



IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC-PRIVATE PARTNERSHIPS

DISCLOSURE DIAGNOSTIC REPORT: HONDURAS

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Acronyms

ASJ	Association for a More Just Society
CA	Contracting Authority
COALIANZA	Commission for the Promotion of Public-Private Partnerships
CoST	Construction Sector Transparency Initiative
ENEE	National Enterprise of Electric Energy
EOI	Expression of Interest
FOI	Freedom of Information
IACAC	Inter-American Convention Against Corruption
IAIP	Institute of Access to Public Information
INSEP	Ministry of Infrastructure and Public Services
IPG	Infrastructure, Public-Private Partnerships and Guarantees
IRM	Independent Reporting Mechanism
KPI	Key Performance Indicators
NTP	National Transparency Policy
OGP	Open Government Partnership
OIP	Public Information Official
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public-Private Partnership
PPPP	Public-Private Partnerships Promotion
RFP	Request for Proposals
RFQ	Request for Qualifications
SAPP	Superintendence for Public-Private Partnerships
SEFIN	Ministry of Finance
SIELHO	Electronic Information System
SISOCS	Information and Monitoring System for Works and Supervision Contracts
SNIPH	Public Investment Management System
SPV	Special Purpose Vehicle
TAI	Transparency and Access to Information
UCF	Unit of Fiscal Contingencies
UEC	Executive Unit of Concessions
UNCAC	United Nations Convention Against Corruption
UPEG	Planning and Management Evaluation Unit

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Executive Summary

A joint Government of Honduras and World Bank team conducted a study in Honduras between January and June 2017, using the Public-Private Partnership (PPP) Disclosure Diagnostic template recommended by the World Bank *Framework for Disclosure of Information in PPPs*. This study has been consolidated in the form of a PPP Disclosure Diagnostic Report for Honduras. The Diagnostic Report examines the political, legal, and institutional environment for disclosure in PPPs.¹ Based on a gap assessment exercise with key political, legal, institutional, and process findings benchmarked against the World Bank Framework, the Diagnostic Report makes specific recommendations to improve disclosure. The recommendations include a customized framework for disclosure of PPPs in Honduras.

The findings suggest a move toward greater transparency and openness in several areas of government in Honduras, with several new initiatives having been launched in recent years. Honduras has taken progressive steps at the international level, such as signing the Inter-American Convention Against Corruption and the United Nations Convention Against Corruption, which promote access to information and transparency of public authorities. At the national level, Honduras enacted the Transparency and Access to Information Act in 2006, which, among others, promotes proactive disclosure of procurement and contract information. Honduras joined the Open Government Partnership in 2011 to improve transparency, accountability, and citizen participation in different areas, and the Construction Sector Transparency Initiative (CoST) in 2014 to improve disclosure in the public infrastructure sector.

However, given that most of these initiatives are recent and still in the process of being institutionalized, their impact in improving disclosure in the PPP space, so far, has not been substantial. For example, although the Information and Monitoring System for Works and Supervision Contracts (SISOCS) promoted by the CoST initiative has been implemented in the Commission for the Promotion of Public-Private Partnerships (COALIANZA), it has not yet been used systematically to disclose PPP project information.²

The past five years have seen an increase in interest in the use of PPPs in Honduras. COALIANZA's website indicates that 12 PPP projects were awarded, with a total value of US\$1.8 billion, between 2012 and 2016. Currently, 11 projects are operational; 15 are in the preparation stage; and 22 are in the pipeline.³ This portfolio covers a variety of key sectors, among them, transport, energy, and public services.

Honduras has a relatively well-developed legal and institutional framework for PPPs. The enactment of the Public-Private Partnerships Promotion (PPPP) Act in 2010 was followed by the issuance of PPPP Regulations in 2011. COALIANZA and the Superintendence for Public-Private Partnerships (SAPP) became operational in 2010 and since then have been making steady efforts to improve the technical capacity of the government to develop its PPP program. The PPP approval process has also been strengthened with the creation of the Fiscal Contingency Unit (UCF) under the Ministry of Finance. The PPPP Act was amended in 2014, and a new set of regulations was issued in 2015 that inter alia institutionalized the involvement of UCF in the PPP approval process. However, some ambiguities and

¹ Although it is clear that improving institutional frameworks could have a direct and positive impact on disclosure, the focus of this report remains on improving PPP disclosure within the current institutional arrangement.

² As it was designed for "traditional" procurement, COALIANZA has not used SISOCS for PPP disclosure. Instead, it discloses PPP-related information on a sub-portal within its transparency portal.

³ The pipeline is comprised of projects that have been presented to COALIANZA as public initiatives for which feasibility and other studies have not yet been carried out, and therefore have not entered the preparation phase.

contradictions in the roles and responsibilities of different institutional actors currently exist, which in turn impact PPP processes, including disclosure.

Honduras has a legal and policy framework that directly and indirectly impacts PPP disclosure significantly. Key legislation that enables proactive disclosure includes the Transparency and Access to Information (TAI) and PPPP Acts. The TAI Act 2006 provides for proactive disclosure of information relating to project contracts signed by the government and mandates the use of transparency portals. The PPPP Regulations 2011 provide for the reactive disclosure of basic project information, although after contract signature. Executive Decree 02-2015 issued by the Government of Honduras mandates the publication of information following the CoST Infrastructure Data Standard in a proactive manner, although this is limited to infrastructure projects, including PPPs.

However, the provisions in the TAI Act 2006 and the PPPP Regulations 2011 are inconsistent in terms of obligations related to proactive versus reactive disclosure as well as its timing. In addition, there is ambiguity on the application of some disclosure provisions and a lack of clarity in defining the disclosure roles of different institutions, such as COALIANZA, SAPP, UFC, and the contracting authority. There is a clear need to remove the inconsistencies in legislation, and to bring together the provisions in legislation, policy, and guidelines to provide clear guidance to officials.

In practice there is limited information on PPPs in the public domain in the pre-procurement phase. Although COALIANZA regularly publishes its pipeline,⁴ procurement information on projects and contract details are made public only after the contract is signed.

This Diagnostic Report recommends a systematic structure for proactively disclosing information through a customized framework for disclosure in PPPs in Honduras. It suggests a holistic approach to disclosure through predefined standards, tools, and mechanisms, allowing for increased disclosure efficiency.

Recommended Disclosure

The recommended design for Honduras follows the World Bank Framework. It is hierarchical and includes a logical framework that moves from a high-level mandate to disclose toward the basic elements that need to be disclosed. Table ES.1 provides a snapshot of the recommended features of the suggested framework for Honduras.

⁴ For more details, see <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional>.

TABLE ES.1: SNAPSHOT OF RECOMMENDED DISCLOSURE

LEGISLATIVE MANDATE	Remove inconsistency between the Transparency and Access to Information Act 2006 and Public-Private Partnerships Promotion Regulations 2011 and widen the mandate of the latter to include specific disclosures at various stages of the PPP process.
DETAILED GUIDANCE	<p>Add a specific section on PPP disclosure in the guidelines issued by the Institute of Access to Public Information with the following details:</p> <ul style="list-style-type: none"> • Applicability of legislation to contracts and project information • Elements of disclosure during the various stages of the PPP lifecycle • Timelines for disclosure • Details of confidentiality provisions • Template for disclosure • Standard contract clauses
DISCLOSURE DURING PROJECT IDENTIFICATION AND PREPARATION	<ul style="list-style-type: none"> • Basic project information • Project Information Profile • Summary of key information during project preparation • Project status progress
DISCLOSURE DURING PROCUREMENT	<ul style="list-style-type: none"> • <i>Pre-tender</i>: approved pipeline of projects, brief descriptions of projects, services, estimated cost, likely sources of revenue, and tentative procurement dates; Feasibility Study Report, Project Information Profile • <i>Tender</i>: request for Expression of Interest; number and names of short-listed bidders, award
DISCLOSURE FOLLOWING COMMERCIAL CLOSE	<ul style="list-style-type: none"> • Material risks and allocation • Reasons for choice of PPP • Financing structure • Guarantees, grants, annuity/availability payment schedule, land and asset transfers and other support, revenue share • Tariffs • Actual performance against targets, performance failures, links to independent engineer and audit reports • Termination and handback provisions • Renegotiations or changes
CONFIDENTIAL INFORMATION	<ul style="list-style-type: none"> • Areas or elements that could be considered confidential (subject to overarching law and project-specific circumstances) where the competitiveness of the private provider may be jeopardized • Exceptions and exemptions to the confidentiality clause
STANDARD CONTRACT PROVISIONS	<ul style="list-style-type: none"> • Reports, documents, and other information the private provider and fiduciary bank should maintain and submit to the authority; timelines for submission and disclosure • Language on what constitutes confidentiality, format for listing confidential clauses, and clause for disclosure in public interest
PLATFORM	The Information and Monitoring System for Works and Supervision Contracts (SISOCs) adapted to PPP projects is recommended with a user-friendly integrated back end for use by multiple entities, with a hierarchy of roles related to uploading, validation, and disclosure of information

TIMELINES	Basic project information	Within 10 days after approval of the Commission for the Promotion of Public-Private Partnerships (COALIANZA); updated thereafter with each new milestone achieved; and annual updates
	<i>Disclosure of information prior to commencement of procurement</i>	
	Project Information Profile	Within 10 days of approval of the Feasibility Study and before the Request for Qualifications
	<i>Disclosure of information during procurement</i>	
	Expression of Interest	As soon as procurement documents are approved for publication
	List of number of short-listed bidders	As soon as the minutes of the bid opening session are issued by the notary
	Bid award	As soon as the decision is approved
	<i>Disclosure of information following commercial close</i>	
	Project summary	Within 20 days of publication in the gazette
	Financial structure of the special purpose vehicle	Within five days of financial close
	Project documents	Within 20 days of publication in the gazette
	Other project documents	Within 10 days of signature of the contract
	Renegotiations and renegotiated agreements and associated documents	Within 10 days of signature of the renegotiated contract
	<i>Performance disclosure throughout the contract period</i>	
	Performance information	Within one year of financial close, updated annually
TEMPLATE AND DATA STANDARDS	<ul style="list-style-type: none"> • A simple template with details of elements to be disclosed at various project stages • Consistent, structured, machine-readable, and exploitable information 	

1. Introduction

Based on research and analysis over the past few years, the World Bank Infrastructure, Public-Private Partnerships, and Guarantees Group has worked on creating a [Framework for Disclosure in Public-Private Partnerships](#). The framework suggests a systematic structure for disclosing information proactively at different stages of the public-private partnership (PPP) lifecycle. Two documents, Jurisdictional Studies and Good Practice Cases, have been developed to provide relevant background and resources complementing the goals of the framework. The framework has undergone a public consultation process and is now being piloted in five countries—Ghana, Honduras, Kenya, Nigeria, and Uganda.

The framework suggests the initiation of work with a PPP Disclosure Diagnostic (the Diagnostic) in countries. The objective of the PPP Disclosure Diagnostic is to help PPP policy makers and practitioners to assess the status of PPP disclosure in the jurisdiction, and to identify customized PPP disclosure solutions for all PPP types to enable better disclosure. The Diagnostic can also be used by World Bank teams.

The Diagnostic includes an examination of the following areas in a country:

- ☐ Preliminary overview of the general transparency environment
- ☐ History and outlook for PPP disclosure
- ☐ Political environment for disclosure
- ☐ Legal and policy framework
- ☐ Process and institutions
- ☐ Guidance on confidential information
- ☐ Information systems
- ☐ Technology and data standards.

Under each of the areas identified, the Diagnostic provides the key questions policy makers and practitioners should ask, analysis and techniques for assessing gaps, resources for learning more, and tools for establishing a customized PPP disclosure framework for the jurisdiction. The relevance of each of the areas varies based on the unique circumstances in the country.

This Diagnostic Report is structured around the key themes that are relevant to the disclosure environment in Honduras, as summarized in table 1.

TABLE 1: DISCLOSURE ENVIRONMENT IN HONDURAS

THEME	KEY QUESTION	SECTION
Transparency and Openness in Governance	Is there a transparent and open governance environment in Honduras?	2
PPP Experience	Does the government have substantial experience in PPP?	3
	Does the government have an ongoing PPP program?	
Institutional Framework for PPPs	What are the institutions supporting the preparation, procurement, and implementation of PPPs?	4
Legal and Institutional Framework for PPP Disclosure	Is the legal and regulatory environment sufficiently conducive to PPP disclosure?	5
	Does freedom of information legislation support proactive disclosure?	
	Do PPP legislation/regulations provide clarity on the elements, timing, institutional structure, and processes for disclosure?	
	Do other related legislation and regulation support disclosure?	
	Are there guidelines and processes in place to guide disclosure?	
	Are there standardized disclosure contract clauses and templates?	
	Is there a web portal(s) available with a user-friendly back-end and front-end design in machine-readable format?	
Disclosure in Practice and Key Challenges	What information is disclosed in practice?	6
	What are the key challenges to disclosure?	

Based on the findings in these areas, an assessment of the specific gaps in the political, legislative, and institutional contexts is detailed in section 7. Section 8 provides specific recommendations. The key material reviewed in the preparation of this Diagnostic is listed in section 9. Annex A provides suggested amendments to the Public-Private Partnerships Promotion (PPPP) Regulations 2011. Annex B provides the text of the suggested Framework for Disclosure of Information in PPPs in Honduras. The framework also contains a template for disclosure and suggested text for two types of standard contractual clauses in annexes B.1, B.2, and B.3, respectively. Annex C presents a comparison of the World Bank Framework for Disclosure, current disclosure practice in Honduras, and the proposed disclosure guidelines for Honduras.

2. Transparency and Openness

The Government of Honduras has taken several steps toward improving transparency and accountability through several legislative and institutional measures. Honduras has signed and ratified international conventions, the most relevant being the Inter-American Convention Against Corruption (IACAC), ratified in 1998, and the United Nations Convention Against Corruption (UNCAC), signed in 2003.

IACAC states that one of its purposes is to promote and strengthen the development of the mechanisms needed to prevent, detect, punish, and eradicate corruption.⁵ UNCAC is more specific and states that each State Party shall take measures as may be necessary to enhance transparency in its public administration, including adopting procedures or regulations that allow members of the public to obtain information on the organization, functioning, and decision-making processes of public authorities.⁶

At the national level, these international provisions have been partially addressed through enabling legislation in the form of the Transparency and Access to Information (TAI) Act 2006, which regulates general aspects of access to information held by public entities, as well as private bodies and civil society organizations that manage public funds. The TAI Act is ranked 60 in the Global Right to Information Rating (of 111 countries that have such laws) and 18th in the Americas.⁷

The TAI Act (through Article 8) created the Institute of Access to Public Information (IAIP) as an autonomous body of the government, with operational, decision-making, and budgetary independence. IAIP is responsible for promoting and facilitating citizens' access to public information, as well as regulating and supervising the procedures of public authorities on the protection, classification, and custody of public information.

Article 1 of the TAI Act states its main purpose to be the development and implementation of the National Transparency Policy (NTP) and the regulation of the right of access to public information. In compliance with this article, NTP was drafted and approved by IAIP in 2015, including an action plan for 2015–30. However, the Government of Honduras has not provided any budgetary support to IAIP for the implementation of this action plan.

Article 3 of the TAI Act recognizes transparency as a set of provisions and measures that guarantee publication of information concerning public institutions and the citizens' right to access such information. Further, the article identifies the entities that are obliged to disclose public information (referred to as “subject institutions”), including the legislative, judicial, and executive branches of the government; autonomous institutions, municipalities, and other state agencies; nongovernmental organizations and private development organizations; all organizations that receive income by issuing stamps, the retention of goods, or those exempt from tax payment; and in general all natural or legal persons who receive or manage public funds, regardless of their origin, on their own behalf or on behalf of the state, or where the state is a guarantor.

Article 5 of the TAI Act states that “All subject institutions must publish information related to their management or, where appropriate, provide all information concerning public funds administered or guaranteed by the State [...]. In turn, any natural or legal person, has the right to request and receive from

⁵ http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption.asp.

⁶ https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

⁷ Continuous ranking is done by the Centre for Law and Development. See <http://www.rti-rating.org/country-data/> for the most recent results.

the Subject Institutions, complete, truthful, adequate and timely information within the limits and conditions established in this Law”.

Under Strategic Action 56,⁸ NTP makes a specific reference to the duty of the Commission for the Promotion of Public-Private Partnerships (COALIANZA) to disclose information related to PPPs (including information related to income, procurement processes, and budget settlements). This guideline places direct responsibility for such disclosure on COALIANZA, the Ministry of Finance, and the Ministry of General Coordination, while IAIP, the National Anticorruption Council, and civil society organizations are to play the oversight role for its implementation.

Other relevant strategic actions in NTP (60, 61, 62, and 63) refer to the promotion, strengthening, and gradual expansion of the Monitoring and Information System for Works and Supervision Contracts (SISOCS), and the publication of a disclosure manual of all data points contained in the Construction Sector Transparency Initiative (CoST) Data Standard.

Openness and Transparency Initiatives

Honduras joined the Open Government Partnership (OGP) in 2011 to ensure transparency and citizen participation; strengthen its fight against corruption; and use new technologies to improve efficiency, openness, and accountability. In its first OGP Action Plan for 2012–14, Honduras made 20 commitments that were related to anticorruption, strengthening monitoring systems for public resources, increasing transparency in public financial management, and improving public services. The midterm report of the Independent Reporting Mechanism (IRM) for OGP highlighted the progress made in compliance with the TAI Act, the dissemination of information related to public finances, increasing public awareness about budgets, and improving the accountability of local governments.⁹

In its second OGP Action Plan for 2014–16, Honduras made 14 commitments that were related to improving access to public information, ethics in civil service, transparency in budgeting and procurement, and improving public services in general. The end-of-term IRM report stated that the implementation of the country’s second OGP Action Plan contributed significantly to greater transparency in public institutions, especially with respect to access to information.

Although eight of the previous commitments have been partially or fully accomplished, Honduras has recently developed a third National Action Plan (July 2016–June 2018), establishing 13 commitments, of which nine are new and four are ongoing. The commitments are grouped thematically as follows: fighting corruption, freedom of information, public expenditure, public procurement, natural resources and environment, public service delivery, and e-government. These include the goal of implementing a performance indicators system¹⁰ modeled on the Transparency and Access to Information Network,¹¹ which has been adapted to the country level.

⁸ IAIP National Transparency Policy 2015, p. 204.

⁹ For more details on Honduras’ OGP commitments and progress, see <http://www.opengovpartnership.org/country/honduras>.

¹⁰ This will be implemented by IAIP and will measure institutional performance and user satisfaction related to OGP commitments in the third National Action Plan.

¹¹ The Transparency and Access to Information Network was created in 2011. It is made up of 16 full members and six associate members composed of public entities of different countries. Membership also includes international organizations such as the World Bank and the Organization of American States. It enables dialogue and cooperation among its members aimed at promoting the exchange of knowledge and experiences on transparency and access to information.

Apart from its engagement with OGP, the Government of Honduras established transparency and state modernization as one of the strategic purposes in the government's plan for 2014–18, entitled “Plan of Everyone for a Better Life.”¹² In addition, in January 2014, the president signed a letter of intent with the national chapter of Transparency International, the Association for a More Just Society (ASJ), requesting them to monitor and evaluate the anticorruption efforts of the new government in five sectors that are particularly vulnerable to corruption: education, tax management, infrastructure, health, and security. As a result, ASJ and the Government of Honduras signed the Agreement of Collaboration and Good Faith for the Promotion of Transparency, Combating Corruption and Strengthening Integrity Systems, in October 2014.¹³

To date, ASJ has published five baseline reports that include the Ministries of Education, Health, and Security; the National Procurement Office; and the Internal Control Office. Once baseline reports are published, an action plan is developed for each institution and its progress is regularly monitored by ASJ. The baseline reports for the Ministry of Infrastructure and the Fiscal Agency have not been published yet.

