

Assessing Public Participation in the Decision-Making on Public-Private Partnership Projects in Kazakhstan

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Abstract

The thesis investigates the issue of public participation in decision-making on public-private partnership (PPP) projects in Kazakhstan. A central question explored here is how, if at all, the authorities of Kazakhstan ensure public participation in the decision-making on PPP projects. Likewise, an analysis is conducted of the different modes of participation by the public, namely meaningful participation, non-participation and pseudo-participation, and how they can affect PPP projects. The thesis also studies the broader implications of public participation in the decision-making on PPPs for the society in Kazakhstan more generally.

By employing a multi-method approach, in particular, interviews, content analysis and case studies, I argue that there remains a deficiency in public participation in the decision-making on PPP projects in Kazakhstan. As the findings and arguments presented in the research indicate, through an assessment of both domestic and international case studies, public participation, namely meaningful participation positively affects the course of PPPs, leading to an effective and more democratic realisation of PPP projects. Similarly, the analysis also shows how non-participation and pseudo-participation by the public in the decision-making on PPPs negatively impact the course of PPP projects, bringing about various risks that could lead to adverse political and economic outcomes resulting in the suspension of PPPs.

Through analysing the state of public participation in the decision-making on PPPs in Kazakhstan and the resulting implications, the key claim is made that public participation in the decision-making on PPPs can lead to the development and advancement of political pluralism, civil society, social capital and to the enhancement of representative democracy in Kazakhstan. Public participation in the decision-making on PPPs can also contribute to the promotion of local, participatory and e-democracy in the country. These are crucial implications arising from ensuring public participation in the decision-making on PPP projects for the society in Kazakhstan. The implications of this research go beyond the particular Kazakhstani experience to any polity where PPPs are used to build public infrastructure and services.

Declaration

I hereby declare that this thesis is my own composition and does not entail any material previously submitted for any other degree of qualification. The work presented in this thesis has been produced by me, except where due acknowledgement is made in the text. I confirm that the thesis does not exceed the prescribed word limit of 80,000 words, including the appendices and footnotes, but excluding the bibliography.

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Abbreviations and Acronyms

BARAR	‘Big Almaty Ring Automobile Road’ Concession Project in Kazakhstan
BOT	Build-Operate-Transfer model of public-private partnership (concession)
CCPPP	Coordination Committee for the Promotion of Private Participation in Infrastructure Projects under the Executive Yuan of Taiwan (the executive branch of the government of the People’s Republic of China on Taiwan)
EBRD	European Bank for Reconstruction and Development
ETC	Electronic Toll Collection Project in Taiwan
FE	Far Eastern Company in Taiwan
ILO	International Labour Organization
JLTR	Jin Long Toll Road Project in China
JRCC	Jinlong Road Construction Company in China
KZT	Kazakhstani Tenge (a national currency of the Republic of Kazakhstan)
NCE RK	National Chamber of Entrepreneurs of the Republic of Kazakhstan ‘Atameken’
NGO	Non-governmental organisation
PCC	Public Construction Commission under the Executive Yuan of Taiwan (the executive branch of the government of the People’s Republic of China on Taiwan)
PPP	Public-Private Partnership
PPP Centre	‘Kazakhstan Public-Private Partnership Center’ JSC
RMB	Renminbi (a national currency of the People’s Republic of China)
SEED	Sustainable Employment and Economic Development
SEED ILO	Sustainable Employment and Economic Development Programme under the International Labour Organization

TANFB	Taiwan Area National Bureau under the Ministry of Transport and Communications of the Executive Yuan of Taiwan
TZS	Tanzanian Shilling (a national currency of Tanzania)
UNCHS	United Nations Centre for Human Settlements
UNECE	United Nations Economic Commission for Europe

Chapter 1 – Introduction

The present thesis is an investigation into the issue of public participation in the decision-making on public-private partnership projects (PPP) in Kazakhstan. As a form of collaboration between the public and private sectors, PPP is widely applied by countries as a tool in implementing infrastructure projects, yet the employment of this tool has been due to various reasons and priorities in different nations. While in certain countries economic challenges or financial constraints such as budget deficits have motivated the use of PPP, other countries have used PPP to ameliorate the provision of public services by involving the private sector (Chowdhury, et al., 2011, p. 247).

As a public policy, it is important to note that first and foremost, PPP is concerned with the wellbeing of people and is therefore adopted for their interests as its main users. In other words, PPP is adopted by governments for citizens qua the end users of public services delivered under the PPP mechanism. This important orientation of public policy is tied to the democratic understanding of politics itself. For instance, in delineating the concept of ‘political’, Gauba draws a parallel with the notion of ‘polity’, where political decisions are made for the public (Gauba, 2013, p. 1). Similarly, Wolin (1960, cited in Gauba, 2013, p. 1) distinctly depicts the idea of ‘political’ as follows:

Certain functions, such as national defence, internal order, the dispensing of justice, and economic regulation, have been declared the primary responsibility of political institutions, largely on the grounds that the interests and ends served by these functions were beneficial to all of the members of the community (Gauba, 2013, p. 1).

It could therefore be concluded that public policies in general, including PPP policy, is adopted for the sake of the public and should be maximally beneficial to the public. This aim is itself based on the democratic understanding that politicians and officials represent the interests of citizens, fulfilling their primary obligations on behalf of citizens and for their sake, who delegate their powers to these representatives.

Generally speaking, democracy itself is construed as a broad conception, containing various characteristics, models and theories. These different ideas aim to account for a wide range of issues such as the democratic rights of an individual, the role of people or majority in governing polity, global democratic challenges, to name a few. As Held (1996, p. 1) has pointed out, the notion of democracy has been subject to scholars’ scrutiny throughout history – from

ancient Greece to the modern era. This continuous scrutiny of the notion has played a part in its complexity and evolution through time. Noting this complexity, such an idea as ‘participation’ has always played a significant democratic and political role for citizens, especially as a right to participate in political processes. This is why the concept of ‘participation’, and more precisely ‘political participation’ has been under the scrutiny of different political thinkers, such as Verba and Nie (1972), Lucas (1976), Macpherson (1977), Pennock (1979), Birch (1993), Bishop and Davis (2002), Teorell (2006), to name just a few. Moreover, scholars such as Mill (1910) and Pateman (1970) advocate the idea of ‘participation’ as a more requisite and democratic method of effecting the power of people – democracy in practice.

Since the early years of the post-Soviet period in Kazakhstan the issue of ensuring citizen participation in the decision-making on public affairs has always remained acute, especially in practice. Therefore, the participation of citizens in the decision-making on PPP projects needs to be examined within the ongoing PPP policy in Kazakhstan. The PPP policy in the country has been recently introduced at large, and the basic law regulating the relations in the field of PPP, namely ‘On Public-Private Partnership’, was adopted in 2015. This recent enactment of the law is in addition to the law ‘On Concessions’, which as a widespread form of PPP has been in place since 2006. Nonetheless, citizen participation as a democratic aspect in the framework of the current PPP policy requires critical exploration into how it is operating. In particular, the question ought to be asked as to whether in fact citizen participation in the decision-making on PPP projects, whose implications affect the interests and lives of people as the end users of PPPs, is ensured by the government.

Apart from citizens, other non-state actors such as interest groups should also be involved in the decision-making on PPP projects. The importance of involving such groups is due to the fact that they also have the right to express their views on public policies (programmes), including a PPP policy. Therefore, they are also interested in how government implements a PPP policy whose practical implications, that is, PPP projects and their associated outcomes can directly or indirectly affect the democratic interests and rights of citizens who create and run interest groups. For instance, in his book *Social Theory* Cole (1920, p. 7) depicts associations in society as a form of guild of individuals who pursue common goals by taking actions to achieve them. From this interpretation, interest groups can be understood as associations or institutions from diverse spheres of social life that enter and attempt to influence societal relations affecting their interests. Therefore, since PPP projects can be implemented in various spheres of public activities, they could also concern the interests of different interest

groups. Consequently, they also have the democratic right to speak out and voice their opinions and concerns regarding PPP projects and their possible impacts. As such, given that interest groups as well as citizens ought to be involved in the decision-making on PPPs, in the course of the thesis I consider the participation of both citizens and interests groups, therefore highlighting the involvement of different voices in the decision-making processes on PPPs.

With this exposition in mind, the aim of this thesis is to investigate the merits of public participation in the decision-making on PPP projects, understood primarily as a democratic tool, through the case study of Kazakhstan. As a young country aiming for strengthening its democratic development, Kazakhstan presents a case where the strengths and shortcomings of public participation in the decision-making on PPPs, as they stand today, can be investigated. And furthermore, the present research can offer new insights into how public participation in the decision-making on PPP projects can be used and implemented in ways to further democratic values and processes.

Speaking about the PPP policy in Kazakhstan, the government is now actively employing PPP as an opportunity to attract investment and other technological capabilities of private institutions in the joint implementation of infrastructure projects alongside government bodies. Since the Republic of Kazakhstan is a developing country (International Statistical Institute, 2017), PPP is considered to be one of the tools instrumental in achieving the strategic objective, namely the development of the national economy. In 2011 the Programme for the Development of Public-Private Partnership in Kazakhstan for 2011-2015 was developed and adopted to realise the Address of the President of the Republic of Kazakhstan – ‘The new decade, the new economic growth, the new opportunities of Kazakhstan’ to the people given on the 29th of January 2010 (Decree of the Government ‘On Approval of the Programme for the Development of Public-Private Partnership in the Republic of Kazakhstan for 2011-2015 and Making Amendment to the Decree of the Government of the Republic of Kazakhstan of 14 April 2010 No. 302’, 2011). The programme was, furthermore, developed in order to implement the ‘State Programme on the Forced Industrial and Innovative Development of the Republic of Kazakhstan for 2010-2014’ (Decree of the Government ‘On Approval of the Programme for the Development of Public-Private Partnership in the Republic of Kazakhstan for 2011-2015 and Making Amendment to the Decree of the Government of the Republic of Kazakhstan of 14 April 2010 No. 302’, 2011).

Currently PPP networks in Kazakhstan working to implement infrastructure projects include both public institutions and private organisations. It should be noted that within the government’s Programme for the Development of PPP, PPP is regarded as a mechanism for

attracting private sector actors in the implementation of socially significant projects. A private partner, according to article 1, subsection 2 of the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ (2015), is understood as an individual entrepreneur, legal entity or consortium that enters into a PPP arrangement. Furthermore, in 2006 the Law of the Republic of Kazakhstan ‘On Concessions’ was adopted, stating that a concession is an ‘activity aimed at the creation (reconstruction) and operation of concession facilities that is carried out at the expense of concessionaire’s funds or on terms of co-financing by a grantor’ (Law ‘On Concessions’, 2006). The introduction of the concept of concessions in Kazakhstan is noteworthy, since it is viewed as one of the most common forms of PPP implemented around the world (Grimsey & Lewis, 2004; UNECE, 2008; Zapatrina, 2011; Siemiatycki, 2012).

Given this exposition, it can be seen that for citizens of any state, including Kazakhstan, it is important to know how effectively a PPP policy is implemented in practice, that is, whether the public services under the PPP mechanism bring about the desired results for citizens as the end users of PPPs, meeting their interests. Furthermore, with regards to the democratic considerations of PPP policy in the context of Kazakhstan, it is of interest to the citizens to know how the state, particularly politicians and officials ensure representative democracy while exercising the PPP policy in practice. Since politicians and officials as representatives act and make decisions on behalf of citizens and with their interest in mind, it is important to examine how the interests of citizens are protected and promoted during the implementation of PPP projects. This enquiry is especially noteworthy for the case of Kazakhstan, given the nation’s recent history, and its current quest for democratisation.

As noted earlier, Kazakhstan gained its independence just under 30 years ago following the dissolution of Soviet Union. It is clear that the authoritarian political regime of the Soviet Union has left its profound imprint on its former republics, including Kazakhstan. Such impacts indeed extend to these nations’ political systems. A description of such political drawback is exemplified in the work of Grugel (2002), where she depicts the maelstrom of democratisation in the post-Soviet nations. For example, Grugel shows how the ex-Soviet republics were in a complete turmoil after the collapse of the Soviet Union, and accordingly, the progress towards democratisation was extremely obscure and onerous (Grugel, 2002, p. 197). Besides, as Grugel argues further, democratisation could not be advanced both on the part of governments and societies (ibid., p. 198). This is due to the fact that former member states of the Soviet Union inherited an uncertain and unsteady political legacy from the former Soviet Union, namely the encumbrance of the undeveloped society in terms of democratic development (Grugel, 2002, p. 198). Grugel further claims that civil society in Russia was immature, the market was still

undeveloped, and more importantly, the democratisation prospects were ambiguous (ibid.). Similarly, Rutland has noted that the social gap and economic recession were exacerbated in Russia in the early years of the post-Soviet period, thus making the development of the democratic society most challenging (Rutland, 1996, p. 249). It is clear that such political, democratic, social and economic woes following the fall of the Soviet Union, were not limited to Russia, but rather extended to all former republics of the Soviet Union, including Kazakhstan.

The first few years of formation of a new independent Kazakhstan, there were various examples of vacuums in the society and government particularly regarding democracy and free markets. For instance, in 1991, the year of independence, the government adopted the Law 'On Concessions in the Republic of Kazakhstan' that was a reasonable move insofar as the country had to revitalise its economy, including through the development of private entrepreneurship. However, the law was imperfect, since at the time not only was a market environment not properly institutionalised, but domestic entrepreneurship was also underdeveloped. Furthermore, the law was democratically flawed, especially in relation to domestic private institutions. This is since, according to article 1 of the above law, the concession as the right to perform an economic activity was to be granted exclusively to a foreign legal entity or entrepreneur. As a result, the law was repealed in 1993 (Law 'On Recognition Invalid the Law of the Republic of Kazakhstan 'On Concessions in the Republic of Kazakhstan', 1993).

Furthermore, in the first years of independence the society in Kazakhstan was not evolving in democratic conditions. In this period citizens did not have the rights to voice their opinions during the decision-making processes on public matters, including the laws, public programmes and infrastructure projects. For example, examining the opinion poll issues in the ex-Soviet countries during the first years of the states' independence, Bashkirova argued that the authorities disregarded the people's voices, whereas public opinion on public policies would significantly advance democratisation in societies (Bashkirova, 1995, pp. 291-292).

Given these historical and democratic contexts in Kazakhstan, it is crucial to examine how, after a certain period of development as an independent state, the democratic processes have improved in the country. In particular, given the focus of the present thesis, it is worth enquiring how the government is currently ensuring public participation in the decision-making on PPP projects.

With the preceding exposition in mind, the present research aims to answer the following key research questions;

- How, if at all, is public participation in the decision-making on PPP projects ensured by the authorities of Kazakhstan?

- How do participation, pseudo-participation, and non-participation of the public affect PPP projects?
- What, if any, are the implications of public participation in the decision-making on PPPs for the society in Kazakhstan?

The answers to these questions will be revealing in various ways. Firstly, the answers will give an insight into the current state of political rights of the public through the lens of public participation in the decision-making on PPP projects in the country. This insight has practical significance for the public since, as mentioned earlier, the implications of PPP affect the lives and interests of the public. Secondly, investigating these questions would be revealing of how democratically the authorities of Kazakhstan implement the PPP policy in practice. That is, whether they ensure public participation in the decision-making on PPP projects. Thirdly, and more importantly, through a multi-method approach adopted for this research, the extent to which the authorities truly take into account opinions and interests of citizens while making decisions on PPPs will be discerned. To be specific, the question of whether *meaningful participation* of the public is ensured in the decision-making on PPP projects will be examined, that is, whether the authorities enable citizens and interest groups to influence their decisions on PPPs. In this vein, an understanding will be gained regarding the impacts of meaningful participation and/or its absence in the decision-making on PPP projects, and how it impacts the practical implementation of PPP projects. In other words, although traditionally PPP policies have been motivated by economics, here the assumption that meaningful public participation, in addition to advancing democracy, would assist in attaining economic goals will be explored. Particularly, as the cases examined reveal, the economic effectiveness of PPP projects may rely on how democratically they are implemented. Lastly, through such an understanding, an account can be offered of how public participation in the decision-making on PPP projects, can impact the society in Kazakhstan by bringing about democratic benefits for it.

Given the outline of the aims and context of the present research, the outline of the thesis is as follows. In the next chapter (Chapter two), I will present the conceptual framework and the methodology employed in the research. In the conceptual framework I will outline the concept of participation that I will be using throughout the work. Given the focus of this research on public participation as a democratic aspect, the concept is understood as an attempt on the part of the public to influence the government decisions related to PPP projects. In the second part of the chapter I will outline the methodology employed, detailing three methods used in gathering and analysing data. These are qualitative, semi-structured interviews conducted with the representatives of government bodies and quasi-state institutions in

Kazakhstan, case studies in the form of examples of PPP projects in Kazakhstan, and content analysis whereby official documents (normative legal acts) will be analysed.

Chapter three presents a literature review whereby important scholarly contributions in the debate about PPP are critically examined. Among the topics included in this review are principles of PPP, risks, success factors and challenges involving public control, monitoring and participation in the decision-making on PPP projects. Through this examination I will point out the gap in the literature that this work aims to fill, namely that pertaining specifically to the democratic issue related to public participation in the decision-making on PPP projects. The project aims to fill this gap through a focus on the case of public participation in the decision-making on PPP projects in Kazakhstan. This would be a revealing case, since Kazakhstan still has some authoritarian elements in governance, thus making the significance of public participation in the decision-making on PPP projects more salient and revealing. Despite the focus of the thesis being on Kazakhstan, the issue of concern has international importance. To show this broader importance and relevance, in chapter four I look at three cases of PPP projects in different countries (China, Taiwan, and Tanzania), where the significance of public participation in PPP and the adverse consequences arising from non-participation and pseudo-participation of the public can be seen. The empirical data examined in this chapter will be drawn on in the later chapters where I give conceptual and practical implications, together with conclusions of the research.

In chapter five I start to use the data collected as part of the fieldwork for this research to outline the current state of public participation in the decision-making on PPP projects in Kazakhstan. In particular, I will draw on the interviews conducted with the representatives of government bodies and quasi-state institutions in different parts of the country to argue that there is a problem of deficiency in public participation in the decision-making on PPP projects in the country. Furthermore, I will examine the existing legislation of Kazakhstan (normative legal acts) to argue that the deficiency in public participation in PPP project is in part due to provisions in the existing legislation of Kazakhstan. Following these observations, in chapter six I examine two cases of PPP projects in Kazakhstan, namely the construction of the Kok-Zhailau ski-resort, and the construction and operation of the Big Almaty Ring Automobile Road, within which local authorities did not initially ensure public participation, as well as meaningful participation. Looking at these cases in detail, I will show how different risk factors arising in the projects, which adversely affected their course, were due to not ensuring public participation, along with meaningful participation of the public in the decision-making on the projects.

In chapter seven, reviewing recent developments in the case of the ‘Kok-Zhailau’ project, I will argue for the benefits of meaningful public participation both for the democratic and effective realisation of PPP projects, as well as for the development and advancement of political pluralism, civil society, social capital and for the enhancement of representative democracy in Kazakhstan, which are conducive to the democratisation of the society in the country at large. As I will show, meaningful participation not only minimises different risk factors therefore assisting in the effective implementation of PPPs, but it also empowers citizens and interest groups to influence the decisions on PPPs, thus bringing about a more democratic realisation of PPPs and democratising the society in Kazakhstan on the whole. Having noted these benefits, I will then suggest ways in which the existing legislation of Kazakhstan could be improved to reflect the importance and benefits of public participation in the decision-making on PPPs for projects, as well as for the society. These improvements include mandating the government to expand and ensure meaningful participation of the public in the decision-making on PPPs and other legal measures directed at ensuring responsiveness, accountability and public control, thus enhancing representative democracy. Also, such legal measures can contribute to the promotion of local, participatory and e-democracy in Kazakhstan, thus benefitting the society in the country.

Lastly, in chapter eight, I will offer a summary of the arguments and key findings of the research. As I will show, the analyses presented in the thesis have valuable theoretical, conceptual and practical contributions. These include contribution to democratic theory and concept of ‘participation’, as well as to the concept and theory of participatory democracy. Practical contributions of this work, in addition to suggesting pathways for the democratic and effective implementation of PPP projects, include those related to the development and advancement of political pluralism, civil society, social capital, the enhancement of representative democracy, as well as the promotion of local, participatory and e-democracy. I will also make suggestions for further research into PPP in Kazakhstan.

Chapter 2 – Conceptual Framework and Methodology

The aim of this chapter is to outline the conceptual framework within which the research is conducted. Through a brief survey of the relevant literature, in the first section I detail the key concepts that define the outlook of the work, thus directing the methodology and the analysis of the project. As I point out, of especial importance to this research is the distinction between meaningful participation and pseudo-participation. Identifying different instances of these modes of participation would allow for an enquiry into how the authorities of Kazakhstan approach public participation in the decision-making processes on PPPs, as well as the ways in which the engagement of public in PPP projects can be improved through legal measures as a way to improve the current state of public participation in PPPs. Having defined the conceptual framework, in the second section the methodology employed for collection and analysis of data is detailed. As was noted in the previous chapter, I employ a multi-method approach to answer the research questions. These include qualitative interviews, case studies, and content analysis of normative legal documents. In giving details of my methodological approach, I detail what each method entails, explaining what they offer for the analysis, as well as the ways in which these methods are complementary and offer more comprehensive answers to the research questions.

2.1. Conceptual Framework

Given the focus of this research and the particular research questions the thesis aims to answer, I make extensive use of the concept of participation. The notion of participation embodies a democratic idea, inasmuch as it signifies the participation of the public in the decision-making on PPP projects with outcomes that affect the lives and interests of people and interests groups. The importance of participation in developing democratic countries lies in its empowering quality for the public. Consequently, various political thinkers have advocated for participation. For example, the proponents of participatory democracy such as Rousseau (1968), Mill (1910), Cole (1920), Pateman (1970) emphasise the notion of participation, insofar as they view it as the inalienable democratic right of people by means of which people should and can exercise their power – democracy. In this outlook, it is owing to participation that people can protect and promote their democratic interests and rights. In other words, through education people can understand how they exercise their democratic power through participation in order to achieve their desired outcomes and collective benefits. For instance,

Rousseau argues that sovereignty is the basis of the body politic which is based on the general will of the people, however, these wills cannot be alienated from the people, although their powers can be delegated (Rousseau, 1968, p. 69). From Rousseau's point of view, therefore, although citizens delegate their power to their elected representatives, the citizens themselves are the source and basis of sovereignty. In this sense, governments and their institutions can be seen as tools for implementing the general will of the people. As such, citizens possess the full moral right to act, participate and demand from the state and their servants the proper fulfilment of the general will.

Noting the historical importance of the notion of participation, and the different senses in which different scholars have defined and defended the notion, it is important to clarify the working definition of participation that will be used throughout this thesis. As a concept emerging from democratic theory, Teorell (2006) has proposed that the concept of participation should be understood within the context of three models of democracy, namely, responsive, participatory, and deliberative models, with each model offering an understanding of a certain aspect of the conception. Within the responsive model of democracy, Teorell describes participation as an "influencing attempt" (Teorell, 2006, pp. 788-789). In this characterisation Teorell follows Verba and Nie (1972) who view participation as "acts that aim at influencing the government, either by affecting the choice of government personnel or by affecting the choices made by government personnel" (Verba & Nie, 1972, p. 2). Participation as 'influencing attempt' implies the opportunity of citizens to express their voices on decisions made by government bodies (Miller, 1992 cited in Teorell, 2006, p. 789). Understood as such, participation is a tool that helps government decision-makers to respond to citizens' needs (Teorell, 2006, p. 789). Similarly, according to Verba, participation can be seen as "a mechanism for representation, a means by which governing officials are informed of the preferences and needs of the public and are induced to respond to those preferences and needs" (Verba, 1996, p. 1). In the context of participatory model of democracy, on the other hand, Teorell defines participation as "direct decision-making" (Teorell, 2006, pp. 789-790). This is in light of Gould's notion of participation, where participation is viewed as "direct and immediate involvement in the process of decision making by the individuals concerned. Thus, in this process, the authority of individuals is not delegated to some representatives but exercised directly by them" (Gould, 1988, p. 259). Lastly, within the deliberative model of democracy participation is defined as political discussion, noting that "to participate is to engage in some kind of collective endeavour" (Teorell, 2006, p. 791).

Within the present work, I will be focusing on the notion of participation understood in the first sense, namely as influencing attempt. This understanding of the concept helps to better problematise and examine the issue at hand, especially in the case of Kazakhstan, since the decisions regarding PPP projects in Kazakhstan are usually initiated and made by government bodies. As such, and given the previously mentioned importance of citizens' input in the decision-making on PPP projects, this understanding of participation would enable a better examination of the extent to which citizens and interest groups are involved in influencing the government decisions regarding PPPs.

Another important conceptual clarification here is the notion of 'meaningful participation'. In *Participation and Democratic Theory* (1970), Carole Pateman defines participation as participation of people in decision-making and argues that this participation can only be regarded as meaningful if and when people are able to influence decisions in such a way that their outcomes satisfy the participants' interests (Pateman, 1970, pp. 68-69). Pateman therefore distinguishes meaningful participation from 'pseudo-participation', which, as Verba defines it, is used as a method of persuasion to agree with an already made decision (Verba, 1961, pp. 220-221). Pateman attaches great importance to meaningful participation, since she argues that it is only through participation that citizens can influence the decisions made by their representatives (Pateman, 1970, p. 110). Participation, in this sense, creates more opportunities for electors to control and direct the actions of their representatives in government.

A further reason for why Pateman upholds and advocates for participation is that often the elected representatives often fail to protect and promote the people's interests and therefore do not properly fulfil their primary duties to them. As she notes in her discussion, 'the classical democratic theory' pays little attention to such a fundamental principle as participation of citizens, thus diminishing its 'democratic character' (Pateman, 1970, pp. 103-104). Pateman is therefore critical of political thinkers associated with classical democracy, such as Schumpeter (1943), Berelson (1954), Dahl (1956) and Sartori (1962), who curb the role of people's participation and believe that active participation of citizens can lead to the destruction of a political system. Pateman argues that while for Schumpeter citizen participation is limited to participation in elections, for Berelson the stable functioning of a political system is the most important factor, even if it means the confined participation of people who themselves do not show an interest in public affairs (Pateman, 1970, pp. 5-7). Similarly, Pateman maintains that Dahl also did not approve of political participation of individuals due to the importance he gave to 'polyarchy' as a form of government (Pateman, 1970, pp. 8-10). Although Dahl (1956)

defines polyarchy as a system in which power is shared by different people and groups, as Pateman notes, the representatives of classical theory of democracy, including Dahl, have not encouraged the participation of people in political processes, giving to it 'a minimal role' (Pateman, 1970, pp.1-11). This is since, as Dahl argued, among the lower socioeconomic groups, there are 'authoritarian' personalities who, if allowed participation, could bring the decline of polyarchy as a political system (Dahl, 1956 cited in Pateman, 1970, p. 10). Lastly, Pateman points to Sartori's lack of sympathy for individuals' active participation in politics, due to his conviction that such activities would result in a totalitarian system of governance, which Sartori understood as a struggle between competing elites for power (Sartori, 1962 cited in Pateman, 1970, p. 11). Through her arguments against these thinkers on the issue of participation, Pateman stresses that in practice, the lack of public participation prevents people from protecting and promoting their democratic interests and rights (Pateman, 1970, pp. 1-11). It is worth noting that a positive example of people's participation in decision-making given by Pateman (1970, pp.85-102), namely, the functioning of workers' councils in the industry of the former Yugoslavia, demonstrates that such participation is not dependant on the fact that a state should be a mature democracy. As such, public participation in the decision-making on PPPs in Kazakhstan can be considered as one of tools in promoting democratic processes in the country.

Pateman is not the only scholar to emphasise the importance of participation, since others have also noted the need for citizens to have their say in decisions that could potentially impact their lives and interests. For instance, Cole (1920) argued that people's participation should not be limited to their right to vote, and expressive power should be granted to citizens more extensively. Noting especially the importance of social groups and associations, Cole argues that "we ought to aim not merely at giving people votes, but at calling forth their full participation in the common direction of the affairs of the community" (Cole, 1920, p. 208). This arises from Cole's conviction that "self-expression involves self-government" (Cole, 1920, p.208), thus demonstrating the importance he attaches to participation of citizens.

Similarly, Mill (1910) emphasises the significance of public participation in public affairs, especially at the level of local government. As he notes, in addition to the power of voting, citizens can themselves get elected to local executive bodies, thus serving their local communities (Mill, 1910, p. 348). This point serves as an answer to one of Mill's concerns, namely the presence of self-interested officials and politicians as one of the vulnerabilities in public governance (ibid, p. 254). As a solution to this worry, Mill points to the need for local representation along with the central (national) representation. In this sense, local communities

have the power to hold their local representatives more accountable and responsive through their active participation, and therefore contribute to effective local governance (Mill, 1910, pp. 347-348). As such, it can be seen that public participation has the potential to bring officials and citizens closer to each other, and even act as a deterrent to self-interested and uncontrolled actions and decisions by representatives.

Various political scholars have emphasised the need for participation along with its democratic benefits. For instance, Arnstein has argued that “citizen participation is a categorical term for citizen power” (Arnstein, 1969, pp. 216-217). Similarly, Held has pointed out that one of advantages of participation is the “minimization (eradication, if possible) of unaccountable bureaucratic power in public and private life” (Held, 1996, p. 271). The democratic benefits of participation have been emphasised in the literature as well. For instance Verba and Nie have argued that more participation in decision-making equals more democracy (Verba & Nie, 1972), while Gauba has stressed the capability of participation to enhance the accountability and responsiveness of office-bearers to people (Gauba, 2013, p. 572). Other scholars who have noted such benefits include Lucas (1976), Pennock (1979), Birch (1993), and Judge (1999), to name a few.

Importantly, some of these scholars argue that participation can contribute to the effective realisation of government policies. For instance, Pennock claims that participation can help officials implement public policies more effectively, thus meeting citizens’ demands (Pennock, 1979, p. 441). Likewise, Birch has argued that participation improves the effectiveness of office-bearers’ work at both central and local levels, since it can make them aware of citizens’ needs and problems (Birch, 1993, p. 81). Participation as consultation, therefore, can be seen to be an effective tool in good governance (Thomas, 1990, 1993; Shand & Arnberg, 1996)

The conceptual exposition above highlights the important aspects of the notion of participation that are of interest to the present project. As a democratic tool, I take participation to denote an attempt to influence the government decisions on PPP projects in particular. The conceptual distinction between meaningful participation and pseudo-participation enables a richer analysis and discussion of the cases considered, especially in identifying how effective public participation has been. Furthermore, I argue that participation cannot and ought not to be limited to participation in voting and that the public ought to have a more extensive role to play. This can be manifested through different forms of public participation in decision-making on public affairs (public meetings, hearings, surveys, advisory boards/committees and so forth), including on PPP projects. Participation defined as such is of utmost importance for citizens in a democratic society, since it empowers them not only to voice their concerns and opinions, but

also to hold their representatives accountable and responsive. Moreover, participation can also ensure the adequate public control over officials and their decisions. In this way, the importance of participation as a democratic tool is highlighted. Lastly, as the exposition above indicates, the success of PPP projects and accordingly PPP policies can be also ensured with meaningful participation of the public. PPP policies planned and enacted in this way are more responsive to the needs and interests of people, and with the participation of the public, the implementation of PPP projects can be more effective and efficient. Therefore, participation can have a positive effect on the implementation of public policies, including that of PPP projects.

Given this conceptual framework, the case for investigating the public participation in the decision-making on PPP projects in Kazakhstan is made. In the current situation in Kazakhstan, the role of citizens and interest groups to express their voices on decisions regarding PPP projects is limited due to the lack of commitment to ensuring public participation in the decision-making on PPPs. This limited role of public participation, in its turn, leads to difficulties in managing projects, not benefitting citizens. I will briefly outline two examples to demonstrate how the conceptual background laid out here can be used effectively to understand the strengths of public participation, including meaningful participation and the shortcomings of non-participation, together with pseudo-participation of the public in the decision-making on PPPs in Kazakhstan.

A case I consider later on in the thesis involves an ongoing PPP project on the construction and operation of a toll road in Almaty region. The regional authorities did not involve the public in the discussion of the project during its planning phase. As a result, without having heard the opinions of the locals, the authorities of Almaty region went ahead with redeeming plots of land and properties belonging to local residents for the planned construction of the toll road. Although such a decision clearly concerns the local residents' interests and has a profound effect on their lives, it was made without their consultation. Furthermore, the authorities attempted to acquire the plots of land and properties of local residents at unreasonably low prices, leading to the suffering of many low-income families. Not surprisingly, this decision led to social, legal, investment, political and corruption problems which, as well as their problematic impact on the locals, had a considerably adverse influence on the project itself. It should be noted that although the authorities began to consult the public by holding public hearings long after making the decision, the public participation in the decision-making on the project was not meaningful.

In this PPP case, the regional authorities made the decisions without considering people's interests, whereas these considerations should have been the primary concern of officials, since

PPP projects are implemented for citizens' interests and needs as the primary users. In this example, where the regional authorities made decisions and implemented them without consulting the people concerned, it is clear that Pateman's scepticism is realised. As was noted earlier in this section, Pateman (1970) argued that the representatives of people do not always fulfil their duties to electors as needed and expected of them, which generally undermines representative democracy. I furthermore agree with Pateman's conviction that public participation should not be limited to participation in elections, and more importantly, that public participation should be extended to enable citizens and interest groups to express their opinions on government decisions, whose outcomes affect their lives and interests. As can be seen from the above example, the lack of public consultation as a widespread form of participation in the decision-making processes can have adverse impacts both on the lives of the public, as well as on the successful implementation of PPP projects. What this case highlights, therefore, is the importance of public participation in the decision-making processes on PPP projects which are primarily implemented for the interests of people.

Another case that will be considered in more detail later on, is the PPP project on the construction and operation of a ski resort on the Kok-Zhailau plateau (the foothills of the Ile-Alatau mountain) not far from the former capital of Kazakhstan, Almaty. The authorities of Almaty did not ensure public participation in the decision-making on the PPP project while planning it. This, similar to the case above, resulted in the project being adversely affected, as well as causing social, legal, investment, political, and corruption problems. Only after some time later the city authorities began to involve the public in the discussion of the feasibility for the project. Although the city authorities held public hearings which are considered to be one of the instruments of consultation (Arnstein, 1969; Thomas, 1990; Bishop and Davis, 2002), the voices and opinions of people were not taken into account. In other words, this was not an instance of meaningful participation, but only of pseudo-participation. For years, the authorities were simply persuading people to support the decisions that had already been made, including the construction of the ski resort, as well as other decisions specified in the feasibility study for the project. In this case of pseudo-participation, the public did not see the results or changes they would have liked to see in the final decisions made by the authorities. This case is an instance of the PPP project within which the authorities do not listen to citizens, fail to respond to their demands, and ultimately, the decision-making process becomes undemocratic, thus undermining representative democracy. Generally speaking, this PPP case demonstrates the importance of meaningful participation of the public when planning PPP projects.

It should, however, be noted that later on in the thesis I discuss some of the recent improvements to the above case regarding public participation. In particular, I describe the latest public hearing on the project, which took place in late 2018 during the course of this research. In this instance the authorities of Almaty brought a new feasibility study for the project to public discussion, taking into account the comments of the public. This shows that after several years of disputes between the local authorities and communities, the city authorities finally took public opinion into account. Furthermore, in this instance the participation was meaningful, insofar as the local community were able to influence the city authorities' decisions and achieve the desired changes in the decisions. This was an important and positive development in the PPP project, since many citizens who had for years opposed it, were now supportive and approved of the project. The crucial observation in these latest developments and events, is the fact that the city authorities began to seriously consider public opinion on the project, and therefore started being responsive to citizens. Furthermore, these developments have been positive in that they brought the local authorities and communities a little closer to each other. This is crucial for the improvement of the existing democratic conditions in Kazakhstan, inasmuch as the authoritarian governance is still present in the country. These developments, therefore, can be seen to run contrary to the claims made by Dahl (1956) and Sartori (1962) respectively that public participation could damage the political stability of government by leading to more authoritarian personalities in power and to a totalitarian regime. At least in the case of Kazakhstan, as my later discussions indicate, public participation in the decision-making on PPPs can be beneficial to the society by conducing to the development and advancement of political pluralism, civil society, social capital and by bringing about other democratic benefits for the society, thus reducing the remaining authoritarian system of governance.

2.2. Methodology

Given the depth of the research questions I seek to answer in this work, and the conceptual framework detailed in section 2.1, the methodology employed for this project is primarily of qualitative nature. As various scholars have pointed out, the main characteristic difference of qualitative methods in social sciences, as compared to quantitative methods, lies in its interpretive approach in investigating problems and seeking answers (Denzin & Lincoln, 1998; Bryman, 2012). The variety in specific research methods under the broad category of qualitative methods is well established (Mason, 2002; Marshall & Rossman, 2011; Ritchie, et al., 2014;

Berg & Lune, 2012; Maxwell, 2013). Noting the scope and aims of the present research, I adopt a multi-method approach to investigating the research questions. The methods for gathering and analysing the data are comprised of qualitative (semi-structured) interviews, examining specific case studies, and qualitative content (text) analysis. Adopting such a multi-method approach enables, in the first instance better chances of gathering data that is wideranging in nature, and therefore, secondly, a more reliable and accurate analysis that would ensure the credibility of the conclusions reached. These are some of the advantages of this approach that would not have been achieved with a single-method research technique (Patton, 2002, p. 248). Furthermore, as I explain, this approach enabled me to bypass some of the issues and limitations associated with specific methods. For instance, the examination of case studies as a way of gathering extra data, helped with some of the limitations of interviews where respondents were not as forthcoming as hoped. Again, as Patton has noted, another advantage of using a multi-method approach lies precisely in its ability to reduce errors that can occur in a single-method approach (Patton, 2002, p. 248). Such errors occur particularly in methods such as interviews, where there is a possibility of obtaining biased or untrue answers. In what follows, I will detail each of the elements of the methodology, explaining along the way the limitations that I have aimed to circumvent through adopting a multi-method approach to both data collection and analysis.

2.2.1. Qualitative (semi-structured) interviews

A substantial part of the data informing this work has been obtained through the fieldwork in Kazakhstan. I conducted interviews with government officials and the representatives of quasi-state institutions, who are involved in drawing up and implementing the PPP policy in the country. In choosing the relevant individuals for this part of data collection, I used a sampling strategy (Mason, 2002; Marshall & Rossman, 2011; Gentles, et al., 2015), in particular by sampling institutions and organisations involved in PPP policy and its implementation. I conducted the interviews with individuals representing relevant institutions, in the city of Shymkent, located in South Kazakhstan region, and in Astana, the capital city, located in Akmola region.

The questions asked here were open-ended and aimed at creating an overall picture of the way in which the PPP policy and its practical implementation take place in Kazakhstan. The questions can be broadly grouped together in the following themes: the workings of PPP policy and projects in Kazakhstan, the extent to which international experiences of PPP informs and

influences the PPP policy in Kazakhstan, how public consultation as a widespread form of participation is ensured in the decision-making on PPP projects in Kazakhstan, and how new legislation (Law ‘On Public-Private Partnership’) influences the work done in the field of PPP in the country (See appendices for more details).

The first group I decided to interview were the representatives of government bodies, who develop and execute the public policy in the field of PPP. For instance, one of the individuals in this group was an employee of local executive body, namely the representative of the Department for Education of Astana. This individual was deemed to be of importance for investigating my research questions, since based on current legislation, local executive bodies execute the PPP policy by implementing PPP projects at a local level. At the time of my fieldwork, the Department for Education in Astana was indeed in charge of implementing several PPP projects in preschool education, and as such, invaluable insights would be gained through interviewing individuals responsible for the implementation of local PPP projects. Similarly, another individual contacted within this grouping was the representative of the central authorised body responsible for the development of public policy in the field of PPP, namely the Ministry of National Economy of the Republic of Kazakhstan in Astana (See Appendices B and F).

There were, however, limitations associated with my interview approach and these officials, due to their workload and busy schedules. Despite having prearranged the time for an in-person interview, the representative of the Department for Education in Astana repeatedly postponed the meeting due to heavy workload. Similarly, the representatives of the Department of Budget Investment and Development of Public-Private Partnership in the Ministry of National Economy also did not succeed in finding the time for an interview for the same reason. In both of these cases I provided the officials with a list of questions and asked them to write their responses in their own time and return them to me by email. In other words, the method of obtaining data in these cases, rather than an in-person interviews, took the form of self-completed questionnaires (Bryman, 2012, p. 232). Although this method ensured the collection of data in the face of timing difficulties, it revealed another limitation over which I, as a researcher, did not have control. In both of these instances the respondents did not answer all the questions listed and in the first case one of the questions was left unanswered, while in the second case there were two answers missing. It is worth pointing out that these omissions have not posed a significant problem for the findings and despite them, the officials provided enough information to contribute to the study.

In addition to these two representatives, I also attempted to conduct interviews with two other individuals within this group, namely from the local executive body of Astana and of South Kazakhstan region. Despite prior arrangements, however, these representatives did not organise meetings with me for interviews, and furthermore, despite their repeated promises they did not provide written answers to the questions either. This issue represents one of the limitations with the interview method, which, as I will expand on further, I attempted to circumvent through my multi-method approach.

The second group of individuals interviewed were those who were chosen based upon their roles and duties as the representatives of the quasi-state sector involved in PPP policy. Within this group, I conducted two interviews with experts of 'Kazakhstan Public-Private Partnership Centre' JSC in Astana (hereafter - PPP Centre). This PPP Centre acts as an analytical and expert centre for PPP development, and its duties include listing PPP projects planned for implementation, making examinations of business plans and tender documentation of republican PPP projects. Additionally, I also conducted one interview with an employee of 'PPP Expert' LLP, which is the regional PPP centre for South Kazakhstan region in Shymkent city. I further received written answers from 'Astana Innovations' JSC, a development institution in the city of Astana, which combines the efforts of city authorities, scientific and business communities in the sphere of industrial and innovative development, including through PPP networks. Similar to the case of the first group of interviewees, the experts of 'Astana Innovations' JSC were also unable to participate in an interview due to their heavy workload. Thus, this is another case where instead of an interview, the individuals completed my questionnaire themselves, and returned them to me through email. Similar to the case above, not all of the questions were answered, once again indicating a methodological limitation.

In addition to these groups, I also attempted to get the perspective of different private companies in each of the two cities. I had contacted four private companies from each of the two cities, Astana and Shymkent, to arrange meetings for interviews. However, despite my efforts, and despite their multiple reassurances that they would be able to provide the self-completed questionnaire in their own time, no data was gathered from this sector. Such issues, together with the difficulty in ensuring that all the questions are answered in the case of written responses to the questionnaire, can be seen as limitations of the interview methodology. In particular, they relate to the problem of non-response, which, as different researchers have pointed out, can and does arise in the case of qualitative interviews (Patton, 2002; Bryman, 2012). Despite such limitations, however, as noted above, these difficulties did not hinder the process of data collection. Although the data gathered in instances were not complete, and in

instances may not represent a comprehensive picture of the different perspectives in play, it has been sufficient for a thorough and meaningful examination and analysis of the subject matter.

Another limitation that should be noted here, is the reluctance among those interviewed to collaborate, or to provide thorough answers. The representatives of government bodies tended to give somewhat tendentious answers, insisting that there are no political, legal and other problems for the effective implementation of the PPP policy in Kazakhstan. Such answers show that the representatives of government bodies are not inclined to say anything negative about the PPP policy, and therefore attempt not to speak openly about the existing problems while executing the PPP policy. Additionally, based upon my observations during this fieldwork, the representatives of public and private sectors were somewhat reluctant to collaborate and provide information, despite the fact that they were not asked to reveal any confidential information in their answers. This observation lends to the belief that officials are to some extent inaccessible and unresponsive to citizens. Furthermore, this inaccessibility and the resultant attitude towards the electorate, can undermine the principles of openness, responsiveness and accountability, and is particularly problematic when implementing the PPP policy in Kazakhstan. Similarly, I also witnessed the reluctance among private business representatives to cooperate with me, making it almost impossible to obtain any information from them that may even be publicly available under legislation. This leads to the assumption that they are as inaccessible as public partners, tending to implement PPP projects behind closed doors. It is due to such limitations that the case for a multi-method approach in collecting data for the project is made. I attempted to circumvent these limitations through the use of case studies and content analysis of normative legal documents.

2.2.2. Case studies

In addition to qualitative interviews, the second strand in my research methodology is case studies. I examine two particular cases that are specifically relevant to my research questions, namely those of two PPP projects in Kazakhstan, which enable an in-depth investigation of whether and how participation is ensured in the decision-making on PPP projects, that is, during their planning stages. In the two cases, where meaningful participation is largely absent, the adverse effects of not ensuring meaningful participation can be seen and investigated. Following Stake (1995), who views a good selection of cases to be one which gives the researcher the best opportunity to understand and examine fully the subject matter of his/her research, I study two different cases, each of which is unique in its own right. In both

cases there was non-participation at the initial stages of planning the projects. Only later on, the local authorities began to ensure public participation in the form of public hearings, which, however, only yielded pseudo-participation. Despite this, as I will detail, meaningful participation was ensured later on in one of the cases. Within each of these cases, the investigation tracks the practice that is unique within the framework of each project.

Furthermore, noting the need for taking into considerations different factors which, despite being unique to each of the cases under study, contribute to the overall question under investigation, in selecting these cases I have been mindful of factors such as time, sector, and places where projects are implemented. Noting and acknowledging these factors allows me to give more in-depth and comprehensive answers to the research questions. Here, the factor of time is especially noteworthy. Since both of these chosen cases are recent PPP projects in Kazakhstan – one still ongoing, the other was recently aborted – they permit a timely analysis based upon recent and current data, thus adding to the value and use of the answers given.

Case study research is an “in-depth, multifaceted investigation” (Feagin, et al., 1991, p. 2), and as such may involve different types of data sources. For instance, as Gentles et al. note, in sampling a case, a specific event and sources of data related to that event need to be examined and selected (Gentles, et al., 2015, p. 1776). In order to examine the two PPP project cases, I collected various data from sources available on the Internet that cover or describe those two projects. Amongst the sources with useful information I gathered are electronic newspapers; websites of national news agencies; public interviews and statements, official reports, document, letters of the representatives of government bodies, NGOs and international organisations, which are available online. These form the secondary information on the cases under investigation (Stewart, 1984).

A note should be made here regarding the choice to examine the two cases. Studying two or more cases in literature is usually called a ‘multiple-case study’ (Swanborn, 2010; Yin, 2014). Delineating the use of two cases as a ‘two-case’ case study, Yin points to its benefits to conduct a more qualitative case study, compared to a ‘single-case’ research design (Yin, 2014, pp. 63-64). Therefore, the use of a two-case design in my research is also in line with my overall approach, aimed at conducting a qualitative and in-depth analysis, based upon empirical evidence that maximises its validity and reliability. Furthermore, Yin asserts that the use of a multiple-case study, including a two-case design, is advantageous in its ability to ensure replication, which is itself essential for presenting more valid and reliable findings (Yin, 2014, p. 57). This ability lies in the fact that a multiple-case study can be seen as an instance of ‘literal replication’, as well as of ‘theoretical replication’. I will briefly explain how a two-case

approach used here, and my choice of the two cases can be discerned as both, therefore satisfying the criteria for replication.

In the first instance, Yin has noted that insofar as a multiple-case study (i.e. two or more cases) can uncover similar results, it can be seen as an instance of ‘literal replication’ (Yin, 2014, p. 57), which ensures the possibility to test or develop a specific finding by employing not one, but several cases. In both of the cases under consideration in the present research, the problem of non-participation of the public in the decision-making with regards to PPP projects is the main focus and interest for investigation. As was noted earlier, one of the cases represents an instance where the regional authorities do not ensure public participation while making certain decisions on the project, that is, during its planning stage. For instance, they do not arrange public consultation in the form of public hearings. Additionally, although the regional authorities began to hold public hearings long after making the decisions, they did not ensure meaningful participation of the public. In the other case, although at first there was no participation, only in the course of time the city authorities started holding public hearings. Yet the fact that a decision had already been made before these public hearings took place, means that the case, rather than representing an instance of meaningful participation, represents one of pseudo-participation, similar to the first case. As such, in both of these cases the same problem can be traced, namely that of absence of required and meaningful participation of the public in the decision-making on PPPs, which leads to adverse outcomes of PPP projects, badly affecting the public.

Secondly, as Yin argues, insofar as the different cases in a multi-case study design produce contrasting results on account of expected cause(s), it can be seen as an instance of ‘theoretical replication’ (Yin, 2014, p. 57). In the two cases under study here, it is revealed that in the case where the city authorities arrange so-called pseudo-participation, over time they start to ensure meaningful participation. Thus, they begin to take public opinion into account and to make decisions based on the public’s suggestions and comments. This change of circumstances allows the project to resume, thereby changing its course for the better, in particular for the benefit of the public. As a result, the two cases that were previously similar in their disregard for public participation, now show dissimilar outcomes due to a specific factor or cause, thus satisfying the condition for theoretical, as well as literal replication.

In addition to studying the two cases of PPP projects in Kazakhstan, I scrutinise several other PPP cases in other countries that can be considered as additional case studies. I apply the findings of these additional cases as further empirical evidence and argumentation in support of ensuring public participation in the decision-making on PPPs that contributes to the

democratic and effective realisation of PPPs in practice. In particular, I consider one successful PPP case in Tanzania, which has brought about the desired positive outcomes not only due to public participation in the decision-making on the project, but also on account of participation of local communities in the joint implementation of the PPP project. By involving the public in the decision-making on the project and taking into account its opinion, the authorities ensured the democratic decision-making process. I also examine the case of a PPP project in Taiwan, which produced favourable impacts for end users only after a private partner reconsidered its decision concerning the tariff for the use of on-board units. It should be noted that although the authorities conducted a public survey at the planning stage of the project, a private partner did not take into account public opinion while making the decision on the tariff for the use of on-board units, thus leading to pseudo-participation. It can be discerned from this PPP case that the decision-making process regarding the project was not democratic. As a result, during the implementation of the project the public objected to that decision, leading to the reconsideration of the previous decision.

I further examine the case of a PPP project in China, where adverse impacts of the absence of public participation can be observed. In this case, the non-involvement of the public in the decision-making on the project, that is, the ignorance of local people's opinions, forced provincial authorities to completely abandon the PPP project. Such a fiasco took place due to the fact that people preferred to use other free roads rather than the costly toll road. Moreover, provincial authorities did not even seek to hear people's voices while making the decisions regarding the project, thus signifying that the decision-making process on the project was undemocratic. As such, through these case studies I examine the positive and negative influences that public participation, or lack thereof, can have for PPP projects.

It is worth noting that a multiple-case design I employ by examining cases from countries other than Kazakhstan, further strengthens the replication of my study. This is since each group of successful and unsuccessful cases of PPP projects can be separately considered as illustrations of literal replication, as described by Yin. Similarly, both groups of successful and unsuccessful cases of PPP projects with dissimilar results can be regarded as examples of theoretical replication defined by Yin. By and large, a multiple-case study approach representing both Kazakhstan and other countries, allows for a cross-case analysis, in turn enabling me to draw broader practical conclusions, as well as increasing the reliability and accuracy of the conclusions reached.

2.2.3. Content analysis

Apart from interviews and case studies, the final methodology employed in my research is content analysis of text documents (Holsti, 1969; Silverman, 2005; Marshall & Rossman, 2011). The use of content analysis along with the other methods detailed above, enables a more thorough understanding of a broader range of data, thus allowing for a more accurate and reliable answers to the research questions. Although content analysis of documents can be viewed as an additional source of data and information relevant to the research (Holsti, 1969, p. 16), the choice of texts (documents) used for analysis is crucial to ensure their relevancy for the research.

Given the focus of the present research, I have selected for analysis specific formal documents, namely different categories of normative legal documents adopted by government institutions, regulating the matters of public participation in the decision-making processes. These documents are particularly useful in answering one of the research questions, namely one regarding whether the authorities of Kazakhstan ensure the political rights of the public to participate in the decision-making on PPPs, if at all. Since these official documents illustrate the socio-legal processes currently in place for allowing and encouraging public participation, they are directly useful for answering the question. Furthermore, studying such processes currently in place allows for a critical reflection on their efficacy, and therefore for identifying areas of improvement. This is an important aspect of content analysis, and as Silverman has noted, content analysis is a useful method of qualitative research, since texts in one way or another describe the reality of social processes which are the subject of study (Silverman, 2005, p. 160). Moreover, analysing normative legal acts (documents) allows for an analysis based on objectivity, which as Holsti notes, adds to the reliability of the analysis through limiting the researcher's own subjective inferences on the subject matter (Holsti, 1969, pp. 3-4). Holsti also points to the importance of content analysis being conducted systematically, that is, in a certain order that could provide robust evidence for research. Yet, as Holsti acknowledges himself, there are no standardised methods of selecting and analysing text documents in this way (Holsti, 1969, p. 102), and as such, which categories of documents are selected for analysis remain at the discretion of the researcher.

I have aimed to be systematic in conducting the content analysis for the present work. The categories of normative legal documents have been selected based upon the hierarchy that determines their classification. According to article 10 of the Law of the Republic of Kazakhstan 'On Legal Acts' (2016), the specific order, namely the hierarchy of legislation is

defined according to their legal force, starting with the Constitution of the Republic of Kazakhstan. It should be noted that certain types of normative legal acts regulate certain public relations. Therefore, I specifically select and analyse the basic legal acts such as codes, laws, decrees of the Government of the Republic of Kazakhstan and normative legal orders of ministers of the Republic of Kazakhstan (according to the descending order of their legal force), which govern public relations concerning public participation in decision-making. An example of such legal acts analysed here is the Environmental Code of the Republic of Kazakhstan (2007).

Amongst the laws of the Republic of Kazakhstan that I analyse are the following: ‘On Administrative and Territorial Structure of the Republic of Kazakhstan’ (1993), ‘On Local State Government and Self-Government in the Republic of Kazakhstan’ (2001), ‘On Public Councils’ (2015). I also analyse the decree of the Government of the Republic of Kazakhstan ‘On Amendments to Decrees of the Government of the Republic of Kazakhstan ‘On Determination of the Legal Entity for Concession Projects Consultancy’ No. 428 of 30 April 2014 and ‘On Determination of the Legal Entity for Accompanying Republican Public-Private Partnership Projects’ No. 1057 of 25 December, 2015 (2017).

Amongst the orders of ministers of the Republic of Kazakhstan, I analyse the following: the Order of the Minister of Environmental Protection ‘On Approval of the Rules for Holding Public Hearings’ (2007); the Order of the Acting Minister of National Economy ‘On Some Issues of Planning and Implementing Public-Private Partnership Projects’ (2015); the Order of the Acting Minister of Energy ‘On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings’ (2016); the Order of Acting Minister of National Economy of Kazakhstan ‘On Introducing Changes and Amendments to Some Orders of the Authorised Body on State Planning’ (2018).

Given that each of these legal normative acts is concerned with a certain aspect of public participation, analysing them together gives a more comprehensive picture of the socio-legal processes in place that allow for public participation in the decision-making on PPPs. As such, content analysis of the normative legal acts as a method complements the other two methods both in terms of collection of data, as well as its analysis. Therefore, a thorough and comprehensive picture of the current state of public participation in the decision-making on PPPs in Kazakhstan can be drawn, allowing for answers to the research questions, which are nuanced, accurate, and reliable. In this sense, a multi-method approach employed in this research and explained in this chapter, indicates the quality of my methodological approach, one which, whilst acknowledging the limitations of methods, actively attempts to overcome

them. Ultimately, this approach enables answers to the research questions outlined in Chapter 1, thus ensuring the validity, reliability and objectivity of the research.

Chapter 3 – Literature Review

3.1. Introduction

The aim of the present chapter is to survey and synthesise the literature on PPP, namely the practical implementation of PPP projects in Kazakhstan. The focus in this research is particularly on the issue of public participation in the decision-making on PPPs in Kazakhstan. Therefore, in this chapter I conduct a thematic literature review around the theme of PPP. Despite the focus of the research being on public participation in the decision-making on PPPs in Kazakhstan, the review presented in this chapter is not confined to the literature concerned with PPP only in the context of Kazakhstan. Rather, through synthesising different scholarly work done both in Kazakhstan and other countries, I examine different theoretical and practical considerations relating to PPP, such as risks, critical success factors, principles of PPP, and challenges while implementing PPP projects. I therefore identify the gap in the literature on PPP in the context of Kazakhstan this thesis aims to fill.

In addition to surveying and synthesising the literature on PPP, I shall raise some critical points in this chapter in the form of a traditional literature review (Jesson, et al., 2011). A critical approach to the literature, along with its survey and synthesis, leads to defining the context for this and future research, identifying the areas of contention and the gaps that need to be filled.

3.2. Risks, critical success factors, principles of PPP, and challenges while implementing PPPs: a critical view

There is a huge body of literature on PPP reporting the research and theories of social scientists, practitioners, and international and national institutions involved in advocacy and criticism of PPP.

In studying PPP, scholars consider various theories that pertain to the development of PPP. An example of such theories include the following: enforced cooperation (McQuaid, 2000); game theory (McQuaid, 2000; Kargol & Sokol, 2007); normative and positive theories (Martimort & Pouyet, 2006); network theory (Colebatch, 2001; Chowdhury, et al., 2011); and power-based economic theory (Tatarkin, et al., 2009). It is important to note that this is not an exhaustive list of theories considered in this field, since different social scientists consider different theories that underpin the PPP relations.

There is a large number of studies that explore PPP as a concept (Mitchell-Weaver & Manning, 1991; Private Finance Panel, 1995; Hastings, 1996; Linder, 1999; Osborne, 2000; Wettenhall, 2003; Bovaird, 2004; Broadbent & Laughlin, 2004; The European Parliament, 2006; Hodge & Greve, 2007; Mouraviev & Kakabadse, 2012; Semenova, 2014; Eshimova & Nurpeisov, 2017; Gafurova, 2013 and many others).

There is also a growing body of literature on principles of PPP, including principles of good governance in PPP (Skelcher, et al., 2004; OECD, 2007; UNECE, 2008; Hayllar, 2010; Varnavskii, et al., 2010); forms, models, types of PPP (Grimsey & Lewis, 2004; Link, 2006; Yescombe, 2007; Maximov, 2010; Zapatrina, 2011); disadvantages (shortcomings) and advantages (benefits) of PPP, including value for money (Hall, 1998; McQuaid, 2000; Heald, 2003; Grimsey & Lewis, 2005; Li, et al., 2005a; Koppenjan & Enserink, 2009; The European Commission Directorate-General for Energy and Transport, 2009; Siemiatycki, 2012).

As can be seen, there is a sizeable amount of literature on issues around PPP. However, I would like to focus on the literature describing the practical side of PPP, that is, issues that arise in the practical implementation of PPPs as infrastructure projects. In other words, I focus on such issues around PPP as risks, critical success factors, principles, challenges (the lack of accountability, transparency and of public participation in decision-making) that play a significant practical role in implementing PPP projects, requiring constant attention on the part of scholars, practitioners, as well as governments that implement PPP policies.

There are many studies that examine risks in implementing PPPs (Lam, 1999; Grimsey & Lewis, 2002; Hodge, 2004; Hardcastle & Boothroyd, 2003; Li, et al., 2005b; Hwang, et al., 2013; Matayev, 2014a; 2014b). Evidently, there are sundry risks, such as social, political, economic, legal ones among others. By way of illustration, Hardcastle and Boothroyd depict 26 risks associated with the implementation of PFI (Hardcastle & Boothroyd, 2003, pp. 43-47). Additionally, there are different subgroups of risks pertaining to a broader risk category. For instance, Matayev claims that economic risks are comprised of four different risks: “production and economic, commercial, financial, and currency risks” (Matayev, 2014a, p. 181).

Amongst sundry risks and the various associated risk factors or causes, I would like to pay particular attention to public objection to a PPP project, regarded as a social risk factor. As Li and others claim, public objection to a PPP project is the factor or reason for a social risk (Li, et al., 2005b, p. 28). Hardcastle and Boothroyd also argue that a social risk or a ‘protester risk’ arises when the public does not approve of a project or its components (Hardcastle & Boothroyd, 2003, pp. 46-47). It is important to note that this social risk factor arises within the framework of the two PPP projects in Kazakhstan that I examine in the thesis. This occurrence

is due to the authorities' ignorance of the public interest while making decisions on the PPP projects. I especially emphasise this social risk factor, since it causes the emergence of other risks such as political, legal and investment, which can also be observed in the case of the PPP projects in Kazakhