

# **Policy process analysis of PPP policy improvement for sustainable development: The case of Colombian road PPP policy**

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**Abstract:** Public-Private Partnerships (hereinafter PPPs) have become a popular approach for sustainable infrastructure development around the world over the past twenty years. A vast number of studies that investigate the critical factors or the best practices for PPPs have emerged from variety of sources including developing country governments, multilateral agencies, consultants, as well as academic field. However, implementation of PPP projects in developing countries is progressing at slower pace and to a lesser extent than expected. One of the major challenges for implementing PPPs would be the obstacles in policy process; for instance, politics hindering an agenda setting for policy improvement. This study thus aims to clarify the process in which the Colombian road PPP policy has been successfully improved and to draw implications on how to promote PPP policy in countries that have not fully developed its PPP policy.

This research identified various driving factors for the road PPP policy development of Colombia through analyzing the policy processes in several periods with information gained by literature reviews and interview surveys. Seven factors were identified that contribute to the development of the Colombian road PPP policy. These are; (i) specification of problems by Multilateral Development bank; (ii) political desire to overcome failure; (iii) integration to the global economic system; (iv) policy learning from other countries experiences; (v) policy learning from domestic past experiences; (vi) smooth takeoff after extensive institutional and legislative reform; and (vii) success of the model project.

Implications of the study relates to; how MDBs could contribute to opening policy window and utilize the opportunity; importance of lesson learning for developing countries' government agencies and how they could foster accumulation of PPP knowledge and expertise; and the morale-boosting effect of a showcase project and relevant timing of the implementation.

**Keywords:** agenda-setting, Colombia, multilateral development banks (MDBs), policy process, Public Private Partnership (PPP)

## **Introduction**

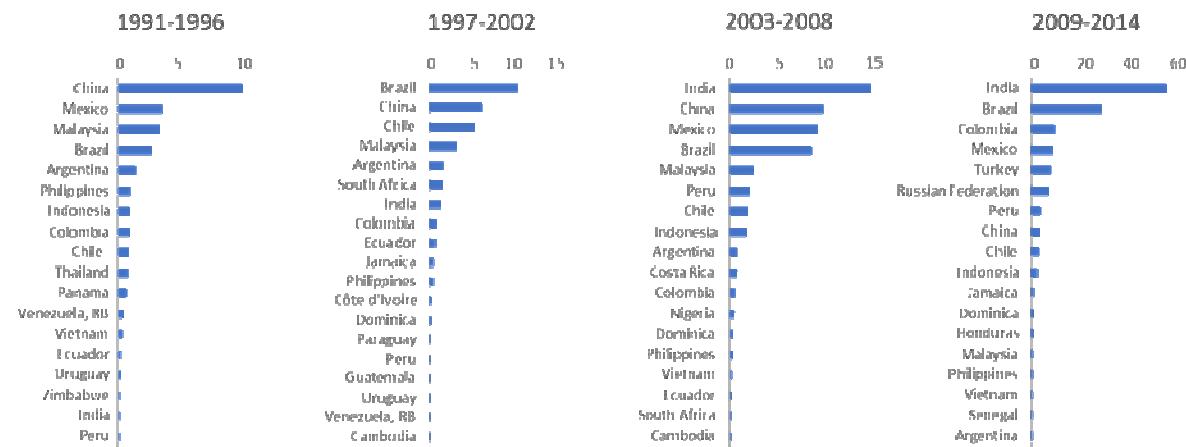
**D**evelopment of social and economic infrastructure is an essential element in satisfying basic human needs, as well as in facilitating economic growth and enhancing competitiveness. Countries worldwide are experiencing ever severe infrastructure needs because of growing populations, rapid economic growth, and increasing urbanization. The World Economic Forum (2014) estimates that roughly \$3.7 trillion is needed annually in the period 2010 to 2030 for infrastructure investment, while currently only about \$2.7 trillion is invested annually [1]. Though this figure should be regarded as a very rough estimation, this indicates the huge gap in demand and supply of infrastructure. Developing countries, particularly, face a more severe situation given its rapid population growth, urbanization while there is limited resource available for the public sector.

To close the gap between infrastructure demand and supply, there are two aspects that needs to be considered: to increase the efficiency of the investment; and to enhance the actual amount of investment. Public-Private Partnership (PPP) have been highlighted as one of the solutions that effectively tackles the infrastructure gap issue from both sides. PPPs have been developed in various ways in countries across the world, so therefore there is no

singular definition to the concept. The definition by the World Bank (2014), however, seems to be widely accepted as the common denominating element of PPPs; namely, “a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance” [2]. Through coordination between the public sector and private sector, PPP brings; additional resources to fill the fiscal gap; assists in transfer of technical knowhow; and provides efficiency in project procurement and operation through the involvement of private sector.

Many countries have thus been eager to adopt PPP approach for the sustainable development of its infrastructures. In addition, multilateral agencies such as the World Bank, has played some part in supporting and promoting PPP initiatives in developing countries. The United Nations (2015), for instance, recently mentioned the significance of PPP for sustainable development in “Transforming our world: the 2030 Agenda for Sustainable Development”: “Encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships” [3, p.27]. As Sundaram, et al. (2016) argues based on existing studies, however, PPPs have often failed to yield expected “value for money” [4].

Despite the fact that many PPP supporting mechanisms are developed through expansion of the PPP model to various countries, many countries still struggle to lead their PPP infrastructure development programs to take-off. Figure 1 represents the total amount of investment on road PPP projects by countries over the period between 1991 and 2014 based on the Private Participation in Infrastructure (PPI) Database by the World Bank [5]. As the figure show, the total amount of investment has been increasing, however there is a tendency that investment concentrates on limited group of countries. For example, over the period of 2009 to 2014, top five countries (India, Brazil, Colombia, Mexico, and Turkey) account for 84% of the total investment committed by countries around the world. This may be an implication that only a few countries have benefitted from PPPs. On the contrary, it may be an implication that countries can benefit greatly from PPPs once the PPP policy have reached the stage of maturity. Referring to the need to share lessons learned, Addis Ababa Action Agenda of the Third International Conference on Financing for Development (2016) puts an emphasis on the fair sharing of risks and reward, the capacity development with regard to planning, contract negotiation, management, accounting and budgeting for contingent liabilities, and the social responsiveness in PPP [6].



**Figure 1:** Trend of investment amount for road PPP projects by countries (in billion US dollars).

Designing, structuring, and implementing PPP remains a challenging and complex task, despite there are many studies that investigate the critical factors for PPP based upon case studies of countries that have successfully applied PPP approach in infrastructure development (World Bank Independent Evaluation Group 2013, KECG 2014) [7][8]. One of the reasons for this is because its application and the effect depends on the context of each country’s environment. For example, after the initial success of road concessions leading countries in infrastructure privatization such as Chile, other Latin American countries like Argentina developed a similar concession scheme, but its outcome have not met its expectation, leading to a high incidence of renegotiation, which casts a doubt on viability of concession model in these countries (Guasch, Laffront, and Straub 2008) [9]. A major challenge for implementing PPP is the politics - World Bank 1996 suggests that the policies regarding PPP are rarely implemented as originally planned. The incomplete implementation of the policy is regarded as one of the major source of failure

(Dolowitz and Marsh 2000) [10]. Therefore, understanding of the political and socioeconomic condition in which PPP was implemented and the process of implementation is crucial (Manzetti 1999) [11].

The questions that this research challenges are threefold. (i) First why some countries have been slow to launch PPP policies (or re-launch PPP after failures during currency crisis, for example) despite certain consensus is built for the need for it? (ii) Second what is the important factors or hindering factors in promoting PPP policies? (iii) Third how can countries that have not fully developed its policies or have not been able to implement major PPP programs promote it?

Colombia has been particularly active in recent years, as the country implemented several policy reforms to promote PPP projects and ranked third in the amount of investment committed in road PPP projects over the period of 2009 to 2014, as Figure 1 shows. It experienced some large failures in the past and has undergone several reforms to improve its PPP policy. Reforms in the road PPP policy in Colombia have occurred by gradually building on previous experiences and incorporation of best practices. Through a case study of road PPP policy reform process in Colombia, the study aims to: (i) identify the factors that contributed to promoting the PPP policy implementation and improvement, and (ii) gain policy implications on the condition and the procedure for implementing effective PPP policy.

### **Method of research**

Various researches have conducted in an attempt to model and analyze the policy process in terms of stages. While there exists some variation of the stages category for policy process, one of the conventional and widely accepted categories is the one which differentiates the policy stage between: agenda-setting, policy formulation, decision making, implementation, and evaluation (Jann and Wegrich 2006) [12]. This policy process model is typically represented in a cycle, referred to as a policy cycle, where policymaking procedure undergoes series of stages in order: agenda setting, policy formulation, decision making stage, implementation, and evaluation, which eventually come back to the agenda setting stage again.

First, agenda setting is the first starting point of policymaking, and it consists of problem recognition and issue selection. Agenda is, according to Kingdon (1995), “the list of subjects or problems to which government officials, and people outside the government closely associated with those officials, are paying some serious attention at any given time” [13, p.3]. Stakeholders in policymaking, whether within the government or outside, are seeking to influence problem recognition in order to influence, or collectively shape the agenda. (e.g., by taking advantage of rising attention to a particular problem, or giving the problem a particular definition). Agenda setting results in a selection made between diverse problems and issues.

Second, policy formulation represents a stage where ideas for solution, proposals for the identified issues are formulated and become government programs. Decision making process represents a stage where formal decision to launch the policy is made. Though policy formulation stage and decision making stage are typically differentiated as a separate category, it is not explicitly possible to separate the two in reality (Jann and Wegrich 2006) [12].

Third, implementation stage represents a stage where political and administrative actions are taken by responsible institutions and organization to execute or enforce a policy. Political and administrative actions are hardly controllable by tools such as programs or laws, so therefore policies usually be distorted or deviates from the original purpose the policy was designed to achieve.

Fourth, evaluation stage represents a stage where the appraisal against intended objectives of the policy and the actual outcomes are conducted. The policy cycle then either ends or be redesigned if there emerges the need for modification or new problem based on agenda setting. The scope of evaluation is not restricted to a particular stage in the policy cycle. Instead, it is applied to the whole policy making process in different stage.

The multiple stream model by Kingdon (1995) is employed in this research for the interpretation of the policy process in which the Colombian road PPP has been improved [13]. His framework focuses on the pre-decisional and decisional stages of policy making process in order to explain how certain issues reach executive attention, when policy change or a policy initiation occur, and how policy proposals are formed. The framework was originally meant to be used as a tool for understanding the process of agenda setting and identifying alternative approaches, but there are a number of instances where it is used to analyze the decision making stages as well (Barzelay et al 2003, Petersen 2011) [14][15].

Kingdon introduced the idea that policy change occurs when “window” opens up. This is most likely to occur when three independent streams; the policy stream (idea of the solution), the problem stream (problem perception), and the politics stream meets at a point. Policy stream consists of idea of solutions which could contribute to formulation of the policy proposals. Kingdon refers to this stream as the policy primeval soup in which policy ideas floats

around waiting for an opportunity to be formed as a policy. Policy ideas are usually generated by experts in policy communities. In a simple and straightforward case, policy ideas are designed to solve an existing problem, but it is not always the case. As Petersen (2011) discusses, the policy ideas float around in search for problems in the problem streams that can be tied, in which case the possibility that the issue would emerge as a prominent agenda would increase [15].

Problem stream is the process in which particular policy issue becomes an issue to which officials pay serious attention. An example of the problem may be: emergence of a crisis or unforeseen event; change of an indicator which would call for policy change; or feedback from existing programs that indicate need for action. The problems therefore are assumed as unwanted situations, which could be controlled or changed.

Political stream is composed of elements such as public mood, pressure group campaigns, election result, and administration change. It is pointed out that in the process, more attention is directed at obtaining winning coalitions than assessing the specific consequences of a certain alternatives and policies (Petersen 2011) [15].

The data for the policy process analysis in this research are based on the interview surveys in Washington, D.C. and Bogotá, Colombia and the literature survey on road PPP in Colombia and in other countries including Indonesia and Peru. The first interview survey was conducted in July 2014 and the interviewees include five experts of the World Bank Group, an expert of the PPP Unit at the National Planning Department of Colombia (Departamento Nacional de Planeación, DNP) and three experts of the Inter-American Development Bank. The second interview survey was conducted in March 2015 and the interviewees include three experts of the National Development Financial Institution of Colombia (Financiera de Desarrollo Nacional, FDN), three experts of the World Bank Group, four experts of the National Infrastructure Agency of Colombia (Agencia de Infraestructura Nacional, ANI), two experts of DNP, an legal expert of private law firm, and an expert of Colombia Compra Eficiente who took part in the past PPP policy making.

#### **Policy process analysis of the Colombian road PPP policy improvement**

The policy process of the Colombian road PPP policy improvement is first described in Table 1 based on the data gained through the interview surveys and the literature survey. It is then interpreted by Kingdon's multiple stream model [13]. The process is conceptualized into "causality diagrams" in which events and actions of problem/policy/politics streams are placed according to causality between events and/or actions. Subsequently, influential factors that have hindering effect, or driving effect on policy making process are identified. The identified factors are then analyzed on the basis of how that factors came to play, and what influence it had on other factors.

**Table 1:** A chronological table of events related to the Colombian road PPP policy

	PPP Policy reform	PPP projects	Colombian Government	World Bank	Circumstances surrounding Colombia
Prior to 1990	Private companies were partially allowed to participate in port infrastructure development from the mid-70s, which represent "defacto" style.		Incremental liberalization. Government executives reluctant to commit to rapid reform that was regarded necessary by international financial institutions	Have put pressure on Colombian government for reform, withheld lending until the inauguration of new president	Effectively weathered out the debt crisis in mid 80s, and the economic recovery was steady.
1990			Gaviria, former minister of finance, takes the government to implement wide range of structural reform	World Bank and Gaviria Gov. agreed on a Public Sector Reform loan for \$304 million in December 1990	Abandoned protectionism to integrate to the world economy. Economic boom due to coffee price recovery and discovery of oil reserves
1991			Constitutional reform: The new constitution emphasized globalization, peace building, and decentralization		

1992	Set up of INVIASThe National Road Fund was replaced by agency with operational autonomy, as a result of public sector reform		Conpes 2597: Identification of Buga - La Paila project		
1993	Transport Law 105: mandated role of central / local government in transport infrastructure, allowed user-toll charge, basic framework for private participation Law 80: Private participation in public works	93/12/11 Buga-Tuluá- La Paila (60 km)	Conpes 2648: Identification of 6 road concession projects	Completion of second Highways Sector Project (1987-1993) Initiation of Third National Highways sector Project (1993-1997)	
1994		94/02/08 Santa Marta- Rioacha-Paraguachon, Malla Vial del Meta, Los Patios - Briceno, Bogota - Villaviencio, Bogota - El Vino, Cartagena - Barranquilla, Norte Bogota	Redefine of management responsibility of central / local gov. Conpes 2701: Agreement on Tobiagrande-Puerto Salgar (COMMSA project)		
1995		Fontoibon - Los Alpes, Girardot - Neiva	Conpes 2775: Revision of the concession programs to further promote PPP, remedial actions taken by INVIASThe	Recommendation on INVIASThe regarding preliminary study	
1996		Desarrollo vial del oriente de Medelin y Rio Negro		Commencement of "urban transit plan" (transmilenio)	
1997		Armenia- Pereira- Manizales El Vino- Tobiagrande- Puerto Salgar- San Alberto		Regulatory reform Technical Assistance (97-2004): assisted invias with developing contingent liability management	Impact of Asian currency crisis
1998	Law 140: Budget law, calling for better control for contingent liability		Conpes 2949: Review of the concession program 95-98, identification of projects, recommendation on budget allocation and INVIASThe strengthening	Loan agreement for Tobiagrande- San Alberto road (COMMSA)	
1999		Malla vial del Valle del Cauca	Conpes 3045: Developmen of policy guideline for the "third generation" concession program. Emphasis on establishing performance parameter to control quality		Plan Colombia: Huge funding from US gov. for military support for Counter-Narcotics
2000	Decree 101: Transport sector reform. Creation of new regulation body CTRT			Commencement of PPIAF technical assistance for concession program	
2001	Article 17 Decree 423: Restriction for the public agencies for the risks they can take as contingent contract obligations	Zipaquirá- Palenque	Conpes 3133: Colombian government defined measures regarding the risks of construction, operation, trade, financing and regulatory		

2002		Bricenlo- Tunja-Sogamoso			Alvaro Uribe become president with strong emphasis on combating armed forces and peace building
2003	Decree 1800: Set up of INCO to replace INVIAS Decree 2053: Modification on function of Ministry of Transport. CTRT ceased to function as regulatory body and MoT assumes the task			PPIAF funded study on the option of concession scheme: Case study of Chile, Spain New Jersey	
2004		Bogota-Girardot Pereira- La Victoria	INCO report review of past experience of concession programs.		Initiation of negotiation for US-Colombia Free Trade Agreement
2005	Degree 4730: Formalized the procedure for identifying priority projects and budget allocation				
2006		Rumichaca-Pasto-Chachagui Area metropolitana de Bucaramanga	Identification of several projects that are of "strategic importance" (including Ruta del Sol)		Creation of Commission for National Competitiveness in the face of US FTA
2007	Law 1150: simplified the bidding criteria for a single investment amount variable	Cordoba Sucre Area metropolitana de Cucuta y Norte de Santander Girardot-Ibague-Cajamarca Ruta Caribe	Termination of legal dispute process of COMMSA project.	IFC advisory requested for Ruta del Sol project	
2008				Innitiation of PPIAF funded technical study on Ruta del Sol	Significant progress in the battle between the armed forces. Successful operation brought down FARC leader
2009		Ruta del Sol 1 Ruta del Sol 2			
2010		Ruta del Sol 3 Transversal de las Amerias			President Manuel Santos takes office whose election campaign was built upon peace building and infrastructure development
2011	Decree 4195: ANI replaced INCO to have a stronger position in implementing PPP policies			PPIAF technical assistance for INCO (ANI) to support reform	Colombia initiating procedure to join OECD members

2012	Law 1580: "PPP Law" set up to provide "one stop solution for PPP issues in Colombia				
2013	Set up of FDN to strengthen financial market for infrastructure development and to attract foreign investors			PPIAF technical assistance for setting up FDN	

[Policy process of Colombia's first generation concession program (1993-1997)]