In addition, Honduras became a member of CoST in August 2014, with an emphasis on improving disclosure practices related to infrastructure projects, including PPPs, as an essential part of its national program.¹⁴ CoST is a multi-stakeholder initiative led by nine institutions and organizations in Honduras: IAIP; Presidential Directorate of Transparency, Modernization, and State Reform; Productive Infrastructure Cabinet; ASJ; Democracy Without Borders Foundation; Regional Western Platform; Civil Engineers Association; Construction Industry Chamber; and Coffee Producers Association.

As a part of this program, the Government of Honduras is committed to disclosing information progressively on infrastructure projects in line with the CoST Infrastructure Data Standard using open data formats. To standardize disclosure practices under the CoST program, the president issued an executive decree in January 2015 establishing a formal disclosure requirement for public infrastructure projects.¹⁵ The formal disclosure requirement is mandatory for all entities that are permanently a part of the public administration (at the federal and subnational levels). It requires procuring entities, including COALIANZA, to use SISOCS and proactively disclose 66 data points of the CoST Infrastructure Data Standard (plus some additional data points relevant to Honduras) via this subsystem of the national e-procurement portal. SISOCS is designed to be consistent with the “traditional” project procurement cycle and IAIP requires procuring entities to add a link to SISOCS in the “program and projects” section of their individual transparency portals (figure 1).

¹² For more information, see http://www.sefin.gob.hn/wp-content/uploads/2016/01/Plan_Estrategico_Gobierno_Diciembre_2015.pdf.

¹³ For more information on the agreement and its progress, see <http://asjhonduras.com/ti-asj/sobre-el-convenio/>.

¹⁴ For more information on CoST, see <http://costhonduras.hn>.

¹⁵ As with all executive mandates, only the President of the Council of Ministers can revert the legal force of its content.

FIGURE 1: SISOCS PORTAL

SISOCS Inicio Módulo Ciudadano Manual Informes SMQ Login

Ciudadano /

Planificación del Programa Planificación del Proyecto Invitación y Calificación Adjudicación Contratación Gestión de los Contratos

Inicio de Ejecución Avances Desembolsos y Montos Gráficos Mapa

Código: PMRC 641-0000000001
BIP: 001400071200
Sector: Sector Infraestructura
Descripción: MEJORAR LA CALIDAD DE LA ADMINISTRACIÓN Y LA RED DE CARRETERAS DEL RECEPTOR, MEJORAR LA GOBERNABILIDAD Y LA CAPACIDAD ADMINISTRATIVA DE LAS CARRETERAS EN SOPTRAVI Y EL FONDO VIAL.
Fecha de Aprobación: 29/04/2008
Fecha de Recepción: 29/12/2013

Nombre del Programa: SEGUNDO PROYECTO DE RECONSTRUCCION Y MEJORAMIENTO DE CARRETERAS
Ubicación del Programa: Francisco Morazan, Yoro, Danli, Comayagua, Copán.
Costo Estimado: 48,600,000.00
Moneda: Dolar
Sub Sector: Sub sector Vial
Propósito:

- Construcción de obras
- Mantenimiento rutinario
- PAVIMENTACION
- Rehabilitación

Datos del Funcionario		Fuente de financiamiento	Monto	Moneda	Tasa
Nombre: Walter Nue Maldonado	Teléfono: 222-55585	Banco Mundial (BM)	48,600,000.00	Dolar	18.90
Puesto: Director de Carreteras	Entidad: Dirección General de Carreteras (DGC)				
Correo: uebm2011@yahoo.com					

[Ver información de respaldo](#)

Source: <https://insep.sisocs.org/index.php?r=ciudadano/FichaTecnica&control=Contratacion&id=253>.

Disclosure timelines (two days after a document/information/data is issued), types of users (administrators, recorders, and publishers), and detailed guidelines (which information must be disclosed) are provided in the SISOCS Manual for internal users within each procuring entity. The manual is also available for external users on the SISOCS website.

Initially, CoST Honduras and the Government of Honduras agreed on three major disclosure commitments related to existing projects:

- ☐ By December 2014, disclose information on all existing road projects financed with external funds.
- ☐ By June 2015, disclose information on all existing road projects financed with national funds.
- ☐ By December 2015, disclose information on all existing infrastructure PPP projects.

SISOCS was implemented by selected procuring entities (Ministry of Infrastructure and the Road Fund) over 2014–15 to achieve the first two disclosure commitments. For the third, CoST Honduras and COALIANZA agreed to develop an interim transparency portal,¹⁶ since SISOCS was not designed to disclose information related to all types of projects, especially PPPs. Since then, CoST Honduras has made modifications to SISOCS to enable disclosure for all types of projects. The system has been deployed in all institutions of the Productive Infrastructure Cabinet, including COALIANZA. COALIANZA's officials have been trained in the management of SISOCS, and information from the interim CoST-COALIANZA

¹⁶ <http://coalianza.gob.hn/transparencia/?q=mapa-de-cost>.

transparency portal will soon be migrated to SISOCS so that consolidated information on national infrastructure projects, traditional and PPP, will be available on a single website.

Now that these initial disclosure commitments have been largely met, a new set of disclosure commitments is being put in place by December 2017, with the understanding that information disclosure will take place on a regular and ongoing basis for present and future projects under each portfolio, as per the requirements of Executive Decree 02-2015.

Transparency Portals and Other Information Systems

According to the TAI Act, IAIP is responsible for creating the National System of Public Information, to systematize, integrate, disclose, and provide access to public information to citizens. IAIP has made significant progress in several segments of the national system, of which two stand out due to their importance for the public: the unique transparency portal and the Electronic Information System (SIELHO).

The unique transparency portal is a repository of information related to almost all government institutions. The aim of the portal is for users seamlessly to access government information, regardless of the institution that generated it. However, COALIANZA maintains its own information portal and does not contribute to the unique transparency portal, as it cannot handle the complexity of COALIANZA's data (figure 2).

FIGURE 2: COALIANZA'S TRANSPARENCY PORTAL



Source: <http://www.coalianza.gob.hn/transparencia/>.

SIELHO is a mechanism aimed at managing requests for information made to public authorities and providing online responses as a key tool to facilitate reactive disclosure, as mandated by the TAI Act. The system directs requests for information to the appropriate public information officer, in the relevant public institution, including COALIANZA and the Superintendence for Public-Private Partnerships (SAPP), and streamlines the process following the electronic request for information. Parties who have requested information through SIELHO can follow up on the status of their request and receive a response through the system.

At the same time, there have been calls to improve the system in terms of the quality of information being released and/or published. Some concerns have been raised about the relevance and usability of the information disclosed, as well as its compliance with open data principles. A recent study that analyzed the quality of information disclosed by 131 public institutions against relevant IAIP guidelines found that no institution was fully compliant, while only 31 were rated above 90 percent.¹⁷

The government has also put in place several internal information management systems, such as HonduCompras, the Public Financial Management System, and the Public Investment Management System (SNIPH). HonduCompras is the state procurement and contracting information system, which was created through Executive Decree 2010-2005, which makes it mandatory for public entities (that are identified as such under the State Contracting Act) to use this system for all public procurement. However, Article 36 of the PPPP Act exempts PPP procurement and contracting processes from the obligations of the State Contracting Act, as a result of which COALIANZA and SAPP are not obliged to use HonduCompras.

SNIPH is designed to track all state expenditures and other financial obligations. It provides a single platform for managing accounting, public finances, budgets, assets, electronic transfers through the national banking system, as well as management of a single treasury account. It is operated by about 90 institutions, including federal and subnational governments and other public institutions.

SNIPH aims to support the planning, monitoring, and evaluation of the public investment portfolio in Honduras, including PPPs. It provides a platform to formulate, evaluate, prioritize, and manage different investment options in accordance with national development plans. All PPP projects must be registered in SNIPH prior to the commencement of the procurement process.

While taking the above measures to ensure transparency and improve public information management and disclosure, the Government of Honduras, through Legislative Decree 418-2013, enacted the Classification of Public Documents Related to Security and National Defense Act in 2014. Better known as the “Secrecy Law,” the Act provides for the classification of information on matters, contracts, data, and objects that may jeopardize security and national defense, and exempts such information from public disclosure. Under this Act, the National Defense and Security Council, which is presided over by the president, specifically names 18 public institutions that are exempt from disclosing information related to national security and defense. However, as this law provides for general applicability and a wide definition of national security and defense, IAIP, through Resolution 006-2015 SN, ordered the Civil Aviation Directorate, National Electric Energy Company, Honduran Institute of Social Security, Institute of Property, National Institute of Water and Sewerage, and Financial Intelligence Unit of the National Commission of Banks and

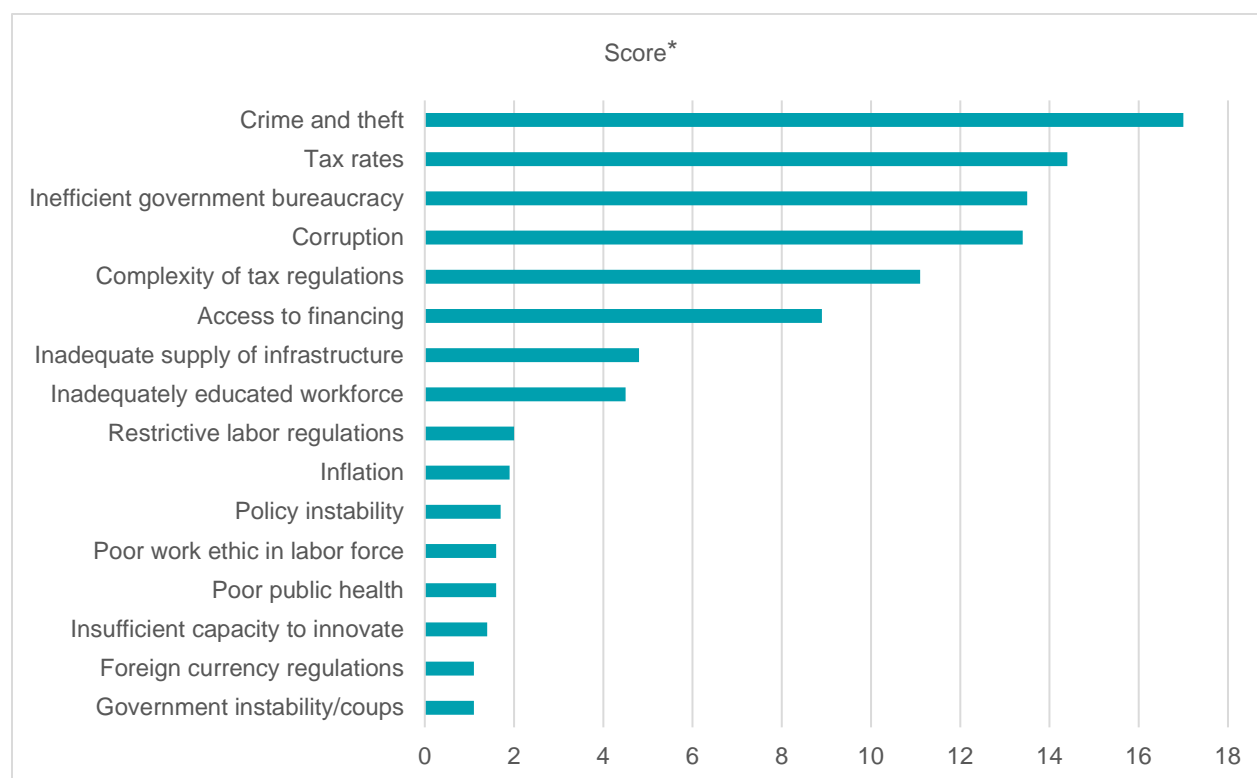
¹⁷ Report titled “Veeduría Ciudadana a los Portales de Transparencia de las Instituciones Obligadas. Segundo Semestre del Año 2016,” by Democracy Without Borders (FDsF). For more details, see <http://fdsf.hn/presentan-informe-de-veeduria-ciudadana-a-los-portales-de-transparencia-del-segundo-semestre-del-ano-2016/>.

Insurance (among other institutions) to refrain from applying the Secrecy Law, as they do not carry out any functions related to the security and defense of the state.

Apart from this legal restriction on access to public information, civil society organizations have also highlighted the fact that information that is disclosed is often incomplete, or not disclosed in a timely manner, or in formats that may not be user-friendly.

Although Honduras has worked on several fronts to enhance transparency in general and specific to infrastructure projects including PPPs, the government has launched most of these initiatives only within the past few years, which is insufficient time for comprehensive and effective implementation. In addition, corruption has been a recognized concern in Honduras. However, the Transparency International Corruption Perceptions Index suggests that some progress has been achieved over the past decade, with the country's score increasing from 23 in 2003–04 to 31 in 2016. However, it is still ranked 123 among the 176 countries surveyed in 2016. In addition, the Global Competitiveness Report 2015–16 ranked corruption as a major problematic factor in doing business in Honduras (figure 3).

FIGURE 3: THE MOST PROBLEMATIC FACTORS FOR DOING BUSINESS IN HONDURAS



* From the list of factors, respondents were asked to select the five most problematic for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their ranks.

Source: Global Competitiveness Report 2015–16, World Economic Forum, Geneva, 2016, p. 192.

3. PPP Experience¹⁸

Honduras has been very active in PPP development and implementation. Since 2010, Honduras has been a pioneer in the Central America region for using PPPs as an investment model. PPPs are now one of the main national strategies for developing the economic and social infrastructure that is considered essential for the country's growth and sustainable development.¹⁹

Between 2013 and 2015, COALIANZA, which centralizes all PPP contracting processes at the national and local levels, awarded five PPP contracts. By 2015, the combined stock and flow of the PPP portfolio accounted for 6.6 percent of gross domestic product, of which 4.1 percent corresponded to the stock of PPP projects awarded by COALIANZA, and 2.5 percent to disbursements made under the minimum revenue guarantee provisions under PPP contracts, such as the Logistic and Tourist Corridor, which includes income from toll fees.²⁰

In 2016, COALIANZA mobilized US\$748 million through PPP projects and awarded five additional contracts.²¹ At the time of drafting this report, the information on COALIANZA's website listed a total of 11 projects that have already been tendered, two of which are PPPs at the subnational level. In addition, two projects are currently under procurement, 14 in the process of preparation, and 19 in the pipeline.

Sectors with PPPs at the national level are roads (11 projects), ports (three projects), energy (five projects), public services (five projects), airports (one project), public buildings (one project), and mining (one project).

At the subnational level, PPP projects are related to public markets and bus stations and water and sanitation. Tables 2 to 8 provide an overview of PPP projects at various stages of preparation and operation in Honduras.

¹⁸ This section borrows partially from *Disclosure in PPPs: Jurisdictional Studies*, World Bank, 2015.

¹⁹ Source: <http://www.coalianza.gob.hn/en/ppp/ppp-in-honduras>.

²⁰ Source: *The Fiscal Implications of Public-Private Partnerships in Honduras*, Inter-American Development Bank, 2015, p. 11.

²¹ Source: <http://coalianza.gob.hn/es/noticias/1017-coalianza-realizo-una-inversion-748-millones-de-dolares-en-el-2016-en-proyectos-de-alianza-publico-privada>.

TABLE 2: PROJECTS AWARDED IN THE INFRASTRUCTURE SECTOR

PROJECT	SUBSECTOR	INVESTMENT (million US\$)	AWARDED	STATUS
Logistics Corridor	Roads	\$90.5	2012	Operational
Tourist Corridor	Roads	\$150	2012	Under construction
Lenca Corridor	Roads	\$43.9	2012	Operational
Containers and Cargo Terminal	Ports	\$624	2012	Operational
Solid Bulk Terminal	Ports	\$44.2	2013	Under construction
Palmerola International Airport	Airports	\$107	2014	Under construction
Century XXI	Urban roads	\$88	2014	Under construction
Government Civic Center	Urban buildings	\$200	2016	Under construction
TOTAL		\$1,347.6		

Sources: <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/infraestructura>;
<http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/infraestructura-urbana>;
<http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/puertos>;
<http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/aeropuertos>;
<http://sapp.gob.hn/#>.

TABLE 3: OVERVIEW OF INFRASTRUCTURE SECTOR PROJECTS IN ADVANCED STAGE

PROJECT	SUBSECTOR	INVESTMENT (million US\$)	STATUS
CA-4, CA-10 and CA-11 Road to the Western Part of Honduras	Roads	\$271	To be awarded
Puerto Castilla	Ports	\$442	In preparation
CA-5 Road to the Southern Part of Honduras	Roads	No data	In preparation
CA-13 Road to the Northern Part of Honduras	Roads	No data	In preparation
Improvement of Infrastructure and Services in Bay Islands	Roads	No data	In preparation
San Pedro Sula Freeway	Roads	No data	In preparation
Puerto Cortés Freeway	Roads	No data	In preparation
El Progreso Freeway	Roads	No data	In preparation

Sources: <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/infraestructura>; <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/puertos>.

TABLE 4: OVERVIEW OF THE INFRASTRUCTURE SECTOR PIPELINE

PROJECT	SUBSECTOR	ESTIMATED INVESTMENT (million US\$)
Santa Rosa de Aguan	Roads	\$12.38
Bonito Oriental - Limon	Roads	\$22.59
Detour of Braulio (between Tocoa and Trujillo)	Roads	\$8.45
El Triangulo - El Puente (Trujillo)	Roads	\$6.30
Trujillo - Santa Fe	Roads	\$12.57
Planes Sonaguera - Detour of Braulio	Roads	\$18.94
Dredging of the Tocoa River	Roads	\$4.71
Coroza Alta - Buena Vista - Cuyamel	Roads	\$2.67
Detour of Limon – Iriona - San José de la Punta - El Castillo - Río Sico	Roads	\$20.53
Santa Fe – Balfate	Roads	\$3.89
Sonaguera - Balfate	Roads	\$2.01
Limonas - Salama - Mame - Detour of Yocon - Detour of Esquipulas del Norte	Roads	\$94.60
Sonaguera - Isleta Central	Roads	\$8.67
La Ceiba - Trujillo - Puerto Castilla	Roads	\$176.29
Guasaule - Jicaro Galan	Roads	\$110.00
Traumatology Hospital in Tegucigalpa	Urban buildings	\$48.25
Traumatology Hospital in San Pedro Sula	Urban buildings	\$35.90

Sources: <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/infraestructura>; <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/infraestructura-urbana>.

TABLE 5: PROJECTS IN THE ENERGY SECTOR

PROJECT	INVESTMENT (million US\$)	STATUS
Recovery of Losses in the National Enterprise of Electric Energy (ENEE) Services; Distribution and Financial Flow	\$378	Awarded
Biomass Project	No data	In preparation
Recovery of Losses in ENEE Services; Public Lighting Services	No data	In preparation
Recovery of Losses in ENEE Services; Transmission and Dispatch	No data	In preparation
Power Generation Project	No data	In preparation

Sources: <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/energia>; <http://sapp.gob.hn/#>.

TABLE 6: PROJECTS IN THE PUBLIC SERVICES SECTOR

PROJECT	INVESTMENT (million US\$)	STATUS
Migration Control System and Passport Issue	No data	In preparation
Vehicle Registration	No data	In preparation
Property Administration System	No data	In preparation
Investment in Telecommunication and Information and Communications Technologies (ICTs)	No data	Partially awarded

Source: <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/servicios>.

