Public-Private Partnerships
in the context of
U.N. Common Premises

Introduction and Background

The primary responsibility for providing office premises for UN agencies rests with the host Government as stipulated under the Host country agreement signed between the host Government and the concerned UN agency. However, in many cases, the Government is unable to provide premises that are safe, secure, affordable and in good condition. Instead, the host Government offers a plot of land with the expectation that the UN system will develop the property.

The paper does not go into details of other office premises options. Where the existing modalities of obtaining office premises are not attainable, alternative options need to be explored. In 2011, the UNDG Task Team on Common Premises (TTCP) introduced the possibility of utilizing a Public-Private Partnership or PPP as an alternative funding mechanism to address the issue of financing which remains a key constraint in pursuing construction of common premises. Construction is not part of the UN's mandate. Moreover, the TTCP has recognized that this modality is highly complex, and fraught with risks which tend to be considerably higher in numerous countries where the UN operates. To mitigate these risks, a comprehensive PPP policy and/or guidelines require the collective UN expertise in facilities, finance, procurement, legal and ethics.

Current Scenario

Currently, there are five modalities of occupancy for UN[1] office premises. The following table lists these in decreasing order of preference (an expanded version of the table with other possibilities is presented in Annex A :

Existing Modalities		Ownership	Rent
1	Government-provided premises	Government	Rent-free, or subsidized
2	Privately-owned premises, rented or subsidized by Government and provided to the UN system or to specific UN agencies	Private	Rent-free or partial rent
3	Premises sub-leased by one or more UN agency from another UN agency.	Varies	May or may not be rent-free
4	Privately-owned premises, rented by the UN system or specific UN Agency	Private	Rent fully paid by UN agencies
5	Premises owned individually and/or jointly by UN agencies.	One or more UN Agency	Rent-free or rent paid by some UN agencies

[1] /UN means Agencies, Funds and Programmes

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Where the host Government is unable to provide office premises, the United Nations Country Team (UNCT), generally turns to the commercial real estate market. However, some countries face serious challenges, such as:

- Lack of security and safety standards: No suitable buildings available in the real estate market that can be made fully MOSS compliant or structurally safe without incurring exorbitant costs;
- Rising rental rates: These escalating recurrent costs are becoming unsustainable in many developing countries;
- Delivering As One: The UNCT agrees to establish a UN House; however existing premises on the market are not adequate to accommodate the entire UN family in the location concerned;
- Lack of buildings with sufficient environmental standards: As the UN is committed to sustainable consumption, its office premises must showcase green standards and reduced energy consumption.

Owning, managing and constructing real estate is not considered a core UN activity. It should be noted that as far as the TTCP is aware, UN organizations have no specific policy to purchase real estate. However, Property, Plant and Equipment (PP&E) as well as procurement policies tend to govern such transactions. Even if funding was available, ready-to- occupy buildings that meet the UN's safety, security and business requirements are often difficult to find. Nevertheless, in the spirit of investigating and reviewing all potential options to achieve common premises, it is strongly recommended that the "lease to buy" option is also included in all future exercises targeting the attainment of UN common premises by the UNCT.

Governments are increasingly looking to the UN system to build office premises. Often, the inducement to achieve this is provided through a donation of or "right to use" plot of land, therefore reducing the upfront investment by the host Government. As this modality has proven more common, it has emphasized the need for the UNCT to include this option in their review and to undertake a comprehensive evaluation by the HQ authorities of the participating organizations.