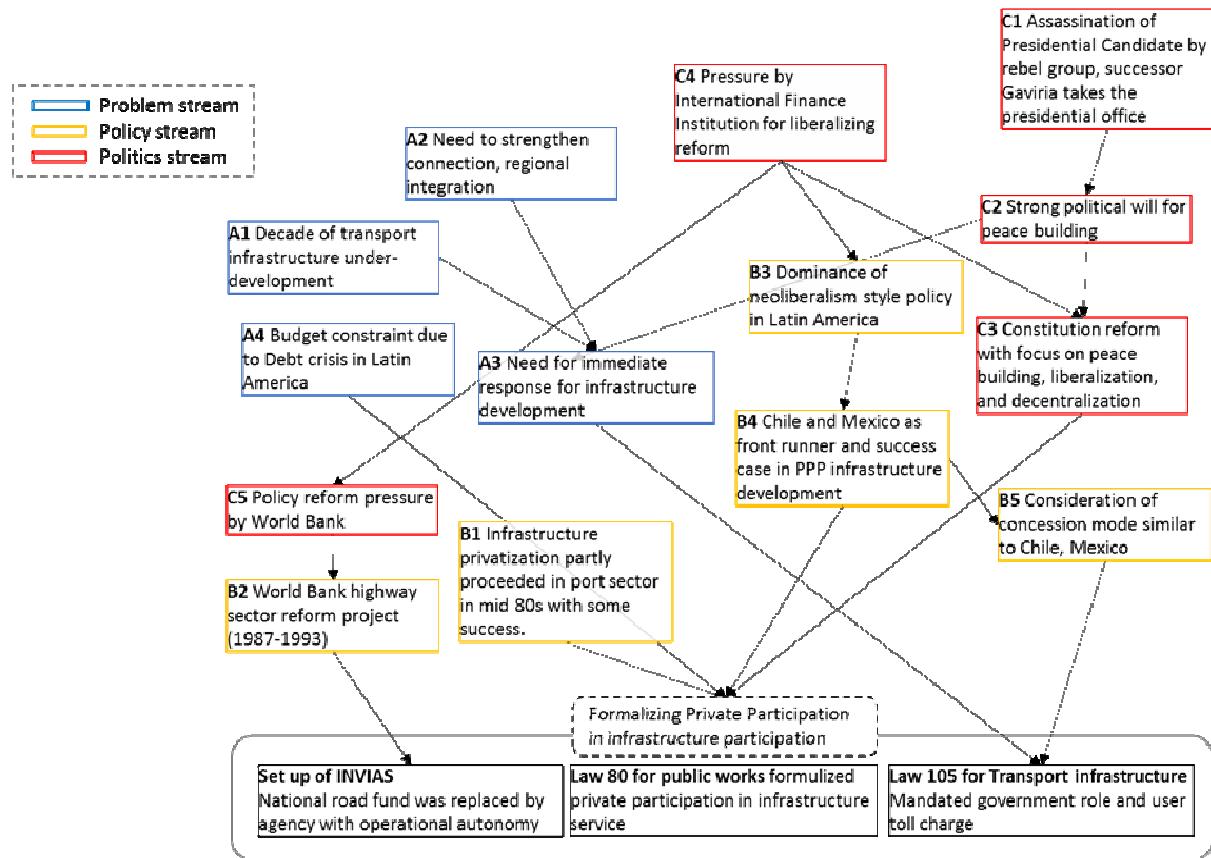
Until the opening up of infrastructure market in the 1990s, Colombia had been relying most part of the investment of infrastructures on public resources. However, the investment was never enough to fill the infrastructure gap, and Colombia's road infrastructure suffered from very bad situation. Private participation in infrastructure had already proceeded in some of the sectors, with seaport sector allowing private sector participation in operation in the mid-70s and in late-80s, some attempt to open up the sector to private participation were made in the railway sector. Looking across countries, private participation in road sector was already put in place in UK, Chile and Mexico, and its efficiency was recognized by government officials. Therefore, policy for road sector private participation was relatively ready to be put into place.

In 1990, the newly elected president César Augusto Gaviria Trujillo inaugurated a restructuring plan to open the economy by launching policies for trade expansion and tariff reduction, and privatization of state-owned enterprises in Colombia. Some literatures (e.g., Kapur et al (1997)) point out that World Bank had, though not explicitly direct, some part in spurring the reforms. Through the 1980s to the 1990s, Colombia had received a series of adjustment loans from the World Bank, which made them commit for some reforms leaning towards liberalism. Especially, in 1989, when Colombia was in need for quick disbursing loans, the World Bank insisted on not lending to Colombia until after the 1990 elections and the inauguration of new president [16].

Adding to the problem, in 1990, President Gaviria initiated the peace renegotiation process with the armed forces FARC (Revolutionary Armed Forces of Colombia—People's Army, Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo), which prompted the need for integrating the nation with physical infrastructure. The year of 1991 saw a major change in political landscape, as the new constitution was launched. This created the national mood for major change, which then helped to reduce the political cost for subsequent reform of the Ministry, and the formulation of Transport Act (Law 105) in 1993 that effectively permitted private participation into the sector.

After the constitutional reform, the government needed to meet the challenges posed by globalization, economic liberalization, and the fiscal debt. To kick start the program for major improvement of the road transport infrastructure and in an attempt to move away from the traditional approach for public works, Plan for Road Development was initiated in 1992. Law 80 (the new law of public procurement) legislated in 1993 provided a basis for private sector participation in fair and transparent conditions for the procurement of public works, and established the norms which regulated the concession contracts by allowing them to be implemented for over 20 years. INVÍAS (Instituto Nacional de Vías, the National Roads Institute) established in 1994 was in charge of elaboration of national projects and programs for the construction of road network and execution of both PPP-related and pure public road infrastructure policies and projects. This period between 1993 and 1997 called the first generation, consists of 13 projects of which 11 were prepared at the time by INVÍAS, and 2 were initiated by departmental government of Cauca Valley and Atlantic. The plan, which was designed by the Ministry of Public Works, DNP, and CONPES (Consejo Nacional de Política Económica y Social, the National Council on Economic and Social Policy), included 1649 km of road projects, in which 230 km accounted for new road construction and 1527 km accounted for upgrade of the existing infrastructure assets.

However, it should be noted that the implementation of the reform was not so favorable. This generation is characterized by numerous concession contract renegotiations, construction delays, and large payments due to traffic guarantees, construction cost overruns, and land acquisition. INVÍAS had to compensate the amount of USD 33.4 million for minimum revenue guarantee and cost overruns over the period of 1996 to 2000 (INCO 2004) [17]. In addition, in the tendering process, there was lack of interest to the projects from the private sector, which then led to awarding it directly, without competition. There is an indication that this may have led the private sector to undermine the legitimacy of the new procurement system. The policy process of this period is interpreted as shown in Figure 2.