TABLE 7: PROJECT IN THE MINING SECTOR

PROJECT	INVESTMENT (million US\$)	STATUS
Mining Industrial Park El Corpus Choluteca	No data	In preparation

Source: <http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-nacional/mineria>.

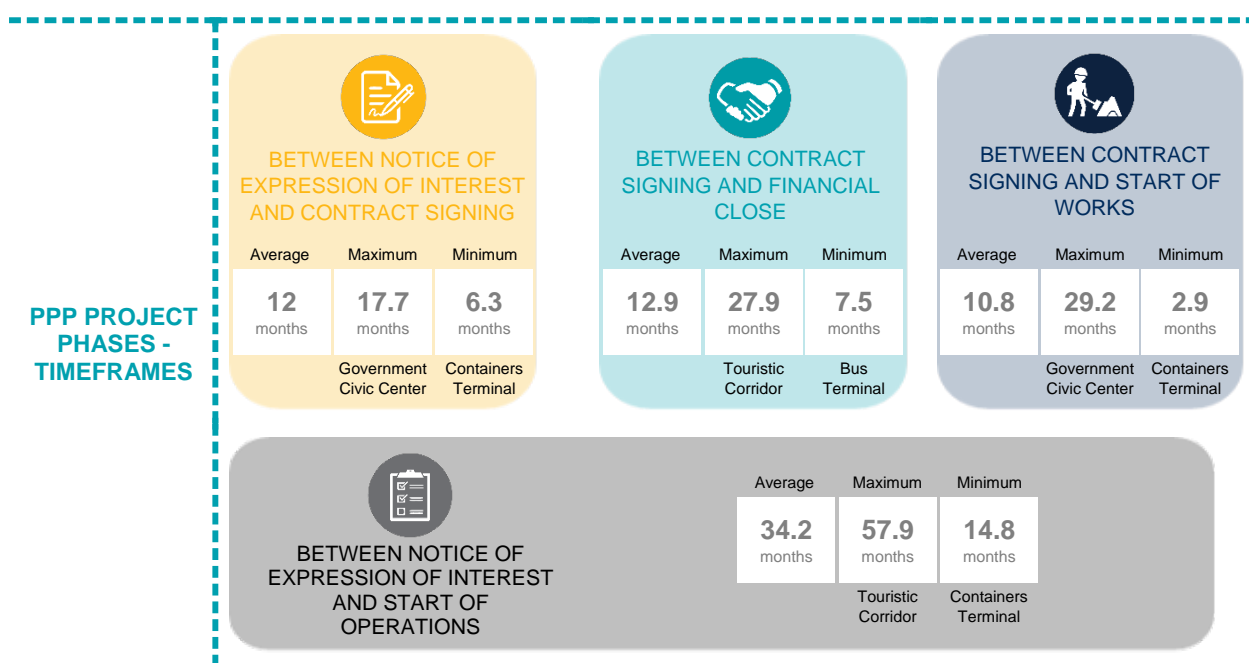
TABLE 8: OVERVIEW OF SUBNATIONAL PPPS

PROJECT	SUBSECTOR	INVESTMENT (million US\$)	STATUS
Danli Market and Bus Terminal	Urban buildings	3.7	Awarded
Danli El Paraíso Water Supply System	Water and sanitation	19	To be awarded
Gravity Irrigation and Drinking Water System for Lamani Municipality	Water and sanitation	10	In preparation

Sources: <http://coalianza.net:81/mapas/index.php/2017-05-11-23-16-30/proyectos/5-terminal-de-buses-y-mercado-municipal-danli>;
<http://coalianza.gob.hn/es/cartera-de-proyectos/cartera-app-local/agua-potable>.

For the time taken in different processes, figure 4 reveals wide ranges, with time taken between the publication of the Expression of Interest (EOI) and contract signature (6.3 to 17.7 months), between contract signature and commercial close (7.5 to 27.9 months), and between contract signature and the commencement of works (2.9 to 29.2 months).

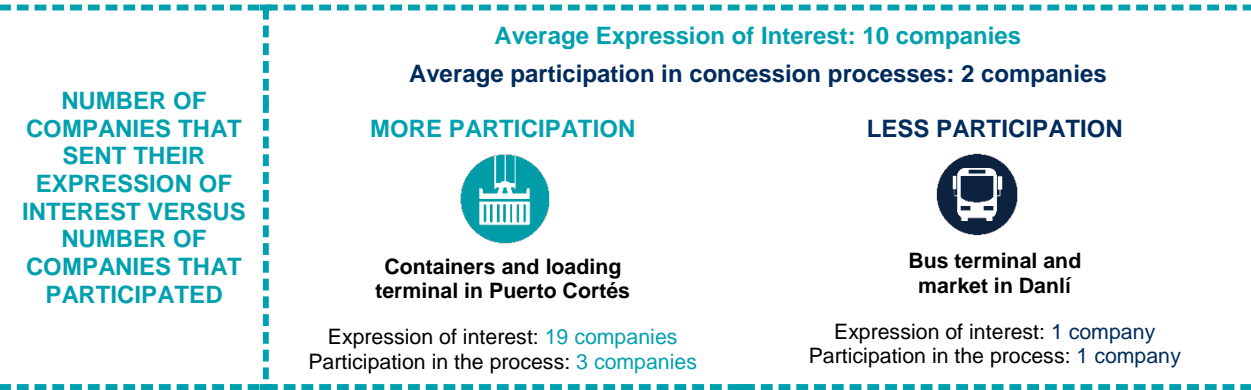
FIGURE 4. TIME TAKEN FOR THE STAGES OF A PPP PROJECT



Source: Third Assurance Report of CoST Honduras.

Figure 5 shows the level of participation in solicited and unsolicited PPP projects. For instance, one solicited project (Containers Terminal) received 19 EOIs, while another unsolicited local project (Market and Bus Terminal) received only one (from the proponent).

FIGURE 5. LEVEL OF PARTICIPATION IN PPP PROJECTS



Source: Third Assurance Report of CoST Honduras.

4. Legal and Institutional Framework for PPPs

Honduras has a relatively well-developed legal framework for PPPs.²² Legislative Decree No. 143-2010 approved the Promotion of Public-Private Partnerships Act in 2010 and its attendant regulations were approved in 2011. Amendments were made to the PPPP Act in 2014 and new regulations were approved in 2015.

The 2010 Act establishes the principles of PPP procurement in Honduras and defines the objectives and modalities of PPPs that include the construction and lease of “mega-projects and investment projects of national priority.” It also identifies the entities that can initiate PPP projects, including line ministries and other public agencies, local entities (municipalities), regional councils, and COALIANZA itself. In addition, it defines the parameters for developing unsolicited proposals from private sector entities.

The parties in a PPP project can be organized in any legal way suitable to the development of the project, including participation contracts, joint ventures, and trust funds, among others. The PPPP Act expressly excludes PPPs from the general procurement law. The PPPP Act also details the creation and powers of COALIANZA as the key entity for the implementation of PPPs, as well as the PPP Superintendence as a regulatory, oversight, auditory, and sanctioning body for PPP projects. The 2014 amendments to the Act created the Fiscal Contingency Unit (UCF) as a part of the Ministry of Finance (SEFIN), with the responsibility to decide whether a project makes fiscal sense for the government.²³

The 2014 amendments also establish a limit on the use of PPPs. The cumulative present value of all approved quantifiable commitments (fixed and contingent) cannot exceed 5 percent of gross domestic product, unless the president makes a request to the Council of Ministers for an exceptional increase in the limit. Additionally, the 2014 amendments allow COALIANZA and SAPP to charge 2 and 1 percent, respectively, of the value of the contract as advisory fees, and these resources must be deposited in the government’s Treasury account. The budgets of COALIANZA and SAPP are to be financed according to budgetary processes and guidelines approved by the National Congress.

The PPPP Act 2010 also defines the institutional framework for identifying and implementing PPPs in Honduras. The broad PPP governance framework in Honduras is summarized in figure 6.

²² The PPP institutional and legal framework of Honduras can be seen in a comparative context in *Disclosure in Public-Private Partnerships: Jurisdictional Studies*, published by the World Bank’s PPP Cross Cutting Solution Area in August 2015. The document analyzes PPP frameworks in 14 national and subnational jurisdictions, including Honduras, and is available at <http://pubdocs.worldbank.org/en/910311448299077946/Disclosure-in-PPPs-Jurisdictional-Studies.pdf>.

²³ Specific functions are detailed in table 9.

FIGURE 6: PPP GOVERNANCE STRUCTURE



Sources: Disclosure in PPPs; Jurisdictional Studies, World Bank, 2015; updated regulations.

Key institutional actors in the project identification, preparation, negotiation, commercial close, financial close, construction, and operation stages include the contracting authority, COALIANZA, UCF in the Ministry of Finance, and SAPP.

The National Congress and the Council of Ministers are responsible for approving projects. In addition, the main contracting authority (Ministry of Infrastructure) has created an Executive Unit of Concessions (UEC).²⁴ The institutional framework and process have clear gatekeeping roles at every stage. The nature of institutions and their role in the PPP process is summarized in table 9.

TABLE 9: INSTITUTIONAL FRAMEWORK FOR PPPS

INSTITUTION	NATURE OF INSTITUTION AND ROLE IN THE PPP PROCESS
Contracting authority	<p>A contracting authority has been identified as a ministry, autonomous institution, Regional Development Council, municipality, government entity, or decentralized body, or other state entity with the capacity to contract goods or services (PPPP Act 2010).</p> <p>The primary role of contracting authorities is to initiate PPP projects and present project proposals to COALIANZA.</p>
Commission for the Promotion of PPPs (COALIANZA)	<p>COALIANZA was created in 2010 as an autonomous legal entity. It is managed by three commissioners, with the leadership function rotating every year.</p> <p>COALIANZA is primarily responsible for project preparation and the procurement process, with participation in the implementation of contracts according to the clauses negotiated with private parties.</p> <p>Its functions and responsibilities are</p> <ul style="list-style-type: none"> • To advise and collaborate with local governments and other state entities in promoting private investment, prior to the submission of projects for feasibility. • To coordinate with other internal public agencies in selecting public investment projects that fall within priority areas. • To collaborate with municipalities in evaluating projects submitted to the pipeline for incorporation into the National Public Investments System. • To ensure that PPP projects are in harmony with the objectives and goals of the Country Vision and the National Plan. • To undertake PPP feasibility studies. • To coordinate with other state entities, and manage all authorizations, permits, licenses, and other requirements to make the execution of PPP projects technically, operationally, and financially feasible. • To manage the contracting processes that allow PPPs in public works and services at the national and the subnational levels. • To guarantee the implementation of activities included in the rationale for carrying out PPP projects.

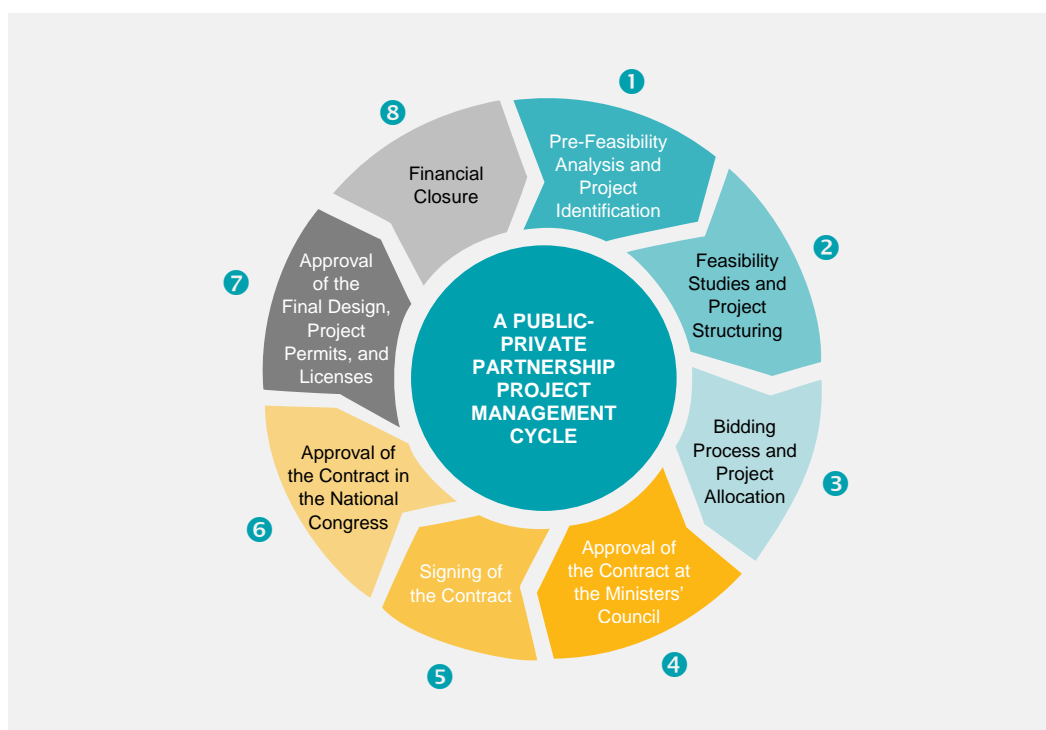
²⁴ Source: Ministerial agreement No. 0244-2013.

Fiscal Contingency Unit (UCF)	<p>UCF is a specialized technical unit of the Ministry of Finance responsible for identifying, analyzing, quantifying, managing, and assessing the fiscal costs and risks of projects, including PPPs, to optimize efficiency and effectiveness in managing public finances.</p> <p>Its functions and responsibilities are</p> <ul style="list-style-type: none"> • To evaluate pre-feasibility analyses (including cost-benefit analysis and financial feasibility analysis) of projects developed by COALIANZA that may potentially be eligible to be designed and executed as PPPs. • To issue opinions authorizing or disallowing the start and/or continuation of each PPP project. • To carry out analyses of the budgetary capacity of the government to execute PPP projects, and create an annual schedule of approval and execution of PPP projects. • To analyze and issue opinions on each version of draft contracts, to draft approval decrees for each PPP, as well as the contract specifications, risk matrix, and private-public comparator to identify fiscal risks, contingencies, and potential tax implications. • To analyze and issue an opinion on the negotiated contract with the winning bidder, including its risk matrix. • To prepare an annual report on the implementation of each PPP project, consisting of at least the amounts disbursed or to be disbursed as per projections, as well as the progress in the execution, schedule, and amount of annual payments committed. • To maintain a record of government commitments, quantifiable contingencies, and guarantees executed under each PPP project.
Council of Ministers, chaired by the President	<ul style="list-style-type: none"> • Authorizes COALIANZA to sign awarded contracts. • Sets legal PPP limits and special dispensations, if required (for example, exemption of licenses and authorizations). <p>PPP projects that fall within the purview of the executive branch require only the authorization of the President of the Republic. In the remaining cases, the executive branch must submit the contract to Congress for final approval.</p>
National Congress	<ul style="list-style-type: none"> • Approves PPP contracts and amendments in certain cases. • Ratifies signed contracts.
Public-Private Partnership Superintendence (SAPP)	<p>SAPP is managed by three superintendents and attached to the Superior Court of Accounts. Its role commences after the PPP contract signature. SAPP has four major areas of responsibility:</p> <p>Regulation</p> <ul style="list-style-type: none"> • To issue standards and procedures for applying sanctions for breaching legal, regulatory, or contractual provisions, while ensuring due process. • To prevent anticompetitive, monopolistic, or discriminatory conduct among the private parties. <p>Monitoring</p> <ul style="list-style-type: none"> • To monitor the provision and management of public services and infrastructure provided through PPPs, and to ensure all parties in a PPP comply with relevant contracts and licenses. • To require from service providers all necessary documents and data to verify their compliance with the PPP Act and its regulations, while ensuring the appropriate protection of confidential information. <p>Oversight</p> <ul style="list-style-type: none"> • To oversee the application of standards related to security matters, interruption and reestablishment of services, as well as the quality of the same, which service managers and providers must follow.

	<ul style="list-style-type: none"> To oversee the quality of services provided through PPPs pursuant to the standards defined in the respective contracts. <p>Sanctioning</p> <ul style="list-style-type: none"> To apply sanctions as per the contract and/or applicable standards for services under a license regime, while respecting the principles of due process. To promote administrative, civil, or legal actions, including precautionary measures, to ensure that service providers fulfill their obligations in conformity with the PPPP Act and their respective contracts or licenses.
Executive Unit of Concessions (UEC)	UEC is a unit of the Ministry of Infrastructure. Its role is to ensure compliance with concession contracts, identify and oversee the management of PPP projects, and act as a facilitating and monitoring body for PPP projects within its jurisdiction.

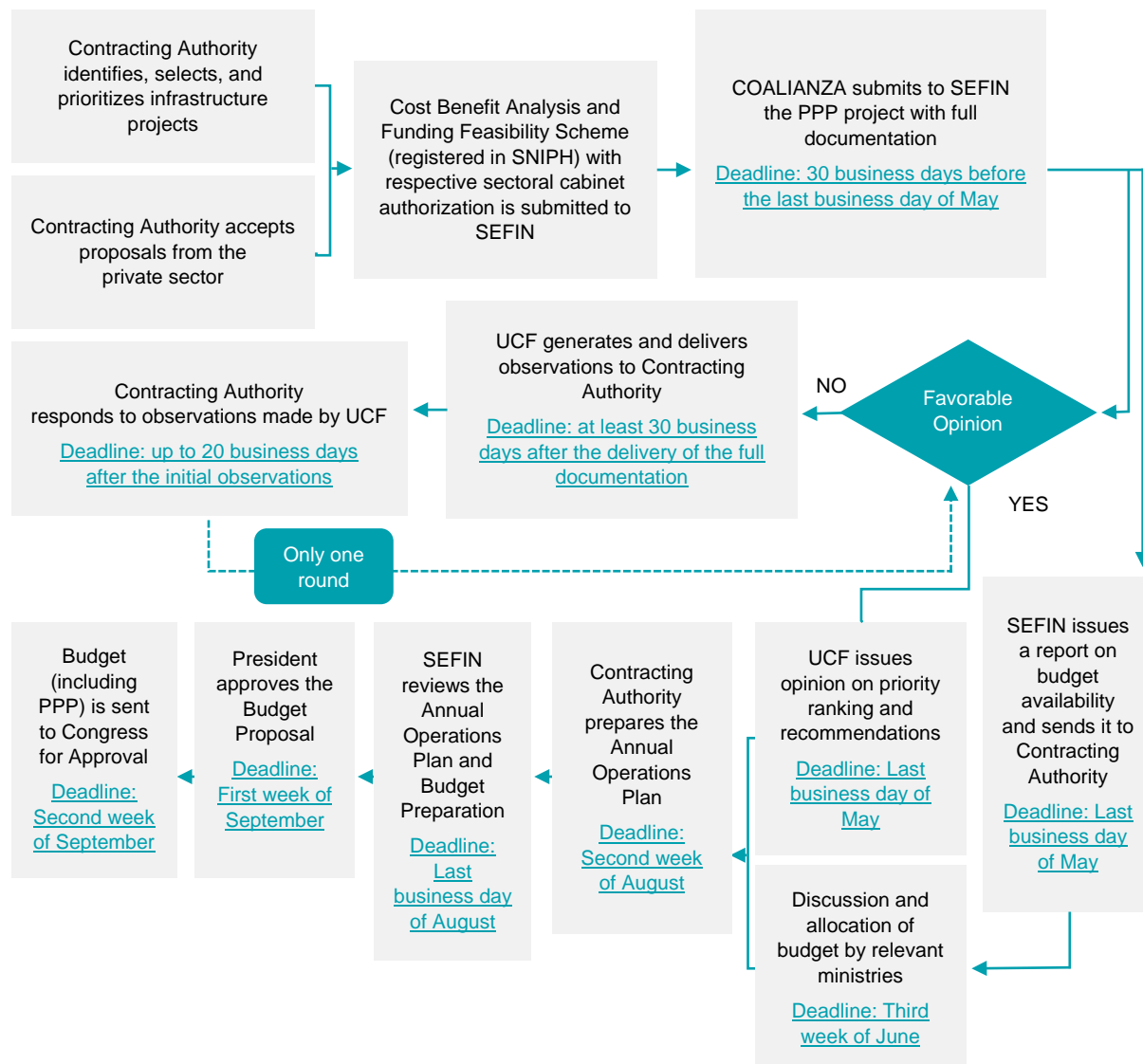
The distinct stages in the PPP project identification, preparation, procurement, negotiation, commercial close, financial close, construction, and operation process in Honduras are summarized in figures 7 and 8. Figure 7 shows the eight stages of a PPP project cycle according to COALIANZA's processes manual. Figure 8 shows different approvals and processes from SEFIN, UCF, and UEC for fiscal and budgetary purposes.