Consistent with the express directive contained in UNDG's 1998 letter from UNDP Administrator, Mr. Gus Speth, construction of common premises remains the least favoured option. In the case of UNDP, there is a strong deterrent in the form of both the inherent risk of construction and an express regulatory limitation to undertake direct construction projects. Moreover, most UN agencies do not have sufficient human resources with the relevant expertise to manage such projects and mitigate the associated risk. Nevertheless, it is notable that a few UN agencies have subsequently established specialized units and are ready to undertake construction projects. These organizations remain limited in number and capacity in the various regions of the globe. Despite this fact, even if undertaking construction were feasible by delegating the management of the construction project to another capable UN agency (UNOPS, WFP, etc.), funding remains a major challenge, since:

- There is no central capital budget in place for a number of UN agencies to undertake such construction projects;
- funding from donors while highly desirable, is not readily available;
- Borrowing funds (whether through a bank or a developer) is generally not permissible under existing UN financial regulations and rules, and these limitations likely apply to most, if not all UN agencies;

Due to these reasons, it is becoming increasingly important to seriously consider more creative approaches. One such option that offers high potential is the Public-Private Partnership modality.

Public-Private Partnerships

Public-Private Partnerships or PPP involves a contract between a public sector authority and a private sector enterprise, in which a private party delivers a ready-to-occupy office building and assumes substantial financial, technical and operational risks for the project. Financing a project through a Public-Private Partnership can often bypass time consuming UN procurement procedures and can facilitate a more timely completion of such projects. More importantly, such an approach overcomes the primary hurdle of initial upfront investment to finance such construction projects. To attract the private sector in such partnerships, there must be a sound regulatory framework with enabling legislation and long term political and contractual commitment. The incentive for a private enterprise to finance the project is to receive both a predictable income stream and realize a realistic return on investment over a set period of time i.e. until the loan is fully amortized.

In the context of this paper, the focus of the PPP venture would be the creation of a UN House or common premises to support the UN system's operational presence in-country. The public sector authority would be the host Government and potentially UN Agencies (as the ultimate client) while the private enterprise would be engaged as the financial investor and property developer.

A list of PPP projects that are currently in the pipeline can be found in Annex B.

Modus Operandi

In essence, the modus operandi is that the host Government engages a property developer to build office premises on Government provided land, in accordance with UN agencies' requirements. The developer self finances the project or uses a financial institution. The Government, in parallel, enters into an agreement with the UN agencies as the identified premises tenant/lessee who is obligated to pay a pre-agreed amount of rent over a pre-determined number of years. This rent is used by the Government to pay off the financier/developer. It is notable that in the context of this funding mechanism the host Government would bear the ultimate responsibility for loan repayment at all times.

Steps

While each case could be different, the general steps are as follows:

1. The host Government sets up a team to design, undertake and manage the construction project; it is imperative to include the UN at inception of the design phase to ensure that all UN requirements including safety and security are factored in;
2. In collaboration with UN Agencies, the host Government prepares Terms of Reference and undertakes the procurement process to evaluate and select developer(s);
3. Upon mutual review of the financial aspects of the project, the maximum acceptable cost of construction is identified and agreed upon between the Government and the UN system. The respective UNCT and UNDG's Task Team on Common Premises represents a suitable forum for initiating inter-agency consultations;
4. The Government then enters into a contract with the developer(s) and assumes the financial liability of the construction project;
5. The lead agency (generally UNDP) enters into a Memorandum of Agreement (MOA) or executes an exchange of Letters (depending on the practice or desire of the Host Government) with the Government on behalf of other UN agencies. This is the preferred approach to requiring each UN agency to sign the MOA. The signature authorized on behalf of the UN system on the MOA is subject to final approval of the respective Headquarters of each participating UN organization;
6. Through the MOA, the UN agencies agree to pay a certain amount of rent annually/quarterly for a set number of years (preferably no more than 10), or until the cost of construction is paid off, or the UN agencies vacate the premises. Thereafter, UN agencies occupy the premises rent-free as long as they are present in the country. The starting point of UN negotiations should be to secure interest and penalty concessions from the Government and agencies should limit repayment to the principal loan amount;
7. Rent payments would commence upon issuance of certificate of occupancy after final inspection of the completed building by the UN system and subsequent handover by the Government;

Key Principles

To ensure success, the following key principles need to be in place:

- The ultimate responsibility of loan repayment rests with the Government at all times;
- The Government must ensure that the premises are constructed according to UN system's design/specifications/requirements including an efficient and environmentally sustainable

use of resources. The occupancy of the constructed premises is subject to safety and security clearance by the UN;

- The UN system remains responsible for running/maintenance costs while the Government is liable for major capital repairs. Where the anticipated duration of the agreement is in excess of 10 years, consideration shall be given to both the inclusion of terminology in the MOA relating to capital replacements (e.g. plant and equipment: HVAC, elevators ,roof, etc.) together with premature termination clauses;
- Each agency remains responsible for its share of rent payments. While the lead agency may assume the role to collect rental payments, the Government would directly deal with the concerned UN agency in case of disputes;
- The agreement among the agencies on cost-sharing is to be specified in a Memorandum of Understanding (MOU). In fact, the lead agency should only sign the MOA after the MOU is signed;
- UN Agencies must have the right to terminate the MOA under certain conditions, such as: a) safety or security reasons; and, b) closing of UN operations in the country. Should the lead agency leave the country, it may assign its role to another UN agency;
- In case of a significant reduction of UN agencies' presence (e.g. 25 per cent), if requested by UN Agencies, the Government agrees to assume the extra space. In such cases, the UN's rental payment is proportionately reduced.

Benefits of PPP modality

The status quo to continue renting available office space is unsustainable for the United Nations as a whole. It is therefore essential to pursue new ways of doing business such as through the PPP modality. Using this modality will allow the UN to improve safety and security for its staff, enhance the environmental sustainability of the UN buildings and improve the climate footprint of UN Agencies, Funds and Programmes on the way to climate neutrality. Such tailor-made buildings will help increase staff productivity, efficiency, motivation and innovation.

It will furthermore, reduce the administrative burden for organizations by reducing the time, effort and money spent in navigating the commercial market for solutions which may be short term or not sustainable or viable in the long term.

In addition, the PPP modality allows for an external party, as opposed to UN agencies, to assume the larger part of construction and ownership risks. Accountability remains with participating agency and the risks are defrayed through due diligence and objective oversight. UN Agencies avoid the financial and project management and minimizes operational risks while benefiting from purpose-built premises.

Even in countries where this modality may be an uncommon practice, it is possible that, while the host Government is in a position to provide land, no developer or financing can be identified. If it is an issue of technical capacity, another UN agency, such as UNOPS or WFP who have the relevant expertise, can undertake the management of the construction project. However, the key principle remains the same i.e. the host Government bears the responsibility of repayment to the financier (e.g. bank, national pension fund, etc.).

It is also likely that some host Governments may either prove unwilling or reticent to assume financial risks. To leverage agreement in such a scenario, the UN system's long term commitment may provide the requisite assurance to the Government that the UN's presence, all else being equal, remains until the initial investment is fully amortized over an agreed duration. Another incentive could be if ownership of the constructed premises rests with the Government thereby offering a longer term benefit in terms of equity in the developed property. Such an ownership arrangement may actually be preferred by the UN system from an accounting and operations perspective.

Like any other construction project, there are inherent risks of cost overruns and schedule delays. This modality has however the advantage that the UN is not liable for such cost overruns, as the risk for such cost overruns rests with the Government. Partnering/innovating with the private sector also offers the UN an opportunity to provide a more conducive and innovative work environment with acceleration of its transition to a lower carbon footprint globally.

Potential Risks

The Government may default on its agreement with the developer or financier. While the UN system may be shielded from financial exposure, there may be a risk of eviction. An added risk is that the Government may partner with individuals or companies that are "incompatible" with the UN's mandate, or perhaps not disclose the actual source of funding. Such issues require further investigation and the potential development of risk mitigation measures to minimize UN exposure under such scenarios.

It is possible that cost overruns and schedule delays have an affect on the price the UN will pay to the Government through rent or other methods. Hence, it is important to ensure that the maximum acceptable cost of construction is identified and agreed at the outset and well before actual construction commences. The accountability, when it comes to timely delivery, should also rest with the Government.