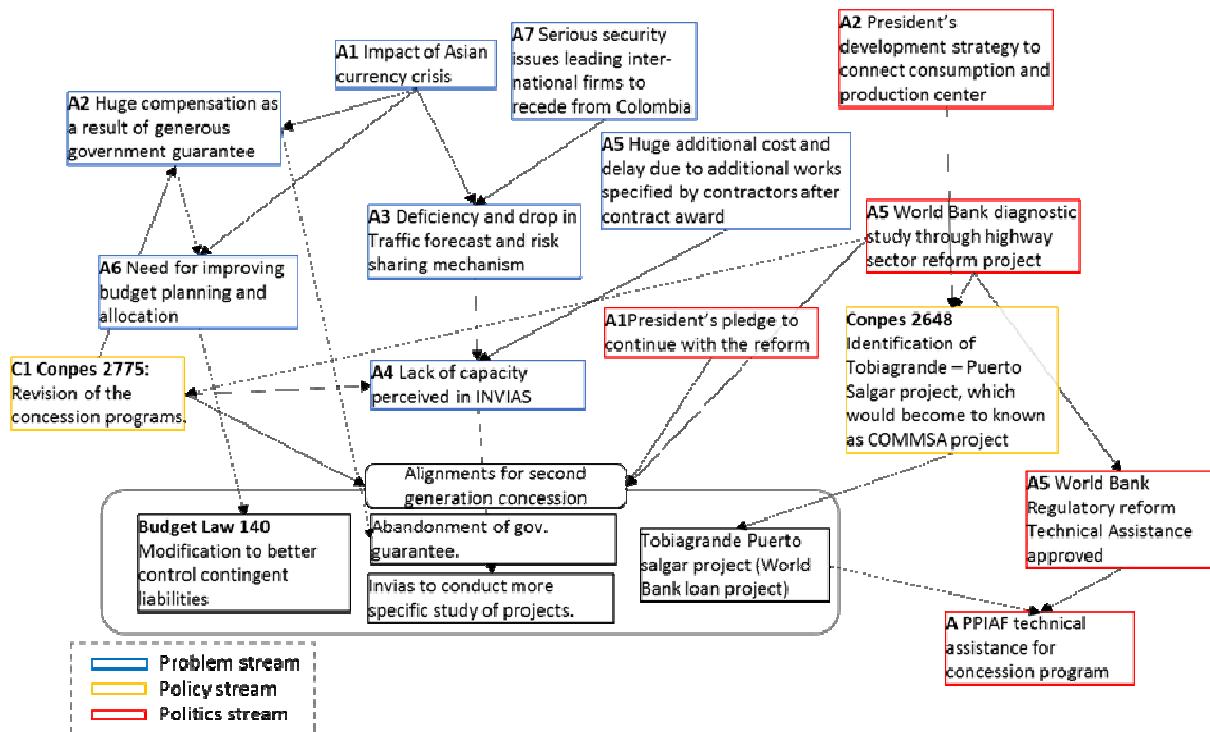


**Figure 2:** Causality diagram of the policy process between 1993 and 1997 (the first generation)

[Policy process of Colombia's second generation concession program (1997-2002)]

The second generation concession program is characterized with the amendment of the problems perceived in the first generation concession program and an attempt to redistribute the risks among private and the public. Amendment of the problem is prompted by the CONPES document in 1995, which revises the projects and contracts, with reference to the initial problems perceived. With regard to the CONPES, ongoing World Bank technical assistance to develop highway had had a hand in diagnosing the problem. Overall, these attempt for problem identification and policy recommendations were built on the basis of firm political support by the national leaders that pledge continuation of the liberalization process, as these political leaders were aware of the political cost to overturn the reform attempt made in the previous administration.

The second generation concession program consists of two projects that were signed between late 1997 (Tobiagrande-Puerto Salgar Highway) and 1999 (Malla vial del Valle del Cauca). The former was never delivered – the project, designed to be 571 km length highway, was contracted out to the COMMSA consortium before being canceled in 2007 after a decade of dispute. The latter project consists of 470 km length, of which about 90% of the road section would be subject of maintenance and rehabilitation of the network. The policy process of this period is interpreted as shown in Figure 3.



**Figure 3:** Causality diagram of the policy process between 1997 and 2002 (the second generation)

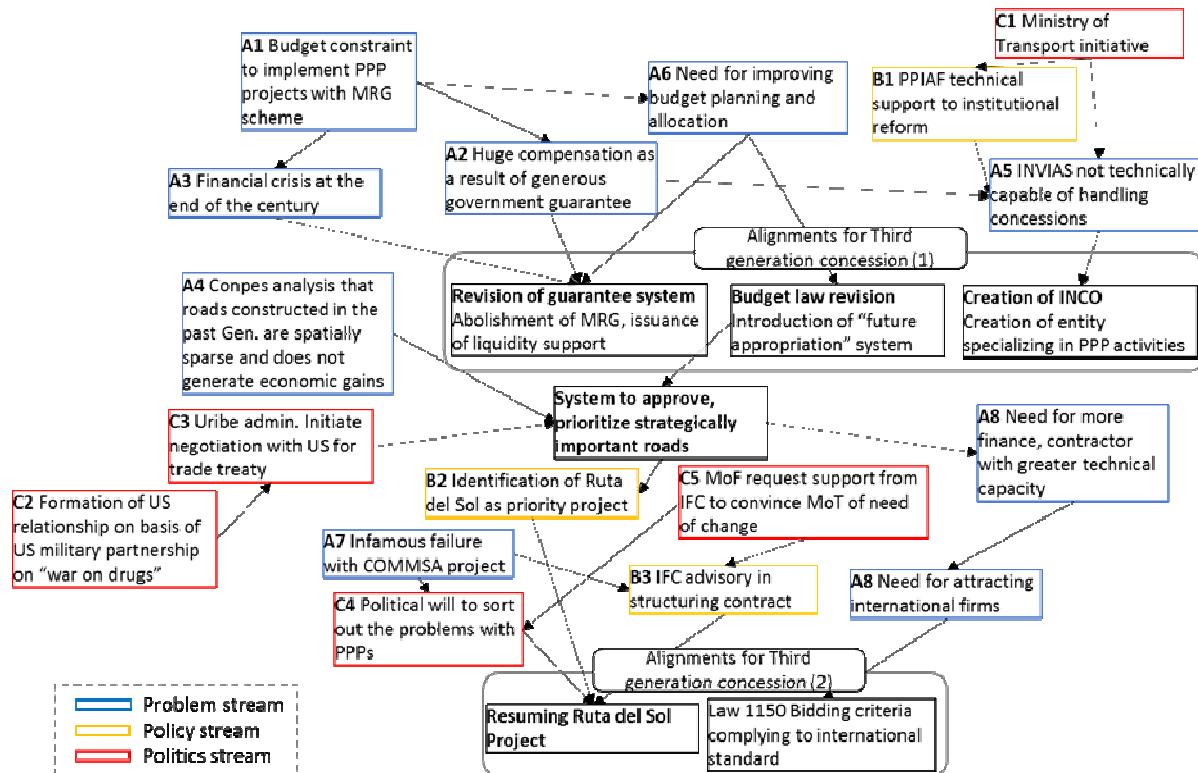
[Policy process of Colombia's third generation concession program (2002-2010)]

The third generation concession program was set up in 1998 through CONPES document which sought to vitalize the concession program. As a result, INCO (Instituto Nacional de Concesiones, the National Institute of Concessions) was set up in 2003 by Decree 1700 and the new alignment to risk allocation was established. However, considering the national agenda, the PPP agenda was not necessarily in a stable position, as greatest priority was placed on ensuring the macroeconomic stability after the crisis and ensuring national security after the violence by armed guerrillas became active. There were three identified factors that ensured the continuation of the PPP agenda. First the CONPES document in 1998 specified the actions and project investment plan to be implemented. Second, the PPIAF (Public-Private Infrastructure Advisory Facility at the World Bank) assistance which started in 1998 was requested to support the Ministry of Transport in line with the specified policy action in the CONPES. Third, the members of the CONPES in administration of Andrés Pastrana Arango (1998-2002) and newly elected Álvaro Uribe Vélez (2002-2010) included a former delegate for IMF (International Monetary Fund), a staff of the World Bank, who would understand the need for the improvement of the situation regarding transport PPP. These factors came into place on the foundation of political continuity that the policy that the former presidents have conducted are respected and is not overturned.

In 2007, Law 80 was amended that was in force since 1993, by Law 1150, which established new rules to the system of contracting with public resources. Act 1150 of 2007 introduced measures for efficiency and transparency of the Transportation Act and amended the provisions of Law 80 of 1993, under which the dividing line between a complex selection process and a simpler one was mainly the amount of the contract to be performed. Thus, the new legal body regulated the modalities of selection due to the characteristics of the object. In short, the decision of the Congress to amend the Law 80 established in 1993 was to introduce specific measures for contracting agencies make its management more efficient and transparent, and also correct some faults in the law that gave some rooms for incentives for corruption.

