerial_Meeting_Rev1.pdf.

¹¹ Elena Gladun, *Chief Editor's Note on Collaboration and Research as the Key Contribution to the BRICS Environmental and Sustainable Development Agenda*, 8(2) BRICS L.J. 4 (2021).

¹² Hanna Kociemska, *Development of Public-Private Partnerships (PPPs) in Diversified Economic Areas*, in Hanna Kociemska, *Public-Private Partnership for Sub-Saharan Africa* 13 (2019).

¹³ Yongheng Yang et al., *Promoting Healthy and Sustainable Development of PPP in China*, in Tianyi Wang et al. (eds.), *Research Series on the Chinese Dream and China's Development Path 1* (2020).

for-profit companies work together on specific projects in order to derive greater benefits and more value from the cooperation. In the majority of instances, this cooperation is long-term, aimed at the production of goods and the provision of services, and based on private investments, allowing the government to reduce costs, risks, etc.¹⁴ In India, a PPP typically refers to a project based on an agreement or concession agreement between the government or a statutory entity, on the one hand, and a private sector company, on the other, to provide infrastructural services through the collection of user fees.¹⁵ In Russia, a PPP is defined as

a formalized agreement concluded for a certain period, based on resource pooling and distributing risks, a mutually beneficial cooperation between public and private partners aimed at solving public, municipal, and other socially significant tasks, carried out through the implementation of investment projects pertaining to objects within public interest and control.¹⁶

PPPs are implemented in various forms across the world. For example, the UNCITRAL Legislative Guide on PPPs also covers leases, service agreements, turnkey contracts, and design-build-finance-operate contracts. From an economic standpoint, more than twenty basic PPP models are distinguished, starting with the model of complete state control and ending with the transfer of objects (i.e. civil works, such as roads, dams, airports, and water treatment facilities and services such as those in the healthcare and education sectors) to private ownership.¹⁷

The potential of PPPs in environmental protection has not yet been fully realized. In particular, there are unresolved problems with PPP objects in the environmental sphere and a lack of special legal regulation of the relationships arising on the basis of these objects. In the legal and scientific literature, various opinions are expressed on these problems, including the need to be able to use PPP models for any objects in this area.¹⁸

¹⁴ Mahmood Ahmad & Muhammad Y. Raza, *Role of Public-Private Partnerships Investment in Energy and Technological Innovations in Driving Climate Change: Evidence from Brazil*, 27 Environ. Sci. & Pollution Res. Int'l 30638 (2020).

¹⁵ Scheme and Guidelines for Financial Support to Public Private Partnerships in Infrastructure (2013), Annex-I. 3/, at 6 (Jun. 2, 2023), available at <https://ppp.worldbank.org/public-private-partnership/library/scheme-and-guidelines-financial-support-public-private-partnerships-infrastructure>.

¹⁶ Публично-частное партнерство в России и зарубежных странах: правовые аспекты / под ред. В.Ф. Попондопуло, Н.А. Шевелевой [Vladimir F. Popondopulo & Natalia A. Sheveleva (eds.), *Public-Private Partnership in Russia and Abroad: Legal Aspects*] 528 (2015).

¹⁷ Голубцов В.Г. Совершенствование правового регулирования отношений в сфере государственно-частного партнерства на современном этапе // Вестник Пермского университета. Юридические науки. 2014. № 1. С. 179–188 [Valery G. Golubtsov, *Improving the Legal Regulation of Public-Private Partnership Relations at the Present Stage*, 1 Bulletin of Perm University, Legal Sciences 179 (2014)].

¹⁸ Бабич А.А. Правовое регулирование государственно-частного партнерства в сфере охраны окружающей среды: дис. ... канд. юрид. наук [Arseny A. Babich, *Legal Regulation of Public-Private Part-*

Some experts have proposed expanding the list of areas of environmental protection included in the PPP mechanism in the relevant legislation.¹⁹ When considering the integration of the BRICS member countries, it is necessary to study the legislation of each individual member country of the association, develop common approaches to building national PPP models with the participation of international actors, and eliminate uncertainties in the legal regulation of these relationships as well as any legislative gaps.

The UNCITRAL Legislative Guide on Public-Private Partnerships expresses concerns about an inadequate legal framework for PPPs and insufficient transparency, both of which may impede investments in infrastructure and public services. It invites countries interested in promoting private sector investments in infrastructure to review the existing sector-specific legislation in order to determine its applicability for PPPs.

1. Research Methods

When writing this article, we used comparative legal research methods to conduct an analysis of the international legislation on the objectives of sustainable development and PPPs, the legislation of the BRICS countries on PPP in environmental protection, and the practice of its implementation. Based on this analysis, we came to the conclusion that the BRICS countries need to update their legislation on PPPs.

2. Results

An analysis of the legislation relating to PPPs in the BRICS countries indicates a lack of uniformity in the legal regulation of the relationships arising from such a partnership, as well as a lack of specific legislation governing PPP projects for environmental protection. A similar situation can be found in the legislation of the majority of countries worldwide. Moreover, there are no two countries in the world with identical PPP legislation or governance systems in this area; rather, each country has its own institutional environment, level of PPP development, unique public

nership in Environmental Protection: Thesis] 12 (2021); Кванина В.В. Публично-частное партнерство в сфере охраны окружающей среды // Вестник ЮУрГУ. Серия «Право». 2021. Т. 21. № 3. С. 85–92 [Valentina V. Kvanina, *Public-Private Environmental Partnership*, 21(3) Bulletin of South Ural State University, Series "Law" 85 (2021)].

¹⁹ Маслова Е.М. Перспективы государственно-частного партнерства в области правовой охраны окружающей среды и рационального природопользования // Электронное приложение к «Российскому юридическому журналу». 2015. № 5. С. 59–66 [Ekaterina M. Maslova, *Prospects for Public-Private Partnership in Legal Environmental Protection and Environmental Management*, 5 Electronic Supplement to the Russian Legal Journal 59 (2015)]; Babich 2021, at 11; Выпханова Г.В. Теоретико-правовые проблемы экологических инноваций и меры государственной поддержки их внедрения // Законодательство. 2020. № 12. С. 22–30 [Galina V. Vypkhanova, *Theoretical and Legal Problems of Environmental Innovations and Measures of State Support to Implement Them*, 12 Legislation 22 (2020)].

administration, business traditions, cultural traits, and national and psychological features, all of which affect the formation of models of partnership between the state and business.²⁰

Due to the lack of special legislation on PPPs for environmental protection in the BRICS countries, the legal regulation of the relationships under this agreement at the national level is carried out within the framework of the general legislation on PPPs and is characterized by significant differences.

2.1. The Brazilian PPP Model

The Brazilian PPP model is based primarily on Law No. 11,079 of 30 December 2004, "Institutes General Rules for Bidding and Hiring Public-Private Partnerships within the Public Administration" (Institui normas gerais para licitação e contratação de parceria público-privada no âmbito da administração pública, Lei No. 11.079 de 30 de Dezembro de 2004).²¹ This law is supplemented by the Law on Concession Agreements (Dispõe sobre o regime de concessão e permissão da prestação de serviços públicos previsto no art. 175 da Constituição Federal, e dá outras providências, Lei No. 8.987 de 13 de Fevereiro de 1995²²), the Law on Administrative Contracts and Tenders (Lei de Licitações e Contratos Administrativos, Lei No. 14.133 de 1 de Abril de 2021²³), and the Investment Partnership Program (Cria o Programa de Parcerias de Investimentos – PPI, Lei No. 13.334 de 13 de Setembro de 2016²⁴).

The concession agreement is the main form of a PPP agreement in Brazil, which is explained by a constitutional provision, namely Article 175 of the Brazilian Constitution²⁵ and obliges public authorities to provide public services directly or according to the concession or permit regime. At the same time, Law No. 8,987/95 (Art. 2) emphasizes that the concluded contracts are aimed at the provision of state or public services and Law No. 11,079/04 (Art. 2) provides for a sponsored concession (a concession for the provision of public services or public works, including, in addition to tariffs charged to users, a monetary remuneration from a public partner to a private person) and an administrative concession (a contract for the provision

²⁰ Oleg V. Ivanov & Agnessa O. Inshakova, *Public-Private Partnerships in Russia: Institutional Frameworks and Best Practices* 312 (2020).

²¹ Lei nº 11.079 de 30 de dezembro de 2004 (Jun. 2, 2023), available at http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2004/Lei/L11079.htm.

²² Lei nº 8.987 de 13 de fevereiro de 1995 (Jun. 2, 2023), available at https://www.planalto.gov.br/ccivil_03/leis/l8987cons.htm.

²³ Lei nº 14.133 de 1 de abril de 2021 (Jun. 2, 2023), available at http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2021/Lei/L14133.htm#art186.

²⁴ Lei nº 13.334 de 13 de setembro de 2016 (Jun. 2, 2023), available at http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/L13334.htm.

²⁵ Constituição da República Federativa do Brasil de 1988 (Jun. 2, 2023), available at http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm#art175.

of services in which the public administration is a direct or indirect user, even if this includes the performance of works or the delivery and installation of goods).

This legislation does not limit the objects of the concession agreement. First of all, the administration delegates the responsibility to provide a service to a private partner, and secondly, the agreement determines the individual conditions (with or without preliminary construction works, as well as the remuneration paid by the users and the state, or only the state²⁶). Various arrangements between the state and businesses can be exemplified by the following programs: (a) the State Parks Concession (Programa de Concessão de Parques Estaduais (PARC)) aimed at implementing innovations in the management of the protected areas of the state to be used to preserve the environment;²⁷ (b) a project for the implementation of photovoltaic power plants as a way to introduce renewable power sources to meet the needs of municipalities.²⁸

2.2. PPP Instruments in South Africa

In contrast to the countries of the Romano-Germanic system of law, the primary PPP instrument in South Africa is Treasury Regulation 16 to the Public Finance Management Act, 1999 (PFMA)²⁹ issued by the PPP division of the National Treasury.³⁰ Regulation 16 provides for two main PPP areas: (a) the private party performs an institutional function; (b) the private party acquires the right to use public property (movable and immovable property, as well as intellectual property) for its own commercial purposes. Both of these forms can be combined.³¹

The National Treasury has developed the PPP Manual³² and Standardized PPP Provisions³³ in order to establish a unified approach to PPP regulation in South Africa. These documents fully provide for the entire process of regulating PPP relationships. In particular, they provide for six stages of the PPP Project Cycle: project announcement,

²⁶ Cesar Queiroz et al., *An Overview of the Brazilian PPP Experience from a Stakeholders' Viewpoint*, Inter-American Development Bank, Infrastructure and Environment Sector, Technical Note No. IDB-TN-641 (2014), at 13 (Jun. 2, 2023), available at <https://publications.iadb.org/publications/english/document/An-Overview-of-the-Brazilian-PPP-Experience-from-a-Stakeholders-Viewpoint.pdf>.

²⁷ Parques Estaduais, Concessões e Parcerias (Jun. 2, 2023), available at <http://www.ppp.mg.gov.br/projetos/projetos-em-estruturacao/parques-estaduais>.

²⁸ Conselho gestor aprova estudos para nove concessões e PPPs, Prefeitura de Porto Alegre (Jun. 2, 2023), available at http://www2.portoalegre.rs.gov.br/ppp/default.php?reg=311&p_secao=1120.

²⁹ Public-Private Partnership Manual (Jun. 2, 2023), available at <https://www.gtac.gov.za/Publications/1160-PPP%20Manual.pdf>.

³⁰ Mzwanele Mfunwa et al., *Public-Private Partnerships for Social and Economic Transformation in Southern Africa: Progress and Emerging Issues*, 2(2) Southern African J. Pol'y & Dev. 6 (2016).

³¹ Public-Private Partnership Manual, *supra* note 29.

³² *Id.*

³³ Standardized Public-Private Partnership Provisions (Jun. 2, 2023), available at <https://www.gtac.gov.za/Publications/1280-Standardised%20Public-Private%20Partnership%20Provisions.pdf>.

project study, tenders to conclude a contract, project development, implementation, and completion. Key performance indicators and responsible persons are identified at each stage. Moreover, the stage of each project can be tracked and monitored.³⁴ These instruments do not distinguish between the different forms or types of PPP agreements and do not define PPP objects. The main difference between PPP agreements is their forms of financing (the process of attracting funds to the project).³⁵ However, along with the standard types of PPP (BOT, DFBOT, DF (part) BOT, etc.), reporting data³⁶ also includes DFOM, DFO, equity partnership, facilities management, tourism concession, and renovation. For example, a concession agreement for the investment in water supply and sanitation in the Ilembe District Municipality was concluded between South Africa and Siza Water Company (Pty) Ltd.³⁷

A peculiar feature of PPPs in South Africa is the application of the Black Economic Empowerment (BEE) policy, which aims to promote a greater participation of black people in the economy. This policy is implemented by verifying the compliance of the PPP project with the requirements of the Broad-Based Black Economic Empowerment Act, 2003. In particular, the report on each PPP project should indicate the percentage of BEE included.³⁸

2.3. China's PPP Legislation

In China, a wide variety of legislative authorities and agencies are empowered to issue legal instruments of varying legal force.³⁹ Laws form the basis of national regulation. However, a major role is also assigned to the government, which is responsible for enacting by-laws. As for PPPs, since 2014, the Chinese government has begun to recommend the use of various types of PPPs as a means to provide public services in a wider range of sectors, including power engineering, transport, water and environmental protection, agriculture and forestry, science and technology, affordable housing, medical services, healthcare, senior care, education, culture, etc.⁴⁰

³⁴ See <https://www.gtac.gov.za/Publications/Updated-PPP-Project-List-April-2021.pdf> (Jun. 2, 2023).

³⁵ See Standardised PPP Provisions (B).

³⁶ See PPP Projects signed/Closed in terms of Treasury Regulation 16, as of September 2017 (Jun. 2, 2023), available at <https://www.gtac.gov.za/Publications/Signed-Closed%20PPP%20Projects%20updated%20doc.pdf>.

³⁷ A Case Study on Ilembe – Siza Water Concession, SADC PPP Case Studies (Jun. 2, 2023), available at https://saiia.org.za/wp-content/uploads/2012/07/ppp_ilembe__siza_water_concession.pdf.

³⁸ GTAC – Government Technical Advisory Centre (Jun. 2, 2023), available at <https://www.gtac.gov.za/Pages/projects.aspx>.

³⁹ OECD, *Regulatory Governance*, in OECD Reviews of Regulatory Reform: China 2009: Defining the Boundary Between the Market and the State (2009) (Jun. 2, 2023), available at <https://doi.org/10.1787/9789264059429-4-en>.

⁴⁰ Jihong Wang, *A General Introduction to Public-Private Partnerships in China*, Lexology (2020) (Jun. 2, 2023), available at <https://www.lexology.com/library/detail.aspx?g=55bbf186-d7b0-4726-9532-8289f4676719>.

China has no basic PPP law; regulation is carried out through a combination of laws that include the Contract Law of the People's Republic of China (1999), Implementing Regulations of the Government Procurement Law of the People's Republic of China (2015), Government Procurement Law of the People's Republic of China (2003); documents defining the national policy (for example, the Guiding Opinions on Further Stimulating Effective Private Investment Vitality and Promoting Sustainable and Healthy Development of the Economy (2017), the Circular of the General Office of the State Council on Guiding Opinions on Promoting the Public-Private Partnership Model in the Public Service Fields (Guo Ban Fa [2015] No. 42), etc.). In addition, the country employs various standards and guidelines, such as the Circular of the Ministry of Finance on Issuing the Operation Guideline for Performance Management of PPP Projects (Cai Jin [2020] No. 13),⁴¹ Implementation Opinions on Promoting Regulated Development of Public Private Partnerships (Cai Jin [2019] No. 10), and the Interpretation on the Circular on Regulating Project Database of the National PPP Integrated Information Platform (2018), among others.

The many multi-level documents did not lead to transparency and specificity in the PPP legislation in China. For example, one of the documents proposes the use of many different instruments, such as switching to mixed ownership and creating foundations or trade unions to encourage private capital to participate in the financing of large-scale PPP projects.⁴²

Nevertheless, the lack of distinct forms or types of PPPs as well as the mechanisms for their implementation that have been established at the legislative level does not prevent China from pursuing an active development of this area. For example, the Guiding Opinions of the State Council on Innovating the Investment and Financing Mechanisms in Key Areas and Encouraging Social Investment identified the following priority areas: provision of public services, resources and the environment, environmental protection, infrastructure, etc.⁴³

Ongoing PPP projects in China include the following:

1. The Project of Watershed Governance for the Botanical Garden Section (Nakao River) in the Upper Reaches of the Zhupai River in Nanning City.⁴⁴ The project includes river regulation, pollution prevention, environmental preservation of the river bed,

⁴¹ Announcement of the First Batch of Commissioned Research Solicitation for Projects in the PPP Field in 2022 from the Government and Social Capital Cooperation Center of the Ministry of Finance (Jun. 2, 2023), available at <http://www.cpppc.org/en/czb/994049.jhtml>.

⁴² Guiding Opinions on Further Stimulating Effective Private Investment Vitality and Promoting Sustainable and Healthy Development of the Economy (Jun. 2, 2023), available at <http://www.cpppc.org/en/zy/995763.jhtml>.

⁴³ Guiding Opinions of the State Council on Innovating the Investment and Financing Mechanisms in Key Areas and Encouraging Social Investment (Jun. 2, 2023), available at <http://www.cpppc.org/en/zy/994006.jhtml>.

⁴⁴ China Public Private Partnerships Center (Jun. 2, 2023), available at <http://www.cpppc.org/en/zlk/999250.jhtml>.

landscaping of the riverbanks, construction of treatment facilities, the creation of a sponge city, and information monitoring;

2. The Huhan East Lake Greenway Phase II Project.⁴⁵ This project includes the creation of four landscape green spaces and the construction of eleven landscape nodes.

2.4. India's PPP Legal Regulations

Since the legal system of India is based on the English Common Law system, the lack of specific PPP legislation is understandable. The basics of legal PPP regulation in this country include various guidelines issued by the authorities, such as the Scheme and Guidelines for Financial Support to PPP in Infrastructure;⁴⁶ Guidelines for Formulation, Appraisal, and Approval of Central Sector PPP Projects; and Guidelines for Formulation, Appraisal, and Approval of Central Sector PPP Projects.⁴⁷

The emphasis in the development of PPPs is placed on the sectors of social and commercial infrastructure, transport, and water treatment, as well as the energy sector. The Scheme and Guidelines for Financial Support to PPPs in Infrastructure limit the scope of PPPs to fifteen main areas.

Similar to the regulation in South Africa, the instruments of the Ministry of Finance of India provide for a phased regulation of relations to conclude and execute PPP agreements. Despite the lack of detailed characteristics of the types of PPP agreements in these instruments, the reporting data⁴⁸ contain both traditional PPPs, such as BOT, DFBOT, BOO, etc., as well as atypical ones, such as leases, hybrid annuity modes (HAM), management contracts (O&M), operation, management, and development agreements (OMDA), input based distribution franchisees, etc.

Illustrative examples of PPPs in the environmental sector in India are the concession agreements for the Teesta IV Project, a 520 MW hydro-power project in the state of Sikkim, the Biomass power project at Sattenapalli, and the creation of a 20 MW hydel based power unit at Telbeila near the city of Pune. All of these agreements were concluded to develop the energy sector to use renewable sources.⁴⁹

2.5. Russian Federation: Laws on PPP and Environmental Protection

Russia has no specific laws on PPPs pertaining to environmental protection; instead, this country has adopted general laws on the various types of PPPs, such as

⁴⁵ The Huhan East Lake Greenway Phase II Project (Jun. 2, 2023), available at <http://www.cpppc.org/en/zlk/999300.jhtml>.

⁴⁶ Scheme and Guidelines for Financial Support to Public Private Partnerships, *supra* note 15.

⁴⁷ Guidelines for Formulation, Appraisal, and Approval of Central Sector PPP Projects (Jun. 2, 2023), available at https://www.pppinindia.gov.in/documents/20181/21751/VGF_GuideLines_2013.pdf/.

⁴⁸ See [https://www.pppinindia.gov.in/infrastructureindia/project-list?id=1&searchType=Government%20Infrastructure%20Projects%20\(PPP\)](https://www.pppinindia.gov.in/infrastructureindia/project-list?id=1&searchType=Government%20Infrastructure%20Projects%20(PPP)) (Jun. 2, 2023).

⁴⁹ The World Bank, *supra* note 5.

Federal Law No. 115-FZ, “On Concession Agreements” dated 21 July 2005 and Federal Law No. 224-FZ, “On Public-Private Partnership and Municipal-Private Partnership in the Russian Federation” dated 13 July 2015. These laws indicate specific areas in environmental protection where PPPs can be used, such as the production, transmission, and distribution of electrical energy (in terms of using renewable energy sources), ecotourism, processing, recycling, detoxification, disposal of solid municipal waste, melioration systems, etc. The list of these areas has been finalized. The list of PPP objects is also finalized and includes immovable property or immovable and movable property technologically related to each other (with some exceptions in the area of information technology) to be created or reconstructed by the private partner. The main objects of concession agreements in the field of environmental protection are the construction or reconstruction of solid waste landfills, dams for hydroelectric power stations, snow-melting stations, hydraulic structures, parks, and other similar projects.⁵⁰

According to statistics, concession agreements in Russia account for 42% of the total volume of investments, PPP agreements account for 16%, and all other forms of PPPs account for 43%.⁵¹ A significant share of these projects is aimed at environmental protection. These figures indicate a significant number of PPP projects that fall outside the scope of special legislation on PPPs.

Conclusion

Our analysis of the legislation on PPPs in the BRICS countries indicates that there is an emerging global trend towards expanding the use of mechanisms to attract private investments in conjunction with the capabilities of the public sector for the implementation of infrastructural and other socially significant projects in environmental protection, in a manner that is consistent with the provisions of the concept of sustainable development and contributes to the achievement of the U.N. Sustainable Development Goals.

Our analysis also showed that only the BRICS countries using the common law system (South Africa and India) have the instruments available to allow potential investors to fully assess the current PPP model in a particular country. This practice developed as a result of a more flexible approach to the regulation of public relations. Undoubtedly, the advantage of taking this approach is the ability to adjust the PPP system and model the known forms and types of PPPs to meet the specific needs of society and the state. The lack of flexibility, for example, of the Russian legislation

⁵⁰ Росинфра [Rosinfra] (Jun. 2, 2023), available at <https://rosinfra.ru/>.

⁵¹ Инвестиции в развитие городской инфраструктуры: зарубежные и российские тренды [Rosinfra, *Investments in the Development of Urban Infrastructure: Foreign and Russian Trends*] (2021) (Jun. 2, 2023), available at <https://pppcenter.ru/upload/iblock/e74/e7449111d9d1f9cf2a1030a21adcfab.pdf>.

on PPP regulation, has led to the limited forms, types, and objects of PPPs, which is inconsistent with the modern needs of society and the state to achieve the SDGs.

For interstate projects using environmental PPPs, as well as large-scale projects implemented under the BRICS Environmentally Sound Technology Platform, it is necessary to develop common approaches, principles for the formation and assessment of the implemented projects, the conditions for using forms and models of environmental PPPs, as well as mechanisms used in supranational interaction. Such an approach is in line with the Strategy for BRICS Economic Partnership.⁵² This strategy provides for the development of PPPs as a tool for attracting additional resources, as well as investments from the BRICS member states in the processing of mineral resources; the introduction of environmentally friendly technologies of production, storage, and consumption of energy resources; the promotion of the use of renewable energy sources; an increase in the efficiency of using clean energy sources; and the practical implementation of sustainable development initiatives in the BRICS countries, taking national interests into account.

However, the formation of a supranational PPP system in the BRICS countries and the implementation of environmental projects further require a differentiated approach that not only takes into account the specifics of the environmental sphere but also sets target values, tasks, and indicators to be reached in order to achieve environmental and environmentally oriented SDGs.

It is necessary to expand the subject area and the list of PPP objects to implement projects that ensure the protection of the environment, its individual components, ecosystems, resource conservation, environmental safety, and a favorable environmental setting of territories, cities, and other settlements. Additionally, the national legislation on PPPs in the BRICS countries should be made transparent for investors, which means, among other things, enshrining the main obligations and responsibilities of not only the private but also the public partners, as well as guarantees of investors' rights.

Acknowledgements

This article was prepared with the financial support of the Russian Foundation for Basic Research and the Chelyabinsk Region (Project No. 20-411-740012).

⁵² Стратегия экономического партнерства БРИКС до 2025 года [BRICS Economic Partnership Strategy until 2025] (Jun. 2, 2023), available at <https://www.economy.gov.ru/material/file/636aa3edbc0dcc2356ebb6f8d594ccb0/1148133.pdf>.

References

Ahmad M. & Raza M.Y. *Role of Public-Private Partnerships Investment in Energy and Technological Innovations in Driving Climate Change: Evidence from Brazil*, 27 Environmental Science and Pollution Research International 30638 (2020). <https://doi.org/10.1007/s11356-020-09307-w>

Gladun G. *Chief Editor's Note on Collaboration and Research as the Key Contribution to the BRICS Environmental and Sustainable Development Agenda*, 8(2) BRICS Law Journal 4 (2021). <https://doi.org/10.21684/2412-2343-2021-8-2-4-9>

Grigoriev L. *Sustainable Development Goals – BRICS Countries' Specifics*, International Affairs 60 (2020).

Ivanov O.V. & Inshakova A.O. *Public-Private Partnerships in Russia: Institutional Frameworks and Best Practices* (2020). <https://doi.org/10.1007/978-3-030-56352-3>

Kociemska H. *Public-Private Partnership for Sub-Saharan Africa* (2019). <https://doi.org/10.1007/978-3-030-14753-2>

Mfunwa M. et al. *Public-Private Partnerships for Social and Economic Transformation in Southern Africa: Progress and Emerging Issues*, 2(2) Southern African Journal of Policy and Development 6 (2016).

Queiroz C. et al. *An Overview of the Brazilian PPP Experience from a Stakeholders' Viewpoint*, Inter-American Development Bank, Infrastructure and Environment Sector, Technical Note No. IDB-TN-641 (2014). <https://doi.org/10.1061/9780784480267.043>

Yang Y. et al. *Promoting Healthy and Sustainable Development of PPP in China*, in Wang T. et al. (eds.), *Research Series on the Chinese Dream and China's Development Path 1* (2020). https://doi.org/10.1007/978-981-15-5724-8_1

Кванина В.В. Публично-частное партнерство в сфере охраны окружающей среды // Вестник ЮУрГУ. Серия «Право». 2021. Т. 21. № 3. С. 85–92 [Kvanina V.V. *Public-Private Environmental Partnership*, 21(3) Bulletin of South Ural State University, Series "Law" 85 (2021)].

Публично-частное партнерство в России и зарубежных странах: правовые аспекты / под ред. В.Ф. Попондопуло, Н.А. Шевелевой [Popondopulo V.F. & Sheveleva N.A. (eds.), *Public-Private Partnership in Russia and Abroad: Legal Aspects*] (2015).

Information about the authors

Valentina Kvanina (Chelyabinsk, Russia) – Professor, Head, Department of Business, Competition and Environmental Law, Institute of Law, South Ural State University (National Research University) (76 Lenina Ave., Chelyabinsk, 454080, Russia; e-mail: kvaninavv@susu.ru).

Ekaterina Kovalenko (Chelyabinsk, Russia) – Senior Lecturer, Department of Business, Competition and Environmental Law, Institute of Law, South Ural State University (National Research University) (76 Lenina Ave., Chelyabinsk, 454080, Russia; e-mail: kovalenkoei@susu.ru).

Galina Vypkhanova (Moscow, Russia) – Professor, Department of Environmental and Natural Resources, Kutafin Moscow State Law University (9 Sadovaya-Kudrinskaya St., Moscow, 125993, Russia; e-mail: msal@msal.ru).