Finally, it is appropriate to highlight the fact there is also an internal risk. The project may be delayed due to the time it takes UN agencies to formally confirm commitment. Such a risk increases proportionate to the number of participating agencies and the need to secure HQ approval from each agency prior to signing the agreement. This is especially applicable for PPP cases since these require agencies to commit to long term rental payments to allow the investor a viable return on investment while ensuring that UN agencies pay either market or below market rent for such dedicated office accommodation. A carefully worded and implementable termination clause in the MOA remains fundamental to ensure wide participation by UN agencies and to facilitate signature of a long term agreement. As a last resort, the lead agency may consider a modular approach to the construction project that leaves open the possibility for other agencies to join at a later time.

Conclusion

Public-Private Partnership modality offers a promising and feasible option to facilitate the construction of common premises where a capital budget is not available and where the UN's Financial Regulations and Rules continue to obviate the option to seek external borrowing for capital investment projects. While keeping in mind that there is no "one-size-fits-all" approach, this paper recommends the introduction of the PPP option in future common premises projects to overcome constraints occasioned by the lack of capital investment funds. The TTCP strongly recommends and reiterates the importance of wider collaboration to include UN expertise from finance, legal, procurement and ethics to develop a robust policy and/or guidelines for PPP which can be a highly complex modality.

Annex A: Premises Modalities and Potential Solutions from a TTCP Perspective

	Options	Applicability	Modus Operandi	Ownership of Land	Ownership of Building	Financing Scheme	Time Span	Level of risk to UN	Constraints
1	**Govt. provides building, UN renovates if required**	The most ideal situation	UN enjoys a rent-free building given by the Govt. UN finances renovation if necessary	Govt.	Govt.	None	None	Low	Many host Govts have no suitable buildings available
2	**UN leases building, renovates if required**	When Govt. has no buildings available	UN leases the building from the private sector, and finances renovation if necessary	Private owner	Private owner	UN makes lease payments to owner of building	Varies; usually around 3 - 10 years	Medium	Some duty stations have no adequate buildings available
3	**UN installs prefab offices**	When land is provided by Govt. or leased from private sector and no alternative buildings can be rented commercially	UN installs prefab structures, placed on Govt. donated land or land leased from private sector	Govt. or Private owner	Generally UN	One-off cost of purchasing and installing prefabs	Varies	Medium	Not a permanent solution. 'Image' of UN.
4	**UN purchases building through secured loan**	When purchasing a building is the only remaining option	UN buys building through a secured loan from a financial institution whereby the building serves as collateral (mortgage)	UN	UN; however, the building is secured by the financial institution until end of loan period.	UN makes loan payments to financial institution	20 - 30 years	High	Requires amendments of UN Financial Regulations & Rules

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	Options	Applicability	Modus Operandi	Ownership of land	Ownership of Building	Financing Scheme	Time Span	Level of risk to UN	Constraints
5	**UN establishes a capital fund**	When buying/developing a building is the only option and when no external funding is available	A UN capital fund for acquiring real estate is established to finance the purchase of building	UN	UN	UN established capital fund	20 - 30 years	High	Requires Executive Board approval
6	**UN constructs building through Public-Private Partnership (PPP) modality**	When the host Govt. can only provide land and when no alternative buildings can be rented commercially	Govt. engages Developer to construct the building. UNDP on behalf of UN system enters into MOA with Govt. UN pays rent to Govt. which Govt. uses to repay the developer.	Govt.	Govt.	Banks provides loan to developer; UNDP makes lease payments to the Government on behalf of UN system.	10 - 20 years	Low	No adequate developers and/or financial institutions available in some countries
OTHER CONSIDERATIONS									
7	**Option Zero (staff works from home) and/or Light Footprint**	When no alternatives are available	UN staff works from home; Due to security risks only a skeleton crew is located in the office ('light footprint' modus)	N/A	N/A	Depends on situation: UN may need to continue paying rent or making lease or loan payments	Less than a year	High - Very High	Massive loss of productivity
8	**Temporary Accommodation such as hotels**	When no alternatives are available	UN staff works from hotels; given that such secured hotels are available.	Private owner	Private owner	UN pays for hotel costs;	Less than a year	High - Very High	Very high recurring costs

	Options	Applicability	Modus Operandi	Ownership of land	Ownership of Building	Financing Scheme	Time Span	Level of risk to UN	Constraints
8	**Complete pull-out**	When no premises alternatives are available, when 'Option Zero' is ineffective	UN leaves the country. Temporary operations will be continued from a different duty station	N/A	N/A	N/A	N/A	High - Very High	High sunk costs

Annex B: List of Current and Potential PPP Projects

- Rwanda: A Letter of Intent has been signed with the Government
- Swaziland: Memorandum of Agreement has been signed with the Government
- Uganda: At the conceptual/negotiation stage

Annex C: TTCP response to Country Office comments relevant to the PPP document

1. A useful current Modus Operandi of a PPP as provided by the Swaziland Country Office .

   CO Comment: The Swaziland CO through the Government of Swaziland is undertaking a green field project under the Design-Build-Finance-Maintain (DBFOM) modality approach through a Public Private Partnership (P3). The Private Developer/Financer is responsible for providing finance, design (to UN specifications), construction, operations and maintenance (O&M) over the project life cycle or until the loan is fully amortized. The DBFOM approach was deemed most suitable because it provides an effective long-term hedge against latent defects linked to poor workmanship that could be present after the completion of the project. All project risks, known or unknown are borne by the Developer/Financer supported by strong political will at all levels of Government including the King.

   The lesson learnt is that in order to attract the Private Sector in such partnerships, there must be a sound regulatory framework with enabling legislation and long term political commitment. Another point to consider when looking at the P3 approach is how to mitigate financing risks, which could result in the inability of the project to reach financial closure or default on the project debt during the operating period. This normally happens when you mix public and private funds into the Government Treasury, which could end up being used for other Government priority areas at the expense of the project.

   To mitigate this risk, which could put the Project in jeopardy, the Government of Swaziland authorized the Developer/Financer to open a special company (Special Purpose Vehicle (SPV) under the directorship of the Developer/Financer to which the rentals from the UN system will be deposited towards liquidation of the debt. This arrangement does not detract from the understanding that the Government remains ultimately responsible for the debt until the loan is fully liquidated.

   The agreement amongst the parties was that the rental to be paid by the UN System toward liquidation of the construction costs was to be below market rates with a fixed escalation over the Project life cycle. Thereafter, the Government will hand over the office premises to the UN on a rent-free basis.

   All in all the Swaziland Public Private Partnership option provides considerable savings for the UN system in the short medium and long-term setting. One of the key lessons learnt in the process is that it is important to work under the guidance of the TTCP, which makes inter Agency consultations and facilitation of decisions at Head Quarters, more fluid and timely and in the process ensures transparency and accountability. This has worked out very well in the case of Swaziland.

2. *CO comment: To mitigate construction risk, suggest a performance bond be required to constrain the financier/developer to deliver the project to the specifications stipulated in the contract documents and architects drawings).*

   TTCP Response: Agreed. The performance bond will form part of the procurement process.

3. *CO Comment: UNDP represents the UN Agencies through a signed MOU. Any dealings with Government including disputes have to be addressed through UNDP and in turn, UNDP has a signed MoA with the Government.*

   UNDP signs on behalf of the agency, it is better they handle the rent payments. Otherwise it may be cumbersome for government to deal with many defaulting agencies should that scenario arise!

   CO Comment: The last point of the government dealing directly with the agency that has not paid is not feasible as it will argue that it has signed an MOA with only the lead agency and it is hence its responsibility to "collect".

   TTCP Response: UNDP cannot assume rent collection responsibility.