A turning point for Colombia's PPP policy was the Ruta del Sol project awarded in 2009 and 2010. The perceived importance of this highway was particularly high, as there was the need for connecting the port, production center of coffee, and the capital Bogota. The importance was further highlighted by the fact that Colombia commenced the negotiation for free trade agreement with the U.S., which was likely to be enforced in the coming years. In prior to awarding this large scale, and once failed project, Ministry of Finance was concerned of the way that the contracts

are awarded in the current method. However, however, the Ministry of Finance of Colombia was not able to initiate the needed reform because of the power of the Ministry of Transport, which perceived no problem with the system. The Ministry of Finance on its own requested support from IFC (International Finance Corporation in the World Bank Group) to “gain balance” and help them with the structuring of Ruta del Sol. The policy process of this period is interpreted as shown in Figure 4.



**Figure 4:** Causality diagram of the policy process between 2002 and 2010 (the third generation)

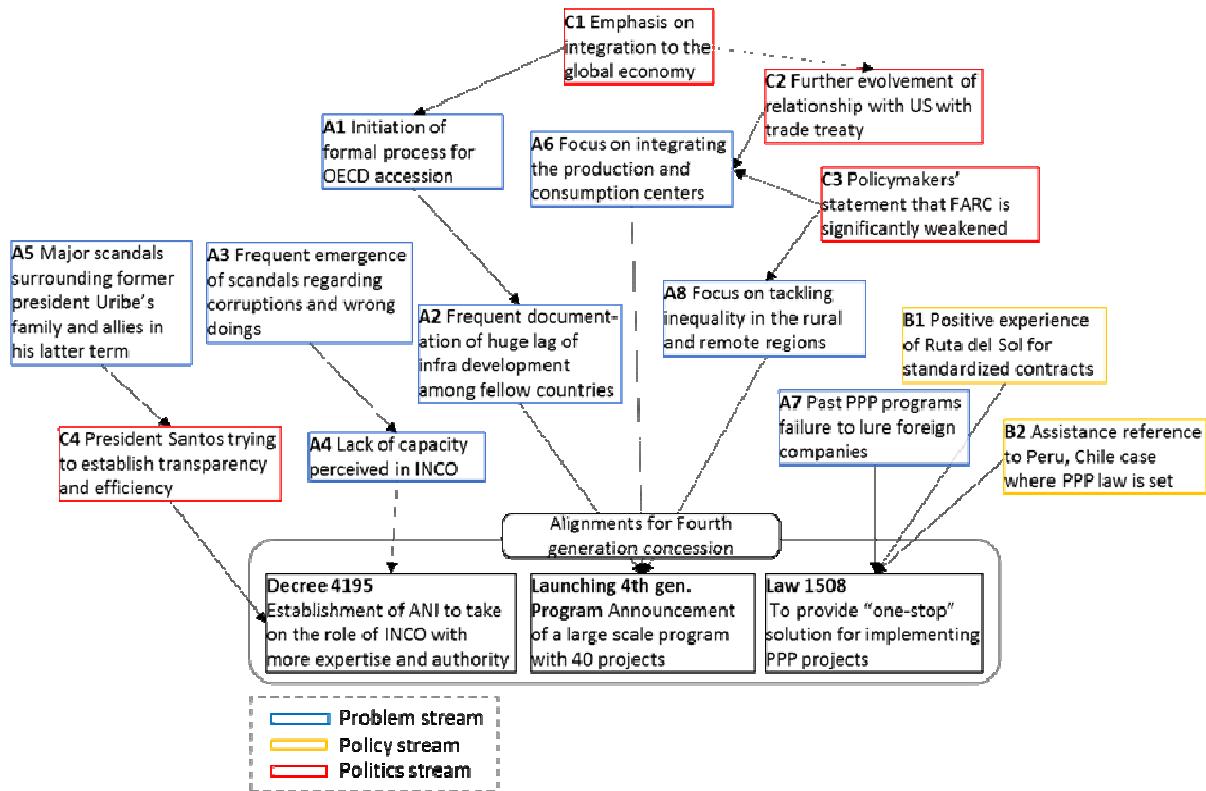
[Policy process of Colombia's fourth generation concession program (after 2010)]

The initiation of the process to join the OECD by President Juan Manuel Santos Calderón in 2011 led to the sector-wide evaluation of the country. The lag in infrastructure development, especially that of road infrastructure development in comparison to other Latin American countries and OECD members, became well documented issue which became acknowledged by policymakers. A large-scale highway PPP program was announced in 2013 consisting about 40 projects extending about 8000km with the aim to finance total of \$24 billion, which requested Colombia to attract international investors. On the other hand, the extensive and vigorous attempt to dismantle FARC had been a success, which led to turning public attention to development of the country. A growing demand was thus recognized to provide better connectivity in the region as part of the peace building process and overcoming inequality in the region. In addition, the United States-Colombia Trade Promotion Agreement was signed in November 2006, which became another source of demand to develop infrastructure in Colombia.

However, the inefficiency of INCO responsible for overseeing concession programs was still apparent. The number of cases of renegotiation became also a well-documented problem, while the success of Ruta del Sol triggered a discussion for standardized contract. IFC and other international organizations stressed the need for a unified PPP law that regulates all the procedures and aspects of activities concerning PPP projects. The Colombian government requested PPIAF an assistance in restructuring INCO.

As a result, Decree 4195 of 2011 led to the restructuring of INCO and the creation of ANI. The Law 1508 (PPP law) was then issued in 2012 to provide “one-stop” solution for implementing PPP projects in a more standardized way. FDN was established in 2013 to help finance the fourth generation concession program and attract more domestic and international players. The series of extensive institutional and regulatory reforms contributed to sending out

message to the domestic and international players that the country is committed to implementing PPPs. The policy process of this period is interpreted as shown in Figure 5.



**Figure 5:** Causality diagram of the policy process after 2010 (the fourth generation)

### Identification of driving factors for PPP policy improvement

Factors that contribute to the improvement of Colombian road PPP policy was identified through case study, which are, again, explained in line of the policy process of: agenda setting, policy formulation and decision, and implementation. First, as for the factors that contribute to development in agenda setting stage, three factors are identified, namely: Multilateral Development Banks role in specifying policy problems, political desire to overcome failure, and integration to the global economic system.