FIGURE 7: STAGES IN THE PPP PROCESS



Source: www.coalianza.gob.hn.

FIGURE 8: PPP APPROVAL PROCESS FOR FISCAL AND BUDGETARY PURPOSES



Source: Ministry of Finance, Ministerial Agreement No. 547-2015.

1. Project Identification (Pre-Feasibility Analysis and Project Identification)

A PPP project can be initiated as a private initiative (unsolicited proposal) or a public initiative. In either case, projects must be presented to COALIANZA with supporting documentation from a private party or a public entity, as the case may be.²⁵

²⁵ Article 17 of the PPP Act.

In the case of private initiatives, interested parties must submit the following documents and information to COALIANZA for consideration:

- ☐ Identification and detailed description of the project and its nature
- ☐ Presentation of base studies of the economic, financial, and technical feasibility of the project, work, service, or delegated activity
- ☐ Estimated total investment and details of investment per year, as well as the methodology used for its calculation
- ☐ If the project does not involve any investment, the savings or improved quality, safety, or time that will accrue with the provision of the proposed goods or services
- ☐ Indication of the source of resources and the type of financing, including whether the project involves co-financing by the state and in what way
- ☐ Whether the project involves the use of material in the public domain or assets of the state, and their identification
- ☐ Environmental feasibility study in the case of projects that would have to undergo the process of environmental impact assessment under current legislation
- ☐ Identification of the public interest.

After examining the above, COALIANZA takes a decision whether to declare the proposal to be of public interest. Although all information related to unsolicited projects is kept confidential until this point,²⁶ once a proposal is accepted to be of public interest, the project enters the pipeline of PPP projects under consideration, and COALIANZA must publish the declaration of interest on its website and in two newspapers with the highest circulation.²⁷ This publication must contain a summary of the project and include the following:

- ☐ Purpose and scope of the investment project
- ☐ Goods and/or public services to be developed
- ☐ Contractual modalities and timelines
- ☐ Estimated amount of investment
- ☐ Tentative schedule
- ☐ Proposed form of payment
- ☐ Quality of service indicators, if applicable
- ☐ Essential elements of the draft contract, according to the criteria established by COALIANZA
- ☐ Guarantee of compliance with contractual obligations
- ☐ Prequalification requirements
- ☐ EOI template

²⁶ Article 27 of the PPP Act and Article 51 of the PPP Regulations.

²⁷ Article 44 of the PPP Regulations.

- ❑ Deadline for EOI, which must be between 30 and 90 days from the date of publication
- ❑ Amount of the offer guarantee, which must be between 5 and 10 percent of the value of the project.

In the case of public initiatives, the contracting authority must first submit a project profile and pre-feasibility study to COALIANZA. After analyzing these, COALIANZA determines whether a public initiative project could be executed as a PPP.²⁸ In both cases, COALIANZA must take the decision to proceed with the project or not after a cost-benefit analysis and an assessment of feasible funding schemes. Once COALIANZA takes the decision to move forward with the project, it enters the pipeline of projects under consideration and COALIANZA must publish on its website basic project information, including the sector, name of contracting authority, location, brief description of works, public services to be provided, and estimated investment.

COALIANZA then submits all documents related to the proposed project to UCF in the Ministry of Finance, which then analyzes the proposal with respect to financial and nonfinancial risks, guarantees, and fiscal contingencies. UCF then issues a binding opinion that allows the project to move into the preparation phase or rejects it. If UCF provides a positive opinion, COALIANZA must then enter the proposed project into SNIPH for integration with the government's infrastructure needs and planning.

2. Project Preparation (Feasibility Studies and Project Structuring)

A system of trust funds has been created by the National Congress to support COALIANZA in the PPP procurement and management process. These trust funds essentially “outsource” the responsibilities of project preparation, procurement, and management to domestic fiduciary banks through a competitive bidding process. The rationale behind creating this system of trust funds was that fiduciary banks would be able to carry out project preparation, procurement, and management more efficiently and transparently. Approximately 90 percent of the PPP projects to date have been developed through trust funds, with more trust funds available for future projects.

Once the project moves into the preparation phase, COALIANZA begins a public tender process to award a trust fund for the project preparation and future management of the project. In most cases, COALIANZA publishes a Request for Proposals (RFP) to select a fiduciary bank to manage the trust fund specific to the project. After the trust fund has been awarded, COALIANZA publishes the approval executive decree and the legislative decree that authorizes the management of the trust fund. COALIANZA also publishes the name of the fiduciary bank that has been awarded the contract to manage the trust fund, the deadline of the trust fund agreement, the estimated investment amount, and the actual contract document.²⁹

After the fiduciary bank has been appointed, a technical committee is formed, comprised of COALIANZA, the relevant contracting authority, SEFIN, and a representative of the selected bank. SAPP has the right to attend all the technical committee meetings. The bank carries out feasibility studies, leads the project preparation, and defines the contract structure. In exceptional cases (10 percent of the projects so far), COALIANZA leads the project preparation, commissions feasibility studies to external consultants, and

²⁸ Article 19 of the PPP Act.

²⁹ Article 22 of the Transparency and Access to Information Regulations requires the proactive publication of subscribed contracts.

develops bidding documents and a draft of the PPP contract. In either case, UCF, must issue an opinion on the draft contract.³⁰

Although “the use of the Trust Fund model [has] encourage[d] the implementation of PPPs, there are high concerns about the quality of the projects that result from it, and about the transparency of the process.”³¹ This is due to two factors. First, banks bid and are selected to manage the trust fund based on a commission or fee on revenues, and not with respect to their technical capacity in preparing or managing PPP projects. Second, there are contradictions in the existing legislation and administrative policies with respect to the oversight roles of UCF, COALIANZA, and SAPP in the context of trust funds and their management. Article 66 of the General Budget Provisions for 2017 states that all concessionaires and public sector institutions that have constituted trust funds are obliged to submit, no later than 10 business days from the end of the month, all financial information related to their operation to the Fiscal Contingencies Unit of SEFIN, as well as to SAPP. Article 26 of the Fiscal Responsibility Act also states that all trust funds are a part of the National Budget and hence subject to public oversight through established bodies and procedures.

However, Article 67 of the General Budget Provisions for 2017 contradicts this, as it says that the General Budget Provisions of Revenues and the Organic Budget Act are not applicable to trusts constituted by the State of Honduras within the framework of PPPs and must instead be governed under the rules related to private law contained in the Commercial Code. In practice, this prevents UCF, COALIANZA, and SAPP from having any effective oversight role in the management of the trust funds.

In addition, the trust funds system has raised concerns that it undermines the institutional capacity of COALIANZA in assuming a lead role in project preparation, procurement, and management.

3. Procurement (Bidding Process and Project Allocation)

Once the project and contract preparation has been completed and approval has been granted by the technical committee (created for each project), the trust fund, through its fiduciary agent (the domestic bank), launches a public competitive bidding process (EOI), whereby interested private firms bid and compete for the project on identified parameters. Where COALIANZA leads the project preparation process, it publishes a request for EOI for private parties to compete for the PPP project.

Once private parties express their interest, they must pay a fee to have access to COALIANZA’s Data Room to access all information related to the bidding process.³² The private parties can seek clarifications and make suggestions on the bidding specifications, including on the draft PPP contract. Parties interested in submitting a bid proposal must then fulfill a prequalification process based on legal, technical, and financial criteria defined by COALIANZA in coordination with the contracting authority.³³

After the deadline for submission has passed, bid documents from prequalified parties are opened in public in the presence of a public notary, who takes notes of the proceedings and prepares minutes.³⁴ The

³⁰ Article 21 of the PPPP Regulations.

³¹ Source: *The Fiscal Implications of Public–Private Partnerships in Honduras*, Inter-American Development Bank, 2015, p. 35.

³² Article 17 of the PPPP Regulations.

³³ Article 22 of the PPPP Regulations.

³⁴ Article 23 of the PPPP Regulations.

Evaluation Committee then reviews the proposals and recommends awarding a contract to a preferred private party based on the technical and economic components detailed in the bidding specifications.³⁵

In the context of unsolicited proposals, once the initial proposal has been approved by UCF and enters the project pipeline and SNIPH, COALIANZA must publish an RFP for the same. If other private parties show an interest in the proposal, COALIANZA must call for a competitive bidding process following the procedure for solicited proposals. If no other parties other than the first proponent shows any interest, then the project must be awarded directly to the applicant.³⁶

If the tender process fails for any reason, the procurement process must be declared canceled, with the possibility of initiating a new process after making necessary amendments to the conditions and specifications if need be.³⁷

4. Negotiation (Approval of the Contract at the Ministers' Council, Signing of the Contract, and Approval of the Contract in the National Congress)

Once the preferred bidder has been identified, negotiations on the draft contract may take place between the bidder and COALIANZA, the contracting authority, and more recently, SAPP as well. UCF is mandated to issue an opinion on each version of the contract that is drafted during the negotiations. Once there is agreement, the final contract is presented to the president and the Council of Ministers and is approved through an executive decree. The draft of this executive decree is also subject to the approval of UCF. Once the president approves the contract, COALIANZA and the contracting authority are authorized to sign it. After the contract has been signed between COALIANZA, the contracting authority, and the private entity, it must be ratified by the Congress through a legislative decree. However, PPP contracts that have been awarded through a trust fund are not required to be sent to the Congress for ratification, as the trust fund contract itself already has its approval.

It is at this stage that the signed contract is published by COALIANZA.³⁸ From this point onward, anyone may request and receive information related to the project, which must be provided by COALIANZA within a maximum period of 15 days of the request.³⁹

In some cases, such as the Logistics Corridor and others,⁴⁰ COALIANZA has also published other documents, such as project terms of reference, adjudication letters, fact sheets, videos of the project, contract modifications, decrees approving the contract and modifications, terms of reference for the supervision of works, and signed contracts for the supervision of works.

³⁵ Article 10 of the PPPP Act.

³⁶ Article 45 of the PPPP Regulations.

³⁷ Article 27 of the PPPP Regulations.

³⁸ Article 22 of the Transparency and Access to Information Regulations.

³⁹ Article 93 of the PPPP Regulations.

⁴⁰ For more, see *Disclosure in Public Partnerships: Jurisdictional Studies*, World Bank, 2015, 74–76.

5. Commercial Close (Approval of the Final Design, Project Permits, and Licenses)

Between the signing of the contract and financial close, COALIANZA must assist the private parties in obtaining permits, licenses, authorizations, and any other required clearances from relevant public entities, including municipalities, to make the PPP project operational. The PPP Regulations establish that the state and municipalities are obliged to give permits and licenses that have been mentioned in the PPP contract. Any other permissions and licenses must be sought by the private party at its own cost.⁴¹ However, in some cases it may be that private parties are exempt from obtaining licenses, permits, and authorizations. In such cases, COALIANZA must publish any decrees that provide such exemptions.

After commercial close, where necessary, COALIANZA prepares the terms of reference and develops the procurement process to appoint a supervisory firm that will follow up on the implementation of the PPP project. The RFP is published in newspapers and on COALIANZA's website. Being the oversight body for PPP projects, SAPP is perhaps best placed to procure supervisory firms. However, in current practice, COALIANZA is carrying out this responsibility, as SAPP was established only after the first generation of the PPP contracts had already been signed and entered the implementation phase. At the same time, SAPP is carrying out the responsibility of monitoring supervisory firms, and such firms are obliged to submit monthly reports to SAPP, which in turn must publish them on its website.

6. Financial Close

Financial close occurs when all the project and financing agreements have been signed and all the required conditions precedent have been met. It enables financing (loans, equity, grants, and so forth) to start flowing so that project implementation can start.

At this stage, all involved parties must provide what is necessary to ensure that SAPP can carry out its supervisory role effectively. This includes the submission of documents related to financial close by each relevant party.⁴² In turn, SAPP discloses on its website information such as the date of financial closure, financing source, source of repayment, and financial closure amount.

7. Construction and Operation

In the final stage, the execution of works must be concluded in the shortest possible time and this process must be monitored by the contracting authority, supervisory firm, and SAPP.⁴³ Once the project is operational, the contracting authority, in close coordination with COALIANZA and SAPP, must monitor the performance indicators and service delivery. Where the concession has been granted by the Ministry of Infrastructure and Public Services (INSEP), UEC monitors the performance of the project.

⁴¹ Article 10 of the PPP Regulations.

⁴² Article 84 of the PPP Regulations.

⁴³ Article 30 of the PPP Regulations.

SAPP is also responsible for publishing all Acts, declarations, and other documents that establish the execution of the project and its compliance with the obligations that exist in the PPP contracts.⁴⁴ SAPP must also publish on its website information such as commencement of works, commencement of operations, guarantees given by the state, and rates and prices for services.

In sum, although a legal and institutional framework to regulate and manage the PPP process has been put in place in Honduras, it could be improved significantly by addressing the ambiguities and contradictions that exist within it. As pointed out in the paragraphs above, these relate to improving clarity in institutional roles and responsibilities, strengthening checks and balances, and reducing potential conflict of interest (especially with respect to the current trust fund model). In addition, strengthening the technical capacity of all public agencies involved in the PPP lifecycle would have a significant positive impact on the overall institutional framework.

⁴⁴ Article 95 of the PPPP Regulations.

5. Legal and Institutional Framework for PPP Disclosure

Key Legislation

PPP disclosure in Honduras is primarily informed by the TAI Act 2006 (Ley de Transparencia y Acceso a la Informacion Publica), with amendments made in 2007 and regulations issued in 2008; the PPPP Act 2010 (Ley de Promocion de Alianza Publico-Privada), with the PPPP Regulations issued in 2011, amendments made in 2014, and new regulations issued in 2015; and NTP 2015.

However, there are contradictions between the TAI Act 2006, NTP 2015, and regulations issued under the PPPP Act in 2011. Article 13(9) of the TAI Act obliges public authorities proactively to publish all contracts, concessions, sales, auctions, calls for tenders, public works tenders and supplies, consulting contracts, procurement and award proceedings, amendments, modifications and extensions, and declarations of direct purchases (as well as their results). In addition, Article 13(9) establishes that it is mandatory to disclose, through the public entity by which contracts have been concluded, information on activities of private companies that provide public goods and services exclusively or that sign contracts financed with public resources or funds. This approach in support of greater disclosure is strengthened by NTP, which, through Strategic Action Number 56, obliges COALIANZA to disclose information on every activity, income, procurement process, and budget settlement related to PPP projects through public transparency portals.

However, Article 92 of the PPPP Regulations 2011 states that all documents related to the process of procuring a PPP project that are owned or held by the state must be kept confidential until the PPP project contract has been signed. Further, Article 93 of the PPPP Regulations 2011 states that even after the PPP contract is signed, neither any public authority nor the relevant special purpose vehicle has any obligation to publish proactively any information related to the project. However, the article states that any natural or legal person may request and receive information related to a PPP project without giving reason or cause to substantiate the request. Such requests must be directed to COALIANZA, and it must provide the requested information within a maximum of 15 days of the request.

A summary of existing laws and their implications for PPP disclosure is provided in table 10.

TABLE 10: IMPLICATIONS OF KEY LEGISLATION FOR PPP DISCLOSURE

CLAUSE	DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
<i>Transparency and Access to Information Act 2006</i>		
Articles 3(5), 3(6), and 3(9)	<p>Defines public information, reserved and confidential information as follows:</p> <p><i>Public information:</i> any file, record, data, or communication contained in any medium, document, printed, optical, electronic record, or other in the possession of the obligated institutions that has not previously been classified as reserved and that may be reproduced.</p> <p><i>Reserved information:</i> public information classified as such by the TAI Act or classified as restricted by other laws and by private resolutions of public sector institutions.</p> <p><i>Confidential information:</i> information given to the state by individuals to which the TAI Act confers confidentiality, including bids sealed in tenders before the date set for opening.</p>	CAs, COALIANZA, SEFIN, and SAPP must define what is to be considered as reserved or confidential information according to the TAI Act.
Article 4	<p>Refers to the duty to inform and the right to access information:</p> <p>All obligated institutions must publish the information related to their management or, where appropriate, provide all information concerning the application of public funds administered or guaranteed by the state.</p> <p>Any natural or legal person has the right to request and receive from the obligated institutions complete, truthful, adequate, and timely information within the limits and conditions established in the TAI Act.</p>	CAs, COALIANZA, and SAPP are obligated institutions and therefore are subject to the TAI Act with respect to the duty to inform and disclose information.
Article 13	Includes a list of the information that public institutions should proactively publish. This includes contracts, concessions, auctions, calls to tender for public works, consulting contracts, minutes of offer opening and award processes, and declaration of direct sales and their results.	CAs, SEFIN, SAPP, and COALIANZA must disclose such information through their transparency portals.
Article 17	Defines confidential information as when the damage that can occur is greater than the public interest in disclosure; or when the disclosure of such information puts at risk or damages the security of the state or the life, safety, and health of any person; or impedes any judicial investigation; or negatively impacts any international relations or negotiations; or negatively impacts the economic, financial, or monetary stability of the country or government.	This set of generic criteria applies to PPP procurement processes and PPP contracts on a case-by-case basis. Public entities must defer to IAIP to declare specific information as confidential based on identified criteria, by following the administrative procedure established in the TAI Regulations.
Article 21	Public authorities must respond within 10 days to any request for information.	CAs, COALIANZA, SEFIN, and SAPP are obliged to follow this timeframe.
Article 28	Establishes that violations of the TAI Act that do not constitute a crime would be sanctioned with written warning, suspension, fine, cancelation, or dismissal of public officials. Sanctions can be imposed by IAIP.	CAs, COALIANZA, SEFIN, and SAPP officers could be sanctioned if they contravene the TAI Act.

<i>Transparency and Access to Information Regulations 2008</i>		
Article 7	Establishes that all obligated institutions should designate a public information officer responsible for managing the transparency portal and receiving and routing information requests within their institutions, as well as responding to applicants.	CAs, SAPP, COALIANZA, and SEFIN have appointed public information officers in accordance with the TAI Act.
Article 17	Refers to the obligation of public entities and all subjects under the Transparency and Access to Information Act to update information every month unless other legal provisions establish other deadlines. Information related to activities of private firms delivering public goods and services must be updated within a period of no more than 10 working days from the date of last modification.	CAs, SAPP, COALIANZA, and SEFIN must update information disclosed in their transparency portals at least every month. Information that has been disclosed through SISOCS is accepted as valid disclosure by IAIP.
Article 22	Public authorities are required to publish on their websites all the processes for selection of suppliers and the signed contracts, together with the information related to acquisitions, rents, services, and public works, detailing the following in each case: administrative unit that signed the contract; tendering process; name of person or company that signed the contract; date, object, amount, and timelines of the contracts; and contract modification agreements.	CAs, SAPP, and COALIANZA must disclose this information through their transparency portals.
Article 26	Information may be classified as confidential by express provision of another law, or if it is considered to be commercially sensitive, or if it is related to industrial, banking, or other trade secrets considered as such by legal provisions.	Some information relating to private parties in a PPP contract could be considered confidential as defined in this clause.
<i>National Transparency Policy 2015</i>		
Strategic Action 56	Refers to the duty of COALIANZA to disclose information on every activity, revenues, procurement process, and budgetary settlements related to PPPs in its portfolio.	This places direct responsibility for PPP disclosure on COALIANZA.
<i>PPPP Act 2010</i>		
Article 3(6)	Refers to the principles guiding PPP contracts and establishes that all PPP projects are public projects and subject to strict accountability, as they have an implication on the fiscal commitments of the state as well as an impact on users who are the public.	There are no legal restrictions or constraints for disclosure in PPP projects.
<i>PPPP Regulations 2011</i>		
Article 2	SPVs must publish their financial statements every three months. In addition, they must publish their annual report within the first quarter of the following year. This publication must be made through their website.	This obliges SPVs to disclose performance information, including the financial performance of PPP projects.
Article 16	Public tender announcements must be published in two newspapers of general circulation for two consecutive days, and on the COALIANZA website. The second announcement should be published at least 15 days before the deadline for the submission of proposals. Announcements for an international public tender may also be published in specialized magazines and/or other media in those countries where there might be interested parties.	COALIANZA and SAPP should publish their RFP or EOI for all their procurement processes.

Article 23	The receipt of proposals must be a public event during which a notary must certify the documentation and proposals submitted.	Names of bidders may be disclosed by COALIANZA prior to the evaluation process.
Article 44	<p>COALIANZA must publish the public interest rationale of unsolicited proposals on its website and in two newspapers of high circulation. This must contain at least the following information:</p> <ul style="list-style-type: none"> a. A summary of the project of the private initiative that includes <ul style="list-style-type: none"> • Purpose and scope of the investment project • Goods and/or public services the project will develop <p>Contractual modalities and terms of the contract</p> <p>Estimated amount of the investment</p> <ul style="list-style-type: none"> • Tentative schedule of the investment project • Proposed form of payment <ul style="list-style-type: none"> b. Indicators of the quality of the service that shall be provided, if applicable c. Essential elements of the draft of the contract, according to the criteria established by COALIANZA d. Guarantee of compliance with contractual obligations e. Request of prequalification, and announcement of public tender or contest f. Model of a letter of EOI to be submitted by third parties interested in the execution of the project g. Deadline for the submission of EOIs, which must be no less than 30 days and no more than 90 calendar days from the date of publication h. Amount of the offer guarantee, which shall be no less than 5 percent and no more than 10 percent of the value of the project. 	It is obligatory to publish this information related to unsolicited proposals.
Article 89	SAPP must keep a register of sanctions imposed on private parties for monitoring, analysis, and evaluation, and to inform the public.	This information could be analyzed with respect to performance indicators and made public.
Article 92	<p>All documents and files owned or held by the state that are related to PPP procurement remain confidential until the signature of the contract.</p> <p>Officials and public servants, members of special committees, and appointed personnel are obliged under legal responsibility to keep confidential the information they have access to even after the respective procurement process.</p>	<p>COALIANZA cannot disclose PPP procurement information until the contract is awarded.</p> <p>This article is in contradiction with the TAI Act, which promotes proactive disclosure of key procurement elements. And procurement information does not fit with the criteria for reserved information.</p>
Article 93	Once the PPP contract is signed, anyone may request and receive information related to the project, which must be provided by COALIANZA within a maximum period of 15 days of the request.	COALIANZA must provide on-demand information in line with the TAI Act once the contract has been signed.

Article 95	Regulations issued by SAPP on monitoring, implementation, and enforcement of PPP contracts are considered public information. SAPP must publish on its website all regulations and fulfillment reports related to PPP contracts.	Once the contract has been signed, there are no constraints on disclosing any information related to PPP projects, except that which has been deemed confidential.
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Note: CAs = contracting authorities; COALIANZA = Commission for the Promotion of Public-Private Partnerships; EOI= Expression of Interest; IAIP = Institute of Access to Public Information; PPP = Public-Private Partnership; PPPP = Public-Private Partnerships Promotion; RFP = Request for Proposals; SAPP = Superintendence for Public-Private Partnerships; SEFIN = Ministry of Finance; SISOCS = Monitoring and Information System for Works and Supervision Contracts; SPV = special purpose vehicle; TAI = Transparency and Access to Information.

Other Legislation

The Organic Budget Act 2004 mandates that all investment projects must be registered in SNIPH and all guarantees and public commitments, including those provided to PPP projects, must be recorded in the Debt Management System. However, these systems are not available in the public domain.

Sectoral Legislation

Articles 2 and 4 of the 02-2015 Executive Decree oblige INSEP, a major contracting authority, and COALIANZA (both entities are part of the Productive Infrastructure Cabinet) to use SISOCS to disclose information related to infrastructure PPP projects by following the CoST Infrastructure Data Standard.

Transparency Portal Guidelines

The Guidelines for Standardization of Transparency Portals 2015⁴⁵ require all public institutions, or private institutions managing public funds, to publish information on their websites using a standardized template as follows:

1. Organizational structure
 - i. Organization chart
 - ii. Functions
 - iii. Jurisdiction of each administrative unit
 - iv. Services provided (fees and duties, procedure, requirements, and formats)
 - v. Cadastral information
 - vi. Public records
 - vii. Contact data of the Public Information Officer (OIP)
2. Planning and accountability
 - i. Plans
 - ii. Programs and projects (a link to SISOCS is allowed in this section)
 - iii. Activities

⁴⁵ Source: Guidelines for Standardized Transparency Portals, IAIP, 2015.

- iv. Monthly remuneration
 - v. Tenders and purchases
 - vi. Contracts, concessions, permits, and licenses
 - vii. Sales of the institution (own income)
 - viii. Auctions
3. Finances
- i. Financial statements
 - ii. Settlement
 - iii. Monthly budget
 - iv. Annual report
 - v. Monthly transfers
 - vi. Expenses
 - vii. Monthly physical investments
 - viii. Financial investments
 - ix. Debt and delinquency
4. Laws and regulations
- i. Laws, regulations, ministerial decrees, and circulars
 - ii. Publications in the official gazette
 - iii. Executive decrees, agreements, and resolutions
5. Citizen participation.

IAIP, through its Verification Unit, carries out a monthly evaluation of transparency portals to verify their compliance with the TAI Act (specifically, Articles 4 and 13, which relate to proactive disclosure), as well as the Guidelines for Standardization of Transparency Portals 2015.

Key Institutions in PPP Disclosure

Table 11 provides a summary of the roles of institutional actors in PPP disclosure.

TABLE 11: ROLES OF INSTITUTIONAL ACTORS IN PPP DISCLOSURE

INSTITUTION	(POTENTIAL) ROLE IN PPP DISCLOSURE
Public-Private Partnership Commission (COALIANZA)	<p>COALIANZA is mandated to disclose the following:</p> <p>For solicited proposals: calls for tenders in two newspapers of general circulation in the country for two consecutive days, as well as on the COALIANZA website for at least 15 days between the second publication and the deadline for the submission of proposals.</p> <p>For unsolicited proposals: after analyzing unsolicited submissions, if applicable, COALIANZA must publish a declaration of interest on its website and in two newspapers of greatest circulation. This declaration of interest must include</p> <ol style="list-style-type: none"> 1. A summary of the project of the private initiative that includes: (i) purpose and scope of the investment project, (ii) goods and/or public services the project will develop, (iii) contractual modality and term of the contract, (iv) estimated amount of the investment, (v) tentative schedule of the investment project, and (vi) proposed form of payment. 2. Indicators of the quality of the service that shall be provided, if applicable. 3. Essential elements of the draft of the contract, according to the criteria established by COALIANZA. 4. Guarantee of true compliance to contractual obligations. 5. Requirements of prequalification of the public bid, public tender, or contest of integral projects that is convened. 6. Model of a letter of Expression of Interest to be submitted by third parties interested in the execution of the project. 7. Term for the submission of Expressions of Interest, which must be no less than 30 days and no more than 90 calendar days counting from the date of publication. 8. Sum of the guarantee of presentation of offer, which shall be no less than 5 percent and no more than 10 percent of the value of the project. <p>COALIANZA must also consider all information received as a part of unsolicited submissions as confidential until it is declared of interest. In addition, because of their nature, unsolicited submissions that represent intellectual property will be protected as such within the parameters established by law from the time of presentation, even where they are not declared of public interest.</p> <p>COALIANZA must also:</p> <ul style="list-style-type: none"> • Keep as confidential all documentation and files prepared to carry out the process of promotion of a PPP project, even if those files are owned by the state. • Keep the information confidential until the signature of the PPP contract. • Submit technical, financial, and full contract files within five calendar days after signature to the National Public Investment Management System (SNIPH). • Once the PPP contract is signed, anyone may request and receive information related to the project, which must be provided by COALIANZA within a maximum period of 15 days of the request.

Contracting authorities	<p>Each contracting authority must:</p> <ul style="list-style-type: none"> • Publish quarterly, through its website, its financial statements, as well as the annual report within the first three months of the following year. • Proactively publish contracts, concessions, auctions, calls to tender for public works, consulting contracts, minutes of offer opening and award processes, and declaration of direct sales and the results. • Disclose information on processes for selection of suppliers and the signed contracts, together with the information related to acquisitions, rents, services, and public works, detailing the following in each case: administrative unit that signed the contract; tendering process; name of person or company that signed the contract; date, object, amount, and timelines of the contracts; and contract modification agreements.
Public-Private Partnership Superintendence (SAPP)	SAPP must publish on its website all Acts or declarations establishing the execution of and compliance with the obligations of all PPP contracts.
Public-Private Partnership Fiscal Contingency Unit (UCF in the Ministry of Finance)	<p>As part of its mandate, UCF must:</p> <ul style="list-style-type: none"> • Register and disclose state commitments, including firm commitments, quantifiable contingencies, and guarantees executed for PPP projects. • Register all accepted guarantees and commitments of PPPs in the Debt Management System. • Publish an annual financial PPP report on the website of the Ministry of Finance no later than the first quarter of the following fiscal year.

6. Disclosure in Practice and Key Challenges

Disclosure in Practice

Honduras currently publishes a relatively high level of project and contract information. However, pre-procurement disclosure is weak, with most information becoming available only after the signing of the contract. In addition, only minimal information on upcoming PPP projects is currently available in the public domain. Like many other jurisdictions, information related to performance is not disclosed systematically.

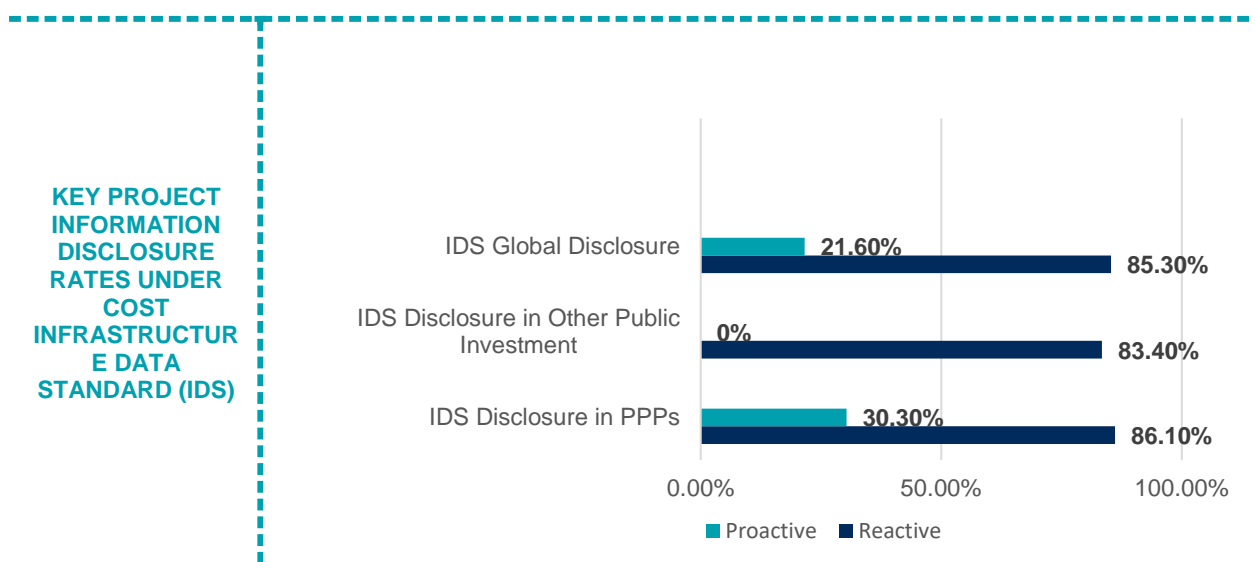
Pre-procurement disclosure includes a list of projects in COALIANZA's pipeline. The list currently includes a one-paragraph description, the estimated investment, and the status of the project. In addition, COALIANZA publishes a list of projects under development. This list includes different types of information, depending on how advanced the preparation process is. The list is updated whenever there is a change. Feasibility and cost-benefit reports are not made public during the pre-procurement stage.

During the procurement phase, requests for EOIs are published on the COALIANZA website and in national newspapers. After that, only bidders who have paid to participate in the public procurement process and signed the confidentiality agreement have the right to access COALIANZA's Data Room. All feasibility studies are available to the bidders solely and exclusively for information and reference purposes. Lists of prequalified firms are not disclosed, but only prequalified firms can respond to the RFPs, since this document can be accessed solely by the short-listed bidders on the COALIANZA website. Evaluation reports are not disclosed, but the names of successful bidders are disclosed on the COALIANZA and SAPP websites.

Post-procurement disclosure includes videos of the tender opening, signed contracts, and relevant technical and feasibility studies. COALIANZA and SAPP recently started to publish substantial information for PPP projects that have achieved commercial close based on CoST Honduras requirements. However, performance reports of all projects have not been made available in the public domain yet. In recent years, CoST Honduras has undertaken a series of assurance processes to assess disclosure. A third round of assessments was carried out in June 2017, which included five PPP projects.⁴⁶ Key statistics on levels of disclosure under different modalities, including the PPP modality, are provided in figure 9. The current practice in PPP disclosure is summarized in table 12.

⁴⁶ Governmental Civic Centre, Palmerola Airport, Puerto Cortes Container Terminal, Touristic Corridor, and Danli Market and Bus Terminal.

FIGURE 9. COST INFRASTRUCTURE DATA STANDARD DISCLOSURE RATES IN PPP PROJECTS UNDER ASSURANCE



Source: Third Assurance Report of CoST Honduras.

TABLE 12: CURRENT PPP DISCLOSURE PRACTICES

DOCUMENT/INFORMATION	PUBLISHED ON COALIANZA AND SAPP WEBSITES	PUBLISHED ON THE RELEVANT CONTRACTING AUTHORITY WEBSITE
PPP pipeline (with basic project information)	Yes	No
Feasibility Study Report	Yes	No
Project Information Profile	Yes	No
Value-for-money report	No	No
RFQ and EOI	Yes	No
Lists of prequalified firms	No	No
RFP	No	No
Evaluation report	No	No
Name of successful bidder	Yes	No
Contract documents	Yes	No
Performance reports	No	No

Note: EOI = Expression of Interest; PPP = Public-Private Partnership; RFP = Request for Proposals; RFQ = Request for Qualifications.

A comparison of the World Bank Framework for Disclosure, current disclosure practice in Honduras, and the proposed disclosure framework for Honduras is provided in annex C.

Key Challenges

Honduras has embarked on an ambitious plan to provide infrastructure services through the PPP route, and has put in place comprehensive legal and institutional frameworks for PPPs. However, several challenges to improving disclosure in PPPs remain. Some of these are discussed in the following subsections.

Alignment of the Regulatory Framework

The TAI Act 2006, PPPP Act 2010, and Regulations under the PPPP Act provide a legal and regulatory framework for public bodies to approach disclosure of information. The Executive Decree of 2015, which enables disclosure through SISOCs, complements these primary legal requirements in the specific context of infrastructure projects.

However, the TAI Act, NTP, PPPP Act, and Regulations under the PPPP Act are misaligned on PPP disclosure requirements. For example, although the TAI Act requires proactive disclosure of contracts (and other PPP-related information), the PPPP Act requires reactive disclosure of contracts and other related information. In addition, the regulations under the PPPP Act are contradictory in spirit to the provisions under the TAI Act, as they prevent disclosure of any information prior to contract signature. Aligning the obligations of these two Acts in the context of proactive versus reactive disclosure is a key challenge to ensure that PPP disclosure is made more meaningful and predictable.

Access to Information Related to Trust Funds

Use of the trust fund model in the preparation process of PPPs is meant to encourage the implementation of PPPs using partner banks that have a better capacity to understand and structure risks. But concerns about the transparency of the process remain, as contracts signed with fiduciary banks are subject only to private law (Commerce Code), which does not include any disclosure obligations. This has meant that SAPP and COALIANZA have not been able to access public information generated by fiduciary banks.

Ambiguity in Institutional Roles for Disclosure

As several entities share the responsibility to monitor the implementation of PPPs (COALIANZA, SAPP, and UEC), clarifying their institutional roles is a key challenge to ensure transparency during the post-procurement phase, especially with respect to performance monitoring.

More specifically, it is also important to define better the limitations and allocate the responsibilities for disclosure of sensitive information such as the risks, government support, and financial information of PPP projects.

Scattered Disclosure

The Guidelines for Standardization of Transparency Portals 2015 provides the details of the type of information that must be disclosed by all public institutions and private parties managing public funds. With respect to PPPs, the information that is made public is scattered across different transparency portals and websites. Although project identification, project preparation, procurement, and contracting information is published on COALIANZA's website, performance information after the project is operational is disclosed by SAPP on its institutional website. Collating and publishing all the information about each PPP project throughout its lifecycle in a single place can make information disclosure more useful and meaningful for users.

In addition to using transparency portals for regular disclosure, Executive Decree 02-2015 of 2015 obliges COALIANZA to disclose PPP-related information following the CoST Infrastructure Data Standard using SISOCS. However, SISOCS was designed for traditional procurement projects and not for PPPs. There is a need to adapt SISOCS for PPP projects, which would include a system to disclose project information by different entities that manage a PPP project during its lifecycle.

Use of Open Data Formats

Most information is disclosed in formats that make the utilization of information by external users difficult and restrict the usability of disclosed information by machine-readable systems. Ensuring that SISOCS and any other systems used for PPP disclosure adhere to the Open Contracting Data Standard may help in mitigating this problem.

Technical Capacity

Given that PPPs are relatively new in Honduras, public institutions that are involved in the PPP process (such as COALIANZA, SAPP, SEFIN, UCF, and so forth) have limited technical capacity in discharging their roles in the PPP lifecycle. This in turn has a direct impact on the quality and timeliness of PPP disclosure. Improving the technical capacity of public entities involved in the PPP process thus remains a key challenge.

7. Gap Assessment

TABLE 13: RAPID REVIEW AND GAP ASSESSMENT

COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
POLITICAL ECONOMY	<ul style="list-style-type: none"> • Clear support from the highest levels of government (national) to disclosure in general • Agreement on PPP disclosure among internal stakeholders (ministries and agencies) • Sufficient agreement on the need to disclose and pressure to disclose among important external stakeholders (private sector, users, media, think tanks, civil society organizations, and any other) 	Y Y Y	<p>There is internal support. There is agreement among external stakeholders as well on the need to disclose, but the pressure on government to disclose by external stakeholders is still developing. Private sector support is substantial.</p> <p>There is also a commitment within the government to implement disclosure systematically in line with CoST standards and enhance disclosure on PPPs.</p> <p>Therefore, the political economy gap is assessed to be small.</p>
LAW	<p>Are there laws, policies, and procedures in place that include the following?</p> <ul style="list-style-type: none"> • Proactive disclosure by governments or agencies • Coverage of proactive disclosure relating to contracts or PPPs • High-level definition of confidential information, and protection for sensitive contract information • Timelines for disclosure • Significant legislative or policy impediments or constraints to PPP disclosure 	Y Y Y Y	<p>Disclosure related to PPPs is covered in the TAI and PPPP Acts, as well as in the SISOCs Executive Decree, but the PPPP Regulations are not completely in sync with them.</p> <p>Removal of contradictions in policies and legislation that impact information disclosure related to trust funds is required to improve transparency in the functioning of trust funds.</p> <p>A defined structure with timelines exists for disclosure through transparency portal guidelines and the SISOCs Manual.</p> <p>There is a high-level definition of confidential information, but there is no disclosure during the pre-procurement phase.</p> <p>Therefore, the legislative gap is assessed to be moderate.</p>

GUIDANCE	<ul style="list-style-type: none"> Clearly established roles and responsibilities on PPP disclosure Processes and actions clearly established in guidance or internal orders Timelines for disclosure clearly established Clear guidance available for officials on the identification and treatment of confidential information, including the timeframe associated with confidentiality, factors to be considered as a test of commercial sensitivity, or public interest Penalties associated with failure to disclose Mechanisms that monitor implementation of disclosure policies, internal and external Processes for checking the accuracy of information and validation, internal and external 	Y Y Y N Y Y N	<p>There are general guidelines to disclose information in transparency portals every month. Information must be disclosed by the public information officer. SISOCS has a manual to guide disclosure, which defines who should disclose information according to the project cycle.</p> <p>There is no guidance on the identification and treatment of confidential information.</p> <p>IAIP has issued regulations for the application of sanctions on officials who fail to disclose.</p> <p>There is a mechanism for monitoring disclosure through the verification of transparency portals. In addition, the CoST assurance process for checking the accuracy of disclosed information is also in place, although limited to PPP infrastructure projects. The assurance process does not apply to other types of PPP projects (for example, services).</p> <p>Therefore, this gap is assessed to be small.</p>
DATA, TEMPLATE, AND STANDARD CONTRACT PROVISIONS	<ul style="list-style-type: none"> Degree of consistent, structured, and exploitable information disclosed across projects Defined common open data model /pattern Guidance on improving data collection and data quality Simple and extensible structure Summary records for all available data at various stages and processes Information on unit and staff managing data standards Comprehensive and clear template for disclosure that covers key pieces of pre- and post-procurement information, including financial and performance information <ul style="list-style-type: none"> The template is flexible enough to cater to different kinds of PPPs and PPPs in different sectors The template is dynamic, that is, suited to ongoing financial and performance disclosure Instructions for filling the template are included as required 	Y N N N N Y N	<p>There are basic templates to disclose information using transparency portals and SISOCS.</p> <p>The CoST Infrastructure Data Standard is applicable to most of the current PPP portfolio, but there are no standard contract provisions on disclosure.</p> <p>It is mandatory to include the name and contact details of the public information officer in every transparency portal.</p> <p>The gap is assessed to be high in this area, given the absence of most key elements for data, template, and standard contract provisions.</p>

DATA, TEMPLATE, AND STANDARD CONTRACT PROVISIONS	<ul style="list-style-type: none"> • There are standard contract provisions that provide the following: <ul style="list-style-type: none"> ◦ Specific language for confidential information ◦ Specified period for which the information will be confidential ◦ Format for listing the specific confidentiality clauses of each contract ◦ Clearly stated information that the private provider is expected to maintain along with timelines for submission ◦ Specified audit mandate with the extent of disclosure to audit 	N	
RESOURCES	<ul style="list-style-type: none"> • Budget is available. • Skilled, trained labor is available. • Technology and web platform/s compatible with easy upload and download of information. • Security systems to prevent data and information tampering. 	N Y Y N	<p>SISOCS has been implemented in COALIANZA, but it is not designed for PPP projects. Skilled labor is available.</p> <p>The public information officers of SAPP and COALIANZA are currently maintaining their transparency portals and websites and can continue to handle disclosure under a new policy, but further training for a more sophisticated web portal would be required. Resources are not available for this specific purpose currently. The Government of Honduras may need to provide specifically for this as the number of projects increases.</p> <p>The gap here is assessed to be moderate.</p>

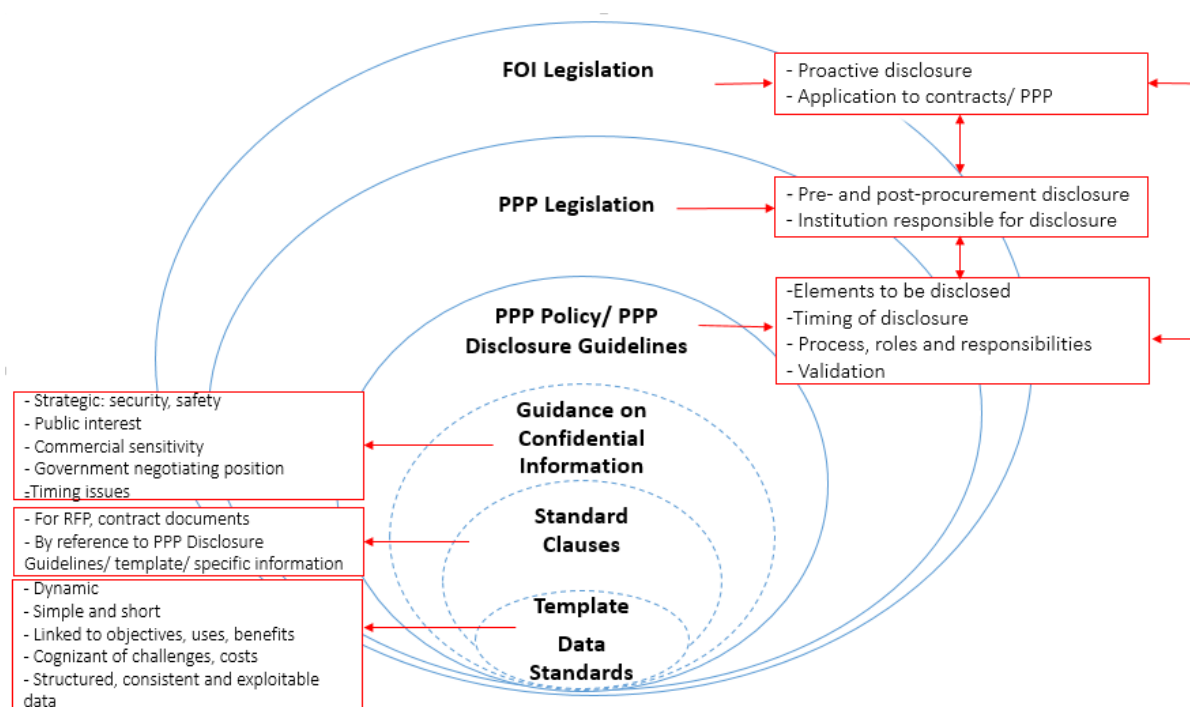
Note: CoST = Construction Sector Transparency Initiative; IAIP = Institute of Access to Public Information; PPP = Public-Private Partnership; PPPP = Public-Private Partnerships Promotion; SISOCS = Monitoring and Information System for Works and Supervision Contracts; TAI = Transparency and Access to Information.

8. Recommendations

The direct and urgent factors that appear to induce governments to disclose, that is, the wider government policy on transparency and whether there is supportive legislation, have been achieved to an extent in Honduras with the enactment of the TAI Act 2006 and the PPP legislations in 2010. Although government policy promotes transparency, there is moderate disclosure in practice. In addition, whatever disclosure happens is often scattered on various websites, due to the ambiguity in institutional roles and lack of clearly delineated roles and responsibilities related to disclosure. The findings of this Diagnostic suggest that strengthening the disclosure clauses of the PPP Regulations 2011; creating an institutional framework for disclosure; and embedding this in practice through standard contractual clauses, particularly for trust funds, the adaptation of SISOCS to PPPs, and implementing strategic communication could go a long way in ensuring greater disclosure in practice.

The World Bank Framework for Disclosure in PPPs recommends a six-layer design (figure 10).

FIGURE 10: ELEMENTS OF THE WORLD BANK RECOMMENDED PPP DISCLOSURE FRAMEWORK



Note: FOI = Freedom of Information; PPP = Public-Private Partnership; RFP = Request for Proposals.

The design of the framework is based on the key drivers of disclosure, major factors influencing the drivers, challenges and benefits associated with disclosure, and uses and various categories of users of information once it is disclosed. Linked directly to these aspects is the issue of customizing disclosure based on specific

PPP contract clauses, levels of government support, and risk-sharing mechanisms within contracts. The framework recommends the incorporation of the following key items in a country's disclosure framework:

- ☐ Mandate to disclose, through freedom of information, PPP, or other legislation/policy
- ☐ More detailed guidance on what, when, and how to disclose
- ☐ Elements of disclosure in different stages with a simple template
- ☐ Timelines for disclosure
- ☐ Guidance on confidential information
- ☐ Standard contractual clauses.

Based on the findings of the Diagnostic and a gap assessment exercise benchmarked against the World Bank Framework, as detailed in earlier sections, this section makes a few focused recommendations on disclosure.

1. *Strengthening the disclosure clauses of the PPPP Regulations 2011.* In countries with strong institutional practices, legislation attempts to include: (a) proactive disclosure; (b) specific coverage, preferably by direct mention of PPPs, or contracts and contract information, as well as performance and procurement information as part of the definition of information; (c) disclosure mechanisms, that is, how the information will be disclosed; and (d) redactions, that is, what information will not be disclosed. The degree of detail to be included in the legislation depends on each country's surrounding integrity risk environment, but it should provide enough detail to ensure sufficient accountability of the public and private actors involved in a project.

Based on the findings of this Diagnostic, it is recommended that the Government of Honduras, under the leadership of SAPP and approval of the General Coordination Ministry, should work on strengthening the disclosure clauses of the PPPP Regulations 2011. Currently, the TAI Act provides for basic proactive disclosure of information. More detailed coverage of disclosure in the PPPP Regulations through an amendment would lead to a stronger mandate for disclosure and better clarity on what to disclose and when. Further, it would remove the inconsistencies inherent in the current legal and regulatory framework. Suggested legal drafting is included as annex A.

2. *Creating an institutional framework for disclosure.* A full suite of instruments, as envisaged in the design of the World Bank Disclosure Framework, could lead to sound and better disclosure practices in Honduras, including trust fund procurement, contracts, and revenue management. A detailed suggested Framework for Disclosure for Honduras based on the six layers of the World Bank Framework is included as annex B. It is recommended that IAIP issues this annex as PPP transparency portal guidelines. To ensure its effective implementation, IAIP will need a capacity development program to verify disclosure under the new guidelines. A summary of the suggested contents is included in table 14. Although suggesting changes in the current institutional framework for PPP *procurement* is outside the scope of this report, it is envisaged that any institutional changes that improve internal and public oversight mechanisms, reduce conflict of interest, and remove existing ambiguities and contradictions in the roles and responsibilities of public agencies involved in the PPP lifecycle will have a positive impact on PPP disclosure.

TABLE 14: SUGGESTED CONTENT FOR A PPP DISCLOSURE FRAMEWORK FOR HONDURAS

CONTENT	DESCRIPTION
ELEMENTS TO BE DISCLOSED PROACTIVELY	<ul style="list-style-type: none"> • Specifics of disclosure at each stage of the PPP process, preferably an exhaustive list of items • Elements to be disclosed should include basic project information, key milestones, procurement, contract features, financial information, renegotiations, and performance
PLACE OF DISCLOSURE	<ul style="list-style-type: none"> • PPP-SISOCS (version 3.0) • Responsibilities for populating and managing the platform to be shared between COALIANZA, SAPP, and SEFIN • Support should be provided for the design and creation of the PPP-SISOCS under World Bank technical assistance.
TIMELINES	<ul style="list-style-type: none"> • Specifics of timelines for each element • Flexible timelines considering the internal processes involved • Key procurement documents, such as RFP, short-listed bidders, preferred bidder, and award disclosed upon signature of the contract • Contract documents and performance information with reasonable lag times from five to 30 days for internal processes, such as removal of confidential information and validation of information
TREATMENT OF COMMERCIAL-IN-CONFIDENCE AND OTHER CONFIDENTIALITY PROVISIONS	<ul style="list-style-type: none"> • Guided by the TAI Act, PPPP Act, discussions with COALIANZA and SAPP, and its appetite for disclosure, the following elements could be considered as confidential information: <ul style="list-style-type: none"> ◦ Trade, industrial, and commercial secrets ◦ The base case financial model submitted by the preferred bidder • Suggestion for additional case-by-case analysis in each instance
VALIDATION PRIOR TO DISCLOSURE	Given that there could be high costs to external validation, it is suggested that SAPP, SEFIN, and COALIANZA take the responsibility for internal validation of disclosed information.
TEMPLATE AND DATA STANDARDS	<ul style="list-style-type: none"> • A format for ensuring ease and uniformity in disclosure • Uniformity can help in data aggregation by sector, risk profile, value, type, and so forth. A template is suggested as part of the draft framework.

Note: COALIANZA = Commission for the Promotion of Public-Private Partnerships; PPP = Public-Private Partnership; PPPP = Public-Private Partnerships Promotion; RFP = Request for Proposals; SAPP = Superintendence for Public-Private Partnerships; SEFIN = Ministry of Finance; SISOCS = Monitoring and Information System for Works and Supervision Contracts; TAI = Transparency and Access to Information.

3. *Creating standard contractual clauses.* It is recommended that the Government of Honduras creates standard clauses on disclosure that provide specific language that must be included in PPP and trust fund contracts by public authorities. These clauses would help government teams in appropriately negotiating provisions related to the responsibility of private parties to provide information to public authorities, the rights and responsibilities of public authorities to disclose information, direct disclosure obligations, and confidentiality provisions. These would also enable government entities and private parties to understand their respective roles in disclosure prior to contract signing. Inclusion of clear disclosure provisions in the standard contract is also a good way to disseminate and educate investors and potential bidders about the government's approach to

information disclosure. Standard clauses would also help greatly in institutionalizing disclosure. Annexes B.2 and B.3 provide suggested text for standard contractual provisions.

4. *Adapting SISOCS to PPPs.* Honduras has the capacity to support the transfer of technology, systems, and instruments that support building, processing, and disseminating the required information. Therefore, the country could incorporate this as a substantial aspect of improving its disclosure framework. It is recommended that, to the greatest extent possible, information, documents, and reports should be machine-readable or provided as inputs into a shared information system and able to be turned into structured data that can be selectively converted into open data as required.

In addition, SISOCS will need to be adapted to the design of the disclosure framework, which will enable continuous publishing of procurement as well as performance information and data as and when key changes happen. Linking and cross-referencing with other existing similar information sets or databases could be useful. Defining or using harmonized information standards could not only reduce human and financial resource challenges, but also allow for comparative analysis of infrastructure projects. A template for disclosure is provided in the suggested text for the framework in annex B.1. A new SISOCS adapted to PPP projects is currently being created in collaboration with the Government of Honduras. This seeks to facilitate disclosure of PPP projects in Honduras by customizing SISOCS, which is the existing information management system. SISOCS for PPP will allow publication of an open data machine-readable format that follows the Open Contracting Data Standard–PPP extension. This implementation strategy will also define specific endpoints and various methods of how users or other systems can access SISOCS data or integrate with it.

5. *Using strategic communication.* Sometimes, disclosed information becomes inaccessible, especially when it is scattered across different websites, is managed by multiple actors with variable capacities, and consists of lengthy contract documents in the public domain. Challenges such as increased litigation and consequent delays during or after procurement may also arise for governments that disclose documents, feeding back into the general reluctance to share information.

Given the longer-term and distinct benefits of disclosing—such as greater accountability in expenditure, higher level of confidence in the fairness of the process, and better quality of bids, along with the potential for formulation of improved long-term PPP policies and practice—it is essential to overcome the challenges. This can be done by building the right frameworks for disclosure, as suggested above, as well as by framing the discussion strategically, through well-planned communication with stakeholders.

Since the framework recommends disclosure beginning with the entry of a project into the approved preliminary pipeline, it is important that strategic communication around projects and programs is formulated at an early stage. This requires making disclosure not a one-way process but a two-way interactive process, to ensure that the feedback loops are completed, and the disclosed information is understood, absorbed, and used optimally by all stakeholders. Strategic communication also entails placing the project in the right context; benchmarking it in terms of tariff (and cost) and services using available regional, national, and local benchmarks of existing projects; and discussing the pros and cons of different alternatives for providing services, highlighting the relative advantages of the selected alternative. It is also important to frame the discussion around

other key issues, such as competition and confidentiality, which may be of concern to the private sector.

6. *Improving technical capacity.* Given that PPPs are relatively new in Honduras, the technical capacity of all public agencies involved in the PPP lifecycle needs to be strengthened. This is particularly important in terms of PPP disclosure, not only with respect to the form of disclosure, but critically, with respect to the content itself. An improved understanding and management of the PPP process by public authorities will lead to correct, relevant and usable information (for example, the nature and extent of government liabilities in PPP contracts) being disclosed in a timely manner, which will better serve public interest and lead to improved trust in government.

9. Key Material Reviewed

Laws, Regulations, and Policy Documents of the Government of Honduras

Transparency and Access to Information Act 2006
Transparency and Access to Information Regulations, 2008
National Transparency Policy, 2015
General Budget Provisions, 2017
Guidelines for Standardization of Transparency Portals, 2015
OGP Action Plan (First), 2012–14
OGP Action Plan (Second), 2014–16
OGP Action Plan (Third), 2016–2018
PPP Promotion Act 2010
PPP Promotion Act Reform, 2014
PPPP Regulations 2011
PPPP Regulations 2015 (Fiscal Contingency Unit)
Ministerial Agreement No. 0244-2013
SISOCS Executive Decree, 2015
HondusCompras Executive Decree, 2005
Fiscal Responsibility Act 2016
SISOCS User's Manual

Other Documents

Processes Manual, 2016, COALIANZA
Corruption Perceptions Index Report, 2015, Transparency International, Berlin
CoST Honduras Third Assurance Report, 2017
Disclosure in PPPs: Jurisdictional Studies, 2015, World Bank
Framework for Disclosure in Public-Private Partnership Projects, 2015, World Bank
Global Competitiveness Report, 2015–16, World Economic Forum, Geneva
Inter-American Convention Against Corruption, 1998

Protocolo para una práctica transparente de las alianzas público-privadas en Honduras, Foro Social de la Deuda Externa y Desarrollo de Honduras, 2017

The Fiscal Implications of Public-Private Partnerships in Honduras, Current Developments and the Road Ahead, Inter-American Development Bank, 2015

United Nations Convention Against Corruption (UNCAC), 2003

Key Websites

Centre for Law and Development: <http://www.rti-rating.org/>

COALIANZA: <http://coalianza.gob.hn>

SAPP: <http://sapp.gob.hn/>

SISOCS: <http://sisocs.org/>

Open Contracting Data Standard (OCDS): <http://standard.open-contracting.org>

Open Government Partnership: <https://www.opengovpartnership.org/>

Private Participation in Infrastructure Database, World Bank: <https://ppi.worldbank.org/>

United Nations Office on Drugs and Crime: <http://www.unodc.org/>

World Economic Forum: <https://www.weforum.org/>

Annex A: Suggested Amendments to the PPPP Regulations 2011

TITLE IV TRANSPARENCY AND PROTECTION OF THE PARTIES Amendments

ARTICLE 93. PUBLICATION OF INFORMATION

1. Subject to and without prejudice to the requirements of the Access to Information Act 2006, information in respect of a public-private partnership (PPP) project shall be provided to any citizen expeditiously at a reasonable cost upon request.
2. The Commission for the Promotion of Public-Private Partnerships (COALIANZA) and Superintendence for Public-Private Partnerships (SAPP) shall publish on a designated website or in any other form specified in the guidelines issued under paragraph (4) the following information:
 - a. Basic project information
 - b. Procurement information on fiduciary banks, if applicable
 - c. PPP project preparation
 - d. Procurement information on PPP contracts
 - e. Contract summary and project documents, including the PPP agreement, feasibility study, and value-for-money report
 - f. Financial information
 - g. Procurement information on the supervisory firm, if applicable
 - h. Contract modifications and renegotiations
 - i. Performance information.
3. No confidential information as stated in the Transparency and Access to Information Act 2006 and as specified in the guidelines issued under paragraph (4) shall be disclosed.
4. The Institute of Access to Public Information (IAIP) shall formulate guidelines that:
 - a. Specify details regarding the elements of information to be disclosed
 - b. Determine the point in time at which COALIANZA and SAPP shall publish the respective elements of information
 - c. Define confidential information, including a list of items that qualify as confidential information
 - d. Prescribe the method of disclosure

- e. Delineate responsibilities for disclosure
- f. Determine how the information is going to be validated prior to publication
- g. Provide sample standard contractual provisions related to proactive disclosure
- h. Identify appropriate governance and administrative arrangements for proactive disclosure of project information, including creating a special website for publishing PPP information.

These guidelines will be reviewed and amended from time to time as appropriate.

Annex B: Suggested Text for the Disclosure Framework⁴⁷

1. Introduction

Public-private partnerships (PPPs) have been identified as an enabler of the government's plan and are fast gaining momentum in the country. Owing to the importance of transparency and information disclosure in enhancing the confidence of investors and other stakeholders, including the public, the Government of Honduras seeks to strengthen disclosure in its PPP process and institutions. The objective of this framework is to provide guidance to enable systematic and organized disclosure of information at different stages of the PPP process.

2. Application

This framework will apply to all PPP projects initiated under the PPP Promotion Act 2010, including projects initiated by public and private initiatives that have been declared as public interest.

3. Specific Disclosures

- a. Specific disclosures will consist of the elements included in subsections b to j below, and will follow table B.1 and the template provided in annex B.1. Confidential information as provided under section 4 will be redacted before publication.
- b. *Basic project information.* Basic project information along with estimated dates for key milestones⁴⁸ will be provided within five days of project approval or declaration of interest from the Commission for the Promotion of Public-Private Partnerships (COALIANZA) commissioners. Basic project information will include project name, location, sector, sponsoring agency, estimated value, project need, description of assets and services to be provided, description of the physical infrastructure, estimated demand to be served annually, and project additionality.
- c. *Procurement information on the fiduciary bank (if applicable).* A summary of the procurement information and key documents will be provided during the procurement process.
- d. *PPP project preparation.* The Project Information Profile,⁴⁹ detailing salient information about the project will be published within five days of approval of the feasibility study and before the issue

⁴⁷ It is recommended that this annex is issued by the Institute of Access to Public Information (IAIP) as PPP transparency portal guidelines. It is also recommended that the guidelines clearly establish that disclosure must be carried out using the adapted Monitoring and Information System for Works and Supervision Contracts (SISOCs), and information must also be published on the transparency portals of the relevant institutions such as COALIANZA, Superintendence for Public-Private Partnerships (SAPP), and the contracting authority.

⁴⁸ These will be disclosed if and as available. Dates for all key milestones may not be available at the project concept stage.

⁴⁹ The current template of the Project Information Profile consists of the following: reason for selection of PPP mode and type; brief description of the other modes analyzed and reasons for rejecting these; and rationale for carrying out the project as a PPP, including a summary of any qualitative or quantitative value-for-money or other analysis that might have been used.

of the Expression of Interest (EOI). This will include the reason for selection of the PPP mode and type, brief description of the other modes analyzed and reasons for rejecting these, and a summary of any qualitative or quantitative value-for-money or other analysis that might have been used.

- e. *Procurement information.* A summary of the procurement information and key documents will be provided during the procurement process. The EOI, list of short-listed bidders, and award will be published immediately after approval by the relevant entity. The full Request for Proposals (RFP) document will be disclosed publicly after close of bid submission.
- f. *Contract summary and project documents.* Summary information on the PPP agreement will be provided within 20 days of contract publication in the gazette, along with estimated dates for key milestones. The project summary will include basic information on the PPP agreement, including the parties to the agreement, project risk matrix, amounts and types of government support provided to the project, information on tariffs and pricing, termination clauses, handback provisions, and key performance indicators with target levels. The complete project agreements, Feasibility Study Report, and Value-for-Money Analysis Report will be disclosed within five days of contract publication in the gazette.
- g. *Financial information.* Information on the financial arrangements will be provided within five days of financial close.
- h. *Procurement information on the supervision firm (if applicable).* A summary of the procurement information and key documents will be provided during the procurement process.
- i. *Contract modifications and renegotiations.* Summary information relating to each renegotiation will be published within 10 days of signature of the renegotiated contract. By this time, the renegotiated contract will also be published.
- j. *Performance information.* Information on the performance of the private party on five to 10 selected key performance indicators against agreed target levels will be published within one year of financial close of the project, with annual updates. Performance information will also include, among others, information on construction milestones, key financial information of the special purpose vehicle (SPV), and details relating to performance failures. Performance information will be updated annually. Links to performance assessments, such as audit reports, private party reports (SPV self-reporting), and independent engineer reports, will be provided and updated annually.

TABLE B.1 SUMMARY OF SPECIFIC DISCLOSURES

	DOCUMENT	CONTENTS	CREATOR	APPROVER	TIME
Disclosure of information at project initiation					
1	Basic project information	<ul style="list-style-type: none">• Project name• Location• Sector• Sponsoring agency• Estimated value• Project need• Description of assets and services to be provided• Estimated demand to be served annually• Project additionality• Estimated dates of key milestones (where available)	COALIANZA's OIP	COALIANZA's commissioners	Within 10 days of project approval or declaration of interest, and 10 days of each status change
2	Procurement information on fiduciary bank (if applicable)	<ul style="list-style-type: none">• Procurement entity and contact details• Type of procurement process• Procurement method• RFP	COALIANZA's OIP	COALIANZA's commissioners	At the same time RFP is being published in a newspaper
		<ul style="list-style-type: none">• Tender evaluation results• Number of banks tendering• Contract type• Contract administration entity• Contract title• Selected bank• Contract price• Contract scope of work• Contract start date and duration• Trust fund contract	COALIANZA's OIP	COALIANZA's commissioners	Within 10 days of publication of the contract in the gazette
Disclosure of information prior to commencement of PPP procurement					
3	Project Information Profile	<ul style="list-style-type: none">• Reason for selection of PPP mode and type• Brief description of the other modes analyzed and reasons for rejecting these• State the rationale for doing the project as a PPP• Summary of any qualitative or quantitative value-for-money or other analysis that might have been used	COALIANZA's OIP	COALIANZA's commissioners	Before or upon publication of EOI

<i>Disclosure of information during PPP procurement</i>					
4	EOI		COALIANZA's OIP	COALIANZA's commissioners	Immediately upon publication of EOI
5	List of short-listed bidders		COALIANZA's OIP	COALIANZA's commissioners	As soon as the Bid Opening Session Memoire is delivered by the notary
6	Full RFP		COALIANZA's OIP	COALIANZA's commissioners	Upon close of bid submissions
7	Bid Award		COALIANZA's OIP	COALIANZA's commissioners	After award decision is communicated to winning bidder
<i>Disclosure of information following commercial close</i>					
8	PPP contract summary	<ul style="list-style-type: none"> Parties to the PPP agreement Project risk matrix Government support Tariffs and pricing Termination clauses Handback provisions Key performance indicators with agreed target levels 	COALIANZA's OIP	COALIANZA's commissioners	Within 20 days of publication of the PPP contract in the gazette
		<ul style="list-style-type: none"> Date of financial close Date of commencement of construction or development Date of completion of construction or development Date of commissioning Date of contract expiry 	COALIANZA's OIP	COALIANZA's commissioners	Within 20 days of publication of the agreement in the gazette
9	PPP project documents	<ul style="list-style-type: none"> Redacted PPP agreement Feasibility Study Report with necessary redactions Value-for-money report 	COALIANZA's OIP	COALIANZA's commissioners	Within 20 days of publication of the agreement in the gazette
10	Financial information	<ul style="list-style-type: none"> Debt and equity of the SPV Debt and equity providers Share capital Shareholders with proportion held and voting rights Caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of 	SAPP's OIP	SAPP's superintendents	Within 10 days of financial close

		bonds, supplier credit, other <ul style="list-style-type: none"> • Categorize senior debt, mezzanine debt, other • Amount and tenor of each, fixed or floating rate 			
11	Procurement information on supervisory firm (if applicable)	<ul style="list-style-type: none"> • Procurement entity and contact details • Type of procurement process • Procurement method • RFP 	SAPP's OIP	SAPP's superintendent s	At the same time RFP is being published in a newspaper
		<ul style="list-style-type: none"> • Tender evaluation results • Number of firms tendering • Contract type • Contract administration entity • Contract title • Selected firm • Contract price • Contract scope of work • Contract start date and duration • Supervisory contract 	SAPP's OIP	SAPP's superintendent s	Within 10 days of the contract being published in the gazette
12	Renegotiations and renegotiated agreements and associated documents	<ul style="list-style-type: none"> • Summary information on each renegotiation • Redacted renegotiated PPP agreement 	CA-COALIANZA	CA-COALIANZA	Within 10 days of the signature of renegotiated contract
<i>Performance disclosure throughout the contract period</i>					
13	Performance information	<ul style="list-style-type: none"> • Performance of the private party on five to 10 selected key performance indicators against agreed targets (including information on construction milestones, key financial information, and information on performance failures, if any) • Audit report • Private party reports • Independent engineer reports 	SAPP's OIP	SAPP's superintendent s	Within one year of financial close, updated annually

Note: CA = contracting authority; COALIANZA = Commission for the Promotion of Public-Private Partnerships; EOI = Expression of Interest; OIP = public information official; PPP = Public-Private Partnership; RFP = Request for Proposals; SAPP = Superintendence for Public-Private Partnerships; SPV = special purpose vehicle.

4. Confidential Information

- a. Confidential information will be identified on a case-by-case basis, but will be broadly based on the provisions of the Transparency and Access to Information (TAI) Act 2006.
- b. Some examples of elements that may qualify for consideration as confidential, on a case-by-case basis, are trade, commercial and industrial secrets, and the base case financial model submitted by the selected bidder.

5. Method of Disclosure

All information and documents will be published on a web-based platform owned by COALIANZA and the Superintendence for Public-Private Partnerships (SAPP), with links to any other media platforms as identified in the TAI Regulations 2008.

6. Responsibilities for Disclosure

- a. The onus for information generation and uploading on the web-based platform will be on COALIANZA and the SAPP public information officers, as provided in section 3, while the responsibility for approving and enabling disclosure of the information lies with the commissioners in COALIANZA and the superintendents in SAPP.
- b. The public information officers will upload all information and documents on the web-based platform to leave at least three full business days within the given timelines for those with final responsibility to validate and approve the information for public disclosure.
- c. Performance information and any other information as required by SAPP and the contracting authority will be provided by the private party to the contract from time to time.

7. Validation of Information Prior to Disclosure

All information shall be validated by the commissioners in COALIANZA and the superintendents in SAPP before publication on the website.

8. Standard Contractual Provisions

- a. A section/chapter entitled Transparency and Information Disclosure shall be included in all draft contractual documentation included in the RFP and in all trust fund and PPP contracts to be signed by the contracting authorities.
- b. The section/chapter mentioned in 8.a will contain clauses pertaining to the proactive disclosures to be carried out by the public entity, including disclosure of summary project and contract

information, project documents, procurement information including procurement documents, and ongoing performance information disclosure.

- c. The section/chapter mentioned in 8.a will also contain the obligation of the private entity to provide documents and information as and when required and in the format required by the public entity as part of its service obligations, with the force of penalties should there be a failure to provide information on the part of the private party.
- d. The section/chapter mentioned in 8.a will include a subsection dealing with confidential information and will list the items of confidential information in a schedule along with the date up to which the information will be considered confidential.
- e. The contract will be structured in a way such that confidential information can be easily removed before publication of the project agreement.
- f. Sample disclosure clauses for use in all draft project documentation included in the RFP and in all project agreements are provided in annex B.3 and its schedules.

Annex B.1: Suggested Template for Disclosure

DISCLOSURE DURING THE PROJECT IDENTIFICATION, DEVELOPMENT, AND PROCUREMENT STAGES

BASIC PROJECT INFORMATION

(disclosed at the identification phase, within 10 days of approval by the Cabinet, updated at the feasibility study stage and signature of contract)

Project name
Location
Sector
Sponsoring agency/department
Estimated project value
Project need
Description of asset
Description of services
Estimated demand to be served annually
Project additionality
Estimated dates of key milestones (where available)
Basic project information summary (link to the document)

PROCUREMENT OF FIDUCIARY BANK

Procurement entity and contact details (as soon as the Request for Proposals (RFP) is published in newspapers)
Type of procurement process
Procurement method
RFP
Tender evaluation results (five days after contract is signed and published in the gazette, if applicable)
Number of banks tendering
Contract type
Contract administration entity
Contract title
Selected bank
Contract price
Contract scope of work
Contract start date and duration
Trust fund contract (link to the document)

PROJECT INFORMATION PROFILE

(disclosed before or upon publication of request for Expression of Interest (EOI))

Reason for selection of PPP mode (and type)

Brief description of the other modes analyzed
(and reasons for rejecting these)

Rationale for doing the project as a PPP

Summary of any qualitative or quantitative
value-for-money or other analysis that might
have been used

PROCUREMENT

(disclosed at different stages)

EOI (following publication of EOI)

List of short-listed bidders (as soon as the notary
delivers the Bid Opening Session Memoire)

Full RFP (upon close of bid submissions)

Bid award (after award decision is communicated
to winning bidder)

DISCLOSURE FOLLOWING SIGNATURE OF CONTRACT

PPP CONTRACT SUMMARY (ESTIMATED (AS AVAILABLE) AND ACTUAL) *(disclosed as they become available)*

- Public authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Project risk matrix

RISK	DESCRIPTION	ALLOCATION

GOVERNMENT SUPPORT

Guarantees

Grants

Availability/annuity payment schedule

Land leases, asset transfers

Other support

Revenue share, if any

TARIFFS

Tariffs and pricing

Termination clauses and handback provisions

TERMINATION PROVISIONS

PARTY	BRIEF DESCRIPTION OF EVENT OF DEFAULT
Concessionaire	
Authority	
Handback terms and conditions	

KEY PERFORMANCE INDICATORS WITH AGREED TARGET LEVELS

KEY PERFORMANCE INDICATORS	Year 1		Year 2	
	Target	Achievement	Target	Achievement

KEY MILESTONES

Date of financial close

Date of commencement of construction or development

Date of completion of construction or development

Date of commissioning

Date of contract expiry

PPP PROJECT DOCUMENTS (disclosed within 20 days of publication of agreement in the gazette)

- Redacted PPP agreement
- Feasibility Study Report with necessary redactions
- Value-for-money report

FINANCIAL INFORMATION (disclosed within 10 days of financial close)

Debt and equity of the special purpose vehicle (SPV)

Debt and equity providers

Share capital

Shareholders with proportion held and voting rights

Caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter

Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other

Categorize senior debt, mezzanine debt, other

Amount and tenor of each, fixed or floating rate

PROCUREMENT OF SUPERVISORY FIRM *(disclosed at two stages)*

Procurement entity and contact details <i>(as soon as RFP is published in newspapers)</i>
Type of procurement process
Procurement method
RFP
Tender evaluation results <i>(five days after contract is signed and published in the gazette, if applicable)</i>
Number of firms tendering
Contract type
Contract administration entity
Contract title
Selected firm
Contract price
Contract scope of work
Contract start date and duration
Contract (link to document)

RENEGOTIATIONS *(disclosed within 10 days of signature of renegotiated contract)*

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4

REDACTED RENEGOTIATED PPP AGREEMENT *(link to document)***PERFORMANCE INFORMATION** *(disclosed within one year of financial close, updated annually)*

Performance failures

Year	
Category of failure	
Number of events	
Penalty or abatement provided in contract	
Penalty or abatement imposed	
Penalty paid or abatement effected: Yes/No	

Performance assessments [Links to audit reports \(if any\), SPV reports, and independent engineer reports.](#)

Annex B.2: Suggested Text for Standard Disclosure Clauses (Trust Funds)

- 1.1 The [Fiduciary Bank] acknowledges that the [Contracting Authority] and other members of the Technical Committee are subject to the requirements of the Transparency and Access to Information Act 2006 and may be entitled to disclose information on procurement processes, feasibility studies, technical and financial reports, and others managed by the [Fiduciary Bank].
- 1.2 The [Fiduciary Bank] agrees to facilitate the [Contracting Authority] and other members of the Technical Committee in compliance with its disclosure requirements under the Transparency and Access to Information Act 2006.
- 1.3 Where the [Contracting Authority] and other members of the Technical Committee receive a request for information under the Transparency and Access to Information Act 2006 in relation to information that the [Fiduciary Bank] is holding and which the [Contracting Authority] and other members of the Technical Committee do not hold themselves, the [Contracting Authority] and Commission for the Promotion of Public-Private Partnerships (COALIANZA), as signers of the trust fund contracts, shall refer to the [Fiduciary Bank] such request for information that it receives as soon as practicable and in any event within [five] business days of receiving the request and the [Fiduciary Bank] shall
 - a. provide the [Contracting Authority] and COALIANZA with a copy of all such information in the form the [Contracting Authority] and COALIANZA require as soon as practicable and in any event within [ten] business days; and
 - b. provide all necessary assistance as reasonably requested by the [Contracting Authority] and COALIANZA in connection with any such information to enable the [Contracting Authority] and other members of the Technical Committee to respond to a request for information within the time for compliance set out in the Transparency and Access to Information Act 2006.
- 1.4 The [Fiduciary Bank] shall ensure that all information held on behalf of the [Contracting Authority] and COALIANZA is retained during the term of this Public-Private Partnership (PPP) Agreement for at least [five] years after the PPP Agreement has been terminated and shall permit the [Contracting Authority] and COALIANZA to inspect such information as requested from time to time.

Annex B.3: Suggested Standard Contractual Clauses

Section [insert number]: **DISCLOSURE REQUIREMENTS**

Obligations regarding specific disclosures

1. Freedom of Information

- 1.1 The [Private Party] acknowledges that the [Contracting Authority] is subject to the requirements of the Transparency and Access to Information Act 2006 and may be entitled to disclose information without consulting or obtaining the consent of the [Private Party].
- 1.2 The [Private Party] agrees to facilitate the [Contracting Authority's] compliance with its disclosure requirements under the Transparency and Access to Information Act 2006.
- 1.3 Where the [Contracting Authority] receives a request for information under the Transparency and Access to Information Act 2006 in relation to information that the [Private Party] is holding and which the [Contracting Authority] does not hold itself, the [Contracting Authority] shall refer to the [Private Party] such request for information that it receives as soon as practicable and in any event within [five] business days of receiving the request and the [Private Party] shall
 - (a) provide the [Contracting Authority] with a copy of all such information in the form the [Contracting Authority] requires as soon as practicable and in any event within [ten] business days (or such other period as the [Contracting Authority] acting reasonably may specify) of the [Contracting Authority's] request; and
 - (b) provide all necessary assistance as reasonably requested by the [Contracting Authority] in connection with any such information to enable the [Contracting Authority] to respond to a request for information within the time for compliance set out in the Transparency and Access to Information Act 2006.
- 1.4 The [Private Party] shall ensure that all information held on behalf of the [Contracting Authority] is retained during the term of this Public-Private Partnership (PPP) Agreement for at least [five] years after the PPP Agreement has been terminated and shall permit the [Contracting Authority] to inspect such information as requested from time to time.
- 1.5 Where the [Contracting Authority] receives a request for information under the Transparency and Access to Information Act 2006, the [Contracting Authority] shall be responsible for determining at its absolute discretion whether information is exempt from disclosure under the Transparency and Access to Information Act 2006, and what information will be disclosed in response to any information request in accordance with the Transparency and Access to Information Act 2006.

2. Public Relations and Publicity

- 2.1 The [Private Party] shall not by itself, its employees, or agents, and procure that its subcontractors shall not, communicate with representatives of the press, television, radio, or other communications media on any matter concerning this PPP Agreement without the prior written approval of the [Contracting Authority].
- 2.2 The [Private Party] may not represent the views of the [Contracting Authority] on any matter, or use the name of the [Contracting Authority] in any written material provided to third parties, without the prior written consent of the [Contracting Authority].

3. Publication of PPP Project Information

- 3.1 The parties agree that the [Contracting Authority], subject to section 4 (Confidentiality) below, is entitled to disclose as detailed in Schedule [] the following information:
- (a) Procurement documents and information;
 - (b) All project documents including this PPP Agreement and other associated documents (such as the Feasibility Study Report and the Value-for-Money Analysis Report);
 - (c) Summary project information as set out in Schedule [] of this PPP Agreement; and
 - (d) Performance information related to this PPP Agreement.
- 3.2 The [Private Party] acknowledges that the [Contracting Authority] intends to publish the information mentioned in subsection 3.1 above, subject to section 4 (Confidentiality), on a web-based platform owned by the Government of Honduras.

4. Confidentiality

Confidential and Reserved Information

- 4.1 For the purpose of this PPP Agreement, Confidential and Reserved Information means
- (a) The sub-set of Confidential and Reserved Information included in column 1 of Schedule [] of this PPP Agreement in each case for the period specified in column 2 of Schedule [].
 - (b) Any other information (however it is conveyed or on whatever media it is stored) that may fall within the definition of “confidential or reserved information” as stated in Article 3 Numbers 6) and 9) of the Transparency and Access to Information Act 2006.
- 4.2 Without prejudice to sections 1 and 3, the parties shall keep confidential all Confidential and Reserved Information received by one party from the other party relating to this [Trust Fund or PPP Agreement] and any other Project Agreements or the PPP project and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such Confidential and Reserved Information.

Permitted Disclosure

- 4.3 Confidential or Reserved Information may be disclosed if:
- (a) disclosure of such Confidential or Reserved Information is reasonably required by any person engaged in the performance of its obligations under the [Trust Fund and PPP Agreement] for the performance of those obligations;
 - (b) a party can demonstrate that such Confidential or Reserved Information is already, or becomes, generally available in the public domain otherwise than as a result of a breach of this clause;
 - (c) such disclosure is necessary to enable a determination to be made under clause [insert reference to Dispute Resolution clause] or in connection with a dispute between the [Private Party] and any of its subcontractors;
 - (d) such disclosure is required pursuant to (i) any statutory or legal obligation, (ii) any order of a court of competent jurisdiction, (iii) a parliamentary obligation placed upon the party making the disclosure, (iv) the rules of any stock exchange, or (v) any order from a governmental or regulatory authority;
 - (e) the Confidential or Reserved Information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (f) the Confidential or Reserved Information is provided to:
 - (i) each party's own professional advisers or insurance advisers; and/or

- (ii) the lenders or the lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation, or otherwise) to the [Private Party] to enable it to carry out its obligations under the PPP Agreement, or may wish to acquire shares in the [Private Party] in accordance with the provisions of this PPP Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; and/or
 - (iii) international or bilateral financial institutions involved in the PPP project as lenders, political risk insurers, or guarantors.
- (g) the disclosure of such Confidential and Reserved Information by the [Contracting Authority] relates to the design, construction, operation, and maintenance of the PPP project and any disclosure of other Confidential Information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers and lenders, should the [Contracting Authority] decide to retender the PPP Agreement or undertake any market testing;
- (h) such disclosure is required for any registration, filing or recording of the required permits and property registration in connection with the PPP project;
- (i) the disclosure of Confidential or Reserved Information by the [Contracting Authority] to any other relevant authority or their respective advisers or to any person engaged in providing services to the [Contracting Authority] is necessary for any purpose related to or ancillary to the PPP Agreement; or
- (j) such disclosure is necessary for the purpose of:
 - (iv) the examination and certification of the [Contracting Authority's] or the [Private Party's] accounts;
 - (v) any examination pursuant to [insert reference to any auditing obligations for public contracts] of the economy, efficiency, and effectiveness with which the [Contracting Authority] has used its resources;
 - (vi) complying with a proper request from either party's insurance adviser or insurer on placing or renewing any insurance policies; or
 - (vii) (without prejudice to the generality of Clause 4.3 (d) above compliance with [insert reference to any laws requiring disclosure (e.g., environmental laws)]).
- 4.4 When disclosure is permitted under clauses 4.3 (a), (c), (f), (g), and (i) above, the party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this PPP Agreement. The [Private Party] shall expressly inform any person to whom it discloses any information under this clause of the confidentiality restrictions set out in this clause and shall procure its compliance with the terms of this clause as if it were party to this PPP Agreement and the [Private Party] shall be responsible for any breach by any such person of the provisions of this clause.
- 4.5 The provisions of section 4.3 are not applicable to [insert relevant exceptions for specific project, e.g., national security information as defined in and as far as protected by Article 17 of the Transparency Access to Information Act 2006].

Confidential Information Related to End Users

- 4.6 Where the [Private Party], in carrying out its obligations under the Trust Fund and PPP Agreement, is provided with personal information relating to [end users (e.g., prisoners, patients, pupils)], the [Private Party] shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the [Private Party] has

obtained the prior written consent of that [end user] and has obtained the prior written consent of the [Contracting Authority].

- 4.7 On or before the expiry date, the [Private Party] shall ensure that all documents or computer records in its possession, custody, or control, which contain personal information relating to [end users] including any documents in the possession, custody or control of a subcontractor, are delivered to the [Contracting Authority].

5. Reporting Obligations, Provision of Information, and Documents

Obligation to Disclose information, Documents, and Records upon Request

- 5.1 (a) The [Private Party] shall provide to the [Contracting Authority] all information, documents, records, and the like in the possession of, or available to, the [Private Party] as may reasonably be requested by the [Contracting Authority] for the purpose of complying with any of its statutory reporting obligations, including its reporting obligations under the Access to Information Act 2006, the Public Private Partnership Act 2010, and the Guidelines for Standardized Transparency Portals, 2015.

To this end, the [Private Party] shall ensure that all such information in the possession of any subcontractor or other counter-party to any Project Agreement shall be available to the [Contracting Authority] and the [Private Party] has included, or shall include, appropriate provisions to this effect in all Project Agreements.

Project Information

- 5.2 (a) The [Private Party] shall provide to the [Contracting Authority] a project summary as set out in Schedule [] of this PPP Agreement within five business days after signature of this PPP Agreement and an updated version including information on the financial structure of the special purpose vehicle (SPV) within five business days after [insert definition for financial close].
- (b) In the event of any relevant change in this project information, the [Private Party] shall provide to the [Contracting Authority] the updated information and links to the updated documents [] business days after the relevant change has occurred.
- (c) In the event of renegotiation, the [Private Party] shall provide to the [Contracting Authority] information on the renegotiation as well as links to the renegotiated PPP Agreement within five business days after signature of the renegotiated PPP Agreement.

Information Relating to Performance

- 5.3 The parties agree that the [Private Party] shall provide to the [Contracting Authority] information relating to performance as set out in Schedule [] of this PPP Agreement. This will include a summary of key performance indicators (KPIs) and target levels within [] business days after signature of this PPP Agreement as well as each year during the term of this PPP Agreement on [] information on performance against KPI targets and performance failure as well as links to performance assessments (such as audit reports, private party reports (SPV self-reporting), and independent engineer reports).

Calculation of Equity Internal Rate of Return

- 5.4 The [Private Party] shall provide to the [Contracting Authority] each year during the term of this PPP Agreement on [] and on [] a calculation of the actual equity internal rate of return and any other financial information submitted to any other authority including any regulators.

Audited Financial Statements

- 5.5 The [Private Party] shall provide to the [Contracting Authority] audited financial statements annually and no later than [60] days after the end of the fiscal year of the [Private Party].

Enforcement of Reporting and Information Obligations

- 5.6 The parties agree that the scope of services under this [Trust Fund or PPP Agreement] includes obligations of the [Private Party] to provide information as set out in [Section/Sub-section [] to the [Contracting Authority] and that any breach of this obligation shall be a failure in performance of the service, triggering deductions in accordance with the payment mechanism as set out in Schedule [] of this PPP Agreement.

Schedule []

Format for submission of summary project information for disclosure

TARIFFS

Tariffs and pricing

TERMINATION PROVISIONS

PARTY	BRIEF DESCRIPTION OF EVENT OF DEFAULT
Concessionaire	
Authority	

Handback terms and conditions

Schedule []

Format for submission of performance information for public disclosure

PERFORMANCE INFORMATION (*KPI and target summary to be submitted within five days of commercial close and achievement and performance failure information to be updated annually*)

KEY PERFORMANCE INDICATORS WITH AGREED TARGET LEVELS

KEY PERFORMANCE INDICATORS	Year 1		Year 2	
	Target	Achievement	Target	Achievement

Performance failures	YEAR	
	Category of failure	
	Number of events	
	Penalty or abatement provided in contract	
	Penalty or abatement imposed	
	Penalty paid or abatement effected: Yes/No	

Performance assessments	Links to SPV reports
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Schedule []

Penalties for noncompliance with the obligation to provide information

Period of delay in compliance	Penalty

Schedule []

Confidential information

Clauses/schedules	Period for which information will remain confidential

Annex C: Comparison of the World Bank Framework, Current Disclosure Practice, and the Agreed Framework for Honduras

	WORLD BANK FRAMEWORK	CURRENT DISCLOSURE PRACTICE	AGREED FRAMEWORK
1.	<i>BASIC PROJECT INFORMATION</i>		
1.1.	Name	Y	Y
1.2.	Location	Y	Y
1.3.	Sector	Y	Y
1.4.	Sponsoring agency/department	Y	Y
1.5.	Estimated project value	Y	Y
1.6.	Project need: benefits provided, economic and social (including specific information on the public interest aspect)	Y/N	Y
1.7.	Stakeholder consultations	N	N
1.8.	Reason for selection of PPP mode and type in brief	N	Y
1.9.	Brief description of other modes analyzed and reasons for rejecting these	N	Y
1.10.	Technical description of the physical infrastructure	N	Y
1.11.	Dates of various approvals	Y/N	Y
1.12.	High-level description of the services	Y	Y
1.13.	Estimated demand to be served annually	N	Y
1.14.	Project additionality	N	Y
2.	<i>CONTRACT MILESTONES AND DOCUMENTS</i>		
2.1.	Date of commercial close	N	Y
2.2.	Date of financial close	N	Y
2.3.	Date of commencement of construction or development	N	Y

2.4.	Date of completion of construction or development	N	Y
2.5.	Date of commissioning	N	Y
2.6.	Date of contract expiry	Y	Y
2.7.	All contract documents (with appropriate redactions)	Y	Y
3.	<i>PARTIES TO THE CONTRACT WITH CONTACT DETAILS</i>		
3.1.	Public authority: name of authority, name of representative, address, telephone, fax, e-mail	N	Y
3.2.	Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail	N	Y
3.3.	Financiers: name of Lead financial institution, other financial institutions, name of representative of lead financial institution, address, telephone, fax, e-mail	N	Y
4.	<i>PROCUREMENT INFORMATION</i>		
4.1.	Dates and summary details	N	Y
4.2.	Final feasibility study (including cost-benefit analysis, if any)	N	Y
4.3.	Land acquisition, rehabilitation, social (including information on human rights impact assessment), and environmental assessment-related information	N	Y
4.4.	Reports of independent procurement auditors and (if any)	N	Y
4.5.	<i>Procurement documents</i>		
4.5.1.	Request for qualification	N	N
4.5.2.	Prequalification or short list	Y/N	N
4.5.3.	Request for Proposals	N	Y
4.5.4.	Evaluation criteria: brief description with weightage	N	Y
4.5.5.	Brief information on constitution of the evaluation committees	N	N
4.5.6.	Negotiation parameters: brief description of the parameters for negotiation with preferred proponent	N	N
4.5.7.	Minutes of pre-bid meetings	N	N
4.5.8.	Selection of preferred bidder	Y	Y

5.	<i>RISK</i>		
5.1.	Pre-construction risk: all risks up to financial close	N	Y
5.2.	Construction/completion	N	Y
5.3.	Cost risk: capital, operating	N	Y
5.4.	Refinancing risk	N	Y
5.5.	Risk related to change in law, taxes, scope, technical standards, regulatory framework	N	Y
5.6.	Exchange rate risk	N	Y
5.7.	Operating risk	N	Y
5.8.	Commercial risk, market risk, demand risk	N	Y
5.9.	Performance risk	N	Y
5.10.	Financial risk	N	Y
5.11.	Force majeure risk	N	Y
5.12.	Environmental risk	N	Y
5.13.	Social risk	N	Y
6.	<i>EVALUATION OF PPP OPTION (VALUE-FOR-MONEY OR OTHER APPROACH USED)</i>	N	Y
6.1.	Evaluation report (value for money or other)	N	Y
6.2.	Rationale for doing the project as a PPP, including any qualitative or quantitative value-for-money, final feasibility studies (including cost-benefit analysis, if any), or other analysis that might have been used, including nonfinancial benefits that have been quantified or considered	N	Y
6.3.	Discount rates used along with the risk premium used, if any, and an explanation for the rate of risk premium used, referring to guidance, if any, available in this regard or describing project-specific circumstances that justify the risk premium rate used	N	Y
6.4.	Risk comparison of other financing mechanisms	N	Y
7.	<i>FINANCIAL INFORMATION</i>	N	Y
7.1.	Equity-debt ratio	N	Y

7.2.	Share capital	N	Y
7.3.	Shareholders with proportion held and voting rights	N	Y
7.4.	Details of any provisions related to contracts providing for caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter	N	Y
7.5.	Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other	N	Y
7.6.	Categorize senior debt, mezzanine debt, other	N	Y
7.7.	Amount and tenor of each, fixed or floating rate	N	Y
7.8.	Security and step-in arrangements	N	Y
7.9.	Forecast internal rate of return	N	Y
8.	GOVERNMENT SUPPORT	N	Y
8.1.	<i>Guarantees (type and details of the guarantees provided—explicit and contingent guarantees)</i>	Y	Y
8.1.1.	Minimum revenue guarantee	N	Y
8.1.2.	Exchange rate guarantee	N	Y
8.1.3.	Debt repayment guarantee	N	Y
8.1.4.	Other guarantees	N	Y
8.1.5.	Fiscal commitments and contingent liability disclosure reports	N	Y
8.2.	<i>Grants</i>	N	Y
8.2.1.	Subsidy as a proportion of project value	N	Y
8.2.2.	Capital subsidies paid during construction with periodicity or milestones	N	Y
8.2.3.	Operating subsidies and their periodicity or milestones	N	Y
8.3.	<i>Service payments (payments made by the public authority or purchaser to the private provider for infrastructure services (applicable in private finance initiative—type projects))</i>	N	Y
8.3.1.	Total payments and periodicity	N	Y

8.3.2.	Methodology for calculating payments	N	Y
8.3.3.	Indexation used	N	Y
8.4.	<i>Land leases, asset transfers</i>	N	Y
8.4.1.	Property numbers with the quantum of land transferred	N	Y
8.4.2.	Zoning information of land	N	Y
8.4.3.	Conditions of transfer of land	N	Y
8.4.4.	Equipment transfers: details of equipment with conditions of transfer	N	Y
8.4.5.	Human resources/personnel transfers: details and conditions of transfer	N	Y
8.5.	<i>Other support</i>	N	Y
8.5.1.	Noncomplete clauses	N	Y
8.5.2.	Provision for revenue shortfall loan	N	Y
8.6.	<i>Revenue share, if any</i>	N	Y
8.6.1.	Revenue share on base case	N	Y
8.6.2.	Revenue share on upside	N	Y
8.6.3.	Graphs: annual concessionaire payments to government	N	Y
9.	TARIFFS	N	
9.1.	<i>Tariffs and pricing (where the infrastructure is financed partly or fully through the levy of user charges)</i>	Y	Y
9.1.1.	Methodology for tariff setting/pricing	N	Y
9.1.2.	Scope for reviews of tariff, pricing, regulatory mechanisms	N	Y
9.1.3.	Graphs: tariff increases over time, consumer price index movement	N	Y
10.	CONTRACT TERMINATION	N	
10.1.	Concessionaire: events of default, termination payments made, methodology used for total payments	N	Y
10.2.	Authority: events of default, termination payments made, methodology used for total payments	N	Y
11.	RENEGOTIATIONS	N	
11.1.	Nature of variation	N	Y
11.2.	Rationale for variation	N	Y

11.3.	Change in roles and responsibilities of the parties due to the variation, if any	N	Y
11.4.	Change in original risk allocation due to the variation, if any	N	Y
11.5.	Change in original fiscal commitments or contingent liabilities of government due to the variation, if any	N	Y
11.6.	Change in capital or operational costs due to the variation, if any	N	Y
11.7.	Change in tariffs or service levels due to the variation, if any	N	Y
11.8.	Date of variation	N	Y
12.	<i>PERFORMANCE INFORMATION</i>	N	
12.1.	Annual demand levels	N	Y
12.2.	Annual revenues (where revenue share clauses or other related clauses, such as minimum revenue guarantees, are present in the contract)	N	Y
12.3.	Actual internal rate of return (where there is government equity investment or other form of government support that is substantial)	N	Y
12.4.	Performance (actual year-wise performance against 10 to 12 identified key performance indicators)	N	Y
12.5.	<i>Performance failures</i>	N	Y
12.5.1.	Year	N	Y
12.5.2.	Category of failure	N	Y
12.5.3.	Number of events	N	Y
12.5.4.	Penalty or abatement provided in contract	N	Y
12.5.5.	Penalty or abatement imposed	N	Y
12.5.6.	Penalty paid or abatement effected	N	Y
12.6.	<i>Performance assessments</i>	N	Y
12.6.1.	Audit reports	N	Y
12.6.2.	Independent performance assessments of the independent engineer	N	Y
12.6.3.	Any other performance reports available for the project	N	Y

The World Bank Group provides assistance to governments in developing countries to improve access to infrastructure and basic services through public-private partnerships (PPPs). When designed well and implemented in a balanced regulatory environment, PPPs can bring great efficiency and sustainability to the provision of such public services as water, sanitation, energy, transport, telecommunications, healthcare, and education.

The World Bank Group's unique value proposition rests with its capacity to provide support along the entire PPP cycle—upstream policy and regulatory guidance, transaction structuring advice, as well as financing and guarantees to facilitate implementation.



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