#### Multilateral Development Banks role in specifying policy problems

Through investigation of Colombia's historical development of PPP policies, it could be considered that the intervention of Multilateral Development Bank in early 2000, namely technical assistance by PPIAF in 2000 was important in keeping Colombia on the path of PPP development and setting an agenda for a major policy improvement. The Asian currency crisis in late 90s led PPP policy halt in many countries. Colombia also experienced the period of standstill, as problem in the late 90s regarding the failure of Minimum Revenue Guarantee scheme was yet to be addressed, as well as the notorious Tobiagrande – Puerto Salgar project that had to be brought to the court to solve the dispute between INVIA and the private concessionaire COMMSA. Moreover, the inauguration of President Uribe in 2002 had added more uncertainty in terms of PPP policy, because he was an outsider of politics (he belonged neither to the Colombian Conservative Party or Colombia Liberal Party that dominated the political scene for decades), and also because his presidential election campaign was built almost solely upon policies for tackling guerrillas and drug-traffickers. However, some important reforms for PPP policies such as fiscal responsibility act as well as the establishment of INCO was implemented in his regime. A part of the reason for the reform could be attributed to the PPIAF technical support which started in 2000. The PPIAF-funded study had pointed out some issues of the past generation concession programs and the result of which was presented to the government officials. Also, it is worth pointing out that in President Uribe's administration, some of the appointed ministers, who also attends the CONPES, had experience of working at international finance institutions

such as World Bank and IMF. Thus, it is assumed that the PPP policy-related issues were well received and shared among government officials at that time.

#### *Multilateral Development Bank as an enforcer of opening of policy window*

It is often the case that policy window for change does not open if a dominant group of people do not perceive the problem. There were already problems arising in the middle of the third generation, when the legal dispute for the COMMSA project ended. Though the Ministry of Finance was proposing for need for change in the way projects are awarded, the Ministry of Transport insisted there needs no change to award the project soon. Being aware of the past failure and the already troublesome third generation concession, the Ministry of Finance on its own decided to request a support from IFC to structure the project so as to initiate the process for needed change. In this way, IFC had entered as an advisor to diagnose the problem with the contracts and structure a standard contract, which became to be formalized as legislation.

#### *Political desire to overcome failures*

Another factor that contributed to setting an agenda for major improvement of the PPP policy is the political desire to overcome failures such as that experienced in Tobiagrande – Puerto Salgar project. The importance of this particular segment of highway for Colombian government is indicated from the fact that the highway was identified and planned in CONPES document issued in 1994, starting point of the concession program. Soon after the decision of project cancelation of the project obtained by COMMSA, Colombian Government requested PPIAF support for INVIA. Another evidence of the political desire to overcome failures could be found in CONPES 3045 document issued in 1999, which states the plan for concession projects to be implemented in the period beyond year 2000. The fact that the document referred to future program the third “generation” and framed the past programs as the first and second generations reflects their will to genuinely improve the PPP policy.

#### *Integration to the global economic system*

In prior to initiating the negotiation process for forming the free trade agreement with US in the 2005, many studies were prompted concerning the economic issues of the country. The lag of transport infrastructure development which results in the higher transport cost of the products and the lack of competitiveness was especially well-documented, which enhanced the acknowledgement of the need for development in the sector. It is worth noting that Mexico also experienced the acceleration of road infrastructure development in prior to initiating NAFTA negotiation. In addition, it should be pointed out that the initiation of the formal process for joining OECD in 2011 further advanced the problem perception by the government officials for the need to improve transport infrastructure, as a study by OECD revealed Colombia's transport infrastructure standard is below that of other OECD member countries.

Second, with regards to the policy formulation and policy decision stage, an interesting feature in Colombia's PPP policy process is that its policy formulation have benefited from policy learning from PPP policy frontrunners in the region, namely Chile and Mexico, as well as policy learning from its own experiences.

#### *Policy learning from other countries experiences*

Some of Colombia's PPP policy elements such as: traffic risk mitigation mechanism, regulations on renegotiations, and procedures for private-initiated projects (unsolicited proposals) resembles those of Chile and Mexico, which indicates that Colombia may have had a positive spillover effect from PPP policy frontrunners. The process of learning policy ideas from other countries may stem from an internal institution such as government agency ANI, or an infrastructure commission which consists of consultants and researchers, or from external institutions such as the World Bank which, in a number of documents, cites Chilean cases as reference.

#### *Policy learning from domestic past experiences*

The interview surveys and literature review of this research reveal some of Colombia's PPP policy improvement, especially that regarding budget planning and allocation have been influenced by Colombia's past experiences. Colombia developed a unique system of budget planning and prioritization system called “future budget appropriation”, which draws upon the past failure experience of the first generation concession program, where huge amount of contingent government guarantees suppressed public budget and caused delay in disbursement of the compensation which in turn led to huge delay in project delivery. The new system is identified as a good practice in the World Bank document on fiscal practices (World Bank 2012) [18]. An important element for formulation of this policy was the existence of firm basis for inter-ministry cooperation through CONPES. Additionally, the factor that contributed to the learning process was the central PPP agencies. Though the central PPP agencies have experienced reforms over the years from INVIA to INCO, and eventually to ANI, it was revealed in the interviews and

literature surveys that the staff members have not significantly changed thus the institutional memory kept. It may also be pointed out that the agency reforms provided timely opportunity for policy revision, as the reforms are accompanied by comprehensive policy review of the past experience.

Third, with regards to policy implementation stage, two factors are pointed out from Colombia's case: smooth takeoff after extensive institutional and legislative reform; and success of the model project.

#### *Smooth takeoff after extensive institutional and legislative reform*

The Law 1508 in 2011 (PPP Law) gave clearer rules in PPP activities which are in line with the international standard. ANI was established to replace INCO, which is intended to give more efficiency and transparency in the PPP implementation process. Overall, the series of extensive reforms enhanced the momentum for implementing PPPs by sending out the message to domestic and international investors that Colombia is committed to PPP policy. Perhaps it may be worth stressing the point that these reforms are followed by actual project implementation. In some countries' case, (e.g., Indonesia) extensive PPP policy reforms are implemented but without implementation of projects, which could bring a standstill situation. In Colombia, these reforms were shortly followed up by two small scale projects, which could have been important for the staffs of ANI in checking how the new institution would work and assuring the potential private partners the effectiveness of the new framework.

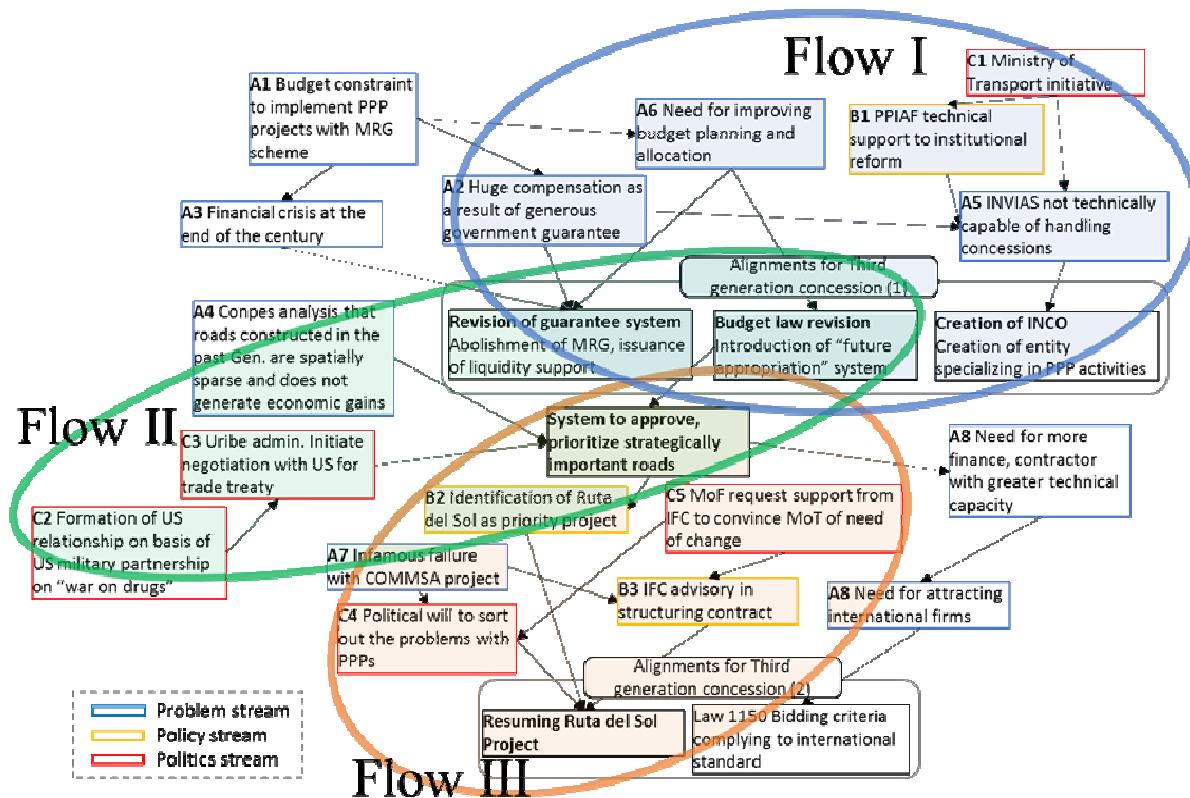
#### *Success of the model project*

The first attempt to develop Ruta del Sol in 1997 (it was then called El Vino-Puerto Salgar project which was awarded to consortium of COMMSA) became an infamous failure that ended up in court and effectively ceased for almost 10 years. With the advisory of IFC, this project was successfully implemented in the third generation and awarded the "Deal of the year" of Latin America from Project Finance International. This positively affected the general public perception of PPPs in infrastructure development.

#### **Implications from the policy process analysis**

Findings of the study point to several notable implications which should be considered further. The first relates to agenda setting of PPP policies. From the perspective of external institutions with the incentive to promote and support PPP policies (e.g., the World Bank, IDB), to induce political commitment for reform and ownership, it is important that advisory and provision of possible policy ideas are delivered timely, as of when agenda is set and policy window is open. The case of the agenda setting for implementing the third generation concession program, especially the Ruta del Sol project, would be a good practice in which Multilateral Development Banks played an important role in opening policy window by bringing all the three streams together. The policy process of the third generation concession program was the key to paving the way for ambitious fourth generation concession program.

The policy process between 2002 and 2010 (the third generation) is interpret based on Kingdon's multiple stream model as shown in Figure 6. It is illustrated that the agenda to resume the Ruta del Sol project was set when politics stream – the Ministry of Finance's action to request IFC support to take initiative of the change (C5) – , problem stream – the infamous failure of COMMSA project (A7) – , and policy stream – identifying Ruta del Sol as a strategically priority road (B2) – combined together, as shown in Figure 6 as "Flow III". Also, in prior to this event, the need for interconnection of road (A4) in the problem stream, the initiation of FTA negotiation with US (C3) in the politics stream, and the newly established budget law in the policy stream combined together to set the agenda for establishing the system for prioritizing strategically important road, as shown in Figure 6 as "Flow II". "Flow I", which lead to the establishment of INCO, can be explained in the same way. It would be said that the combination of problem stream, policy stream, and politics stream is the necessary condition for opening policy window, whereby an agenda to fundamentally change a past policy is set. And, at least in the Colombia case studied, Multilateral Development Banks could contribute to agenda setting by technical support and policy advisory that aim at capacity development, implementation of effective policies learned from past cases, and cohesion of domestic ministries and agencies.



**Figure 6:** Agenda setting process in the third generation

The second implication to be discussed is related to policy learning. As the Colombian case suggests, learning by doing is the key to successful implementation of policy, because after all, problems would inevitably arise that needs modifying. The study of the Colombian case implies that the periodical policy review by the World Bank and internal agencies such as INCO and ANI in times of institutional reforms was effective. It may be also said that Colombia has benefitted from the institutional set-up of centralized PPP unit in which the knowledge and experience is gathered. This may be an implication that countries that are still in the premature stage in terms of PPP policies can benefit from centralized PPP unit rather than a decentralized one by fostering accumulation of PPP knowledge and experience.

The third implication to be noted is related to the implementation stage. The Colombian case suggests that building on successful reform and successful project plays a part in boosting the political mood for PPP policy and thus prompting further development of PPPs. On the contrary, major failure of the project would have a negative effect. This study does not provide recommendations for critical success factors for PPP projects but it does provide issues to be considered regarding agenda setting, namely the timing of project to be implemented. There is some tendency for implementing large-scale PPP project in the early stage of reform effort to send out signals that government is seriously committed to PPPs. While it may be effective if the projects are successful, it should be noted that it may be risky when the resulting reform has not fully settled and the private sector is not fully confident with the new institutional framework. Though the Colombia's approach in the third generation where they started with smaller project and learned the process was not a strategic action, it does indicate that launching large-scale projects should be decided with considerations to whether it is better to demonstrate commitment to PPPs or whether it is better to improve the technical and administrative capacities with smaller and feasible projects first.

## Conclusions

This study analyzed the policy process in which the Colombian road PPP policy has been improved in order to identify the factors that hindered or drove the improvement of PPP policy; to interpret how these factors came into action in the policy process; and to draw implications on how to promote PPP policies in countries that have not fully developed its PPP policy.

This research identified various driving factors for the road PPP policy development of Colombia through analyzing the policy processes of several periods with information gained by literature reviews and interview surveys. Seven factors were identified that contribute to the development of the Colombian road PPP policy. These are; (i) the role of Multilateral Development Banks in specifying policy problems; (ii) the political desire to overcome failure; (iii) the integration to the global economic system; (iv) the policy learning from other countries experiences; (v) the policy learning from domestic past experiences; (vi) the smooth takeoff after extensive institutional and legislative reform; and (vii) the success of the model project.

Implications of the study relates to; how MDBs could contribute to opening policy window and utilize the opportunity; the importance of lesson learning for developing countries' government agencies and how they could foster accumulation of PPP knowledge and expertise; and the morale-boosting effect of a showcase project and relevant timing of the implementation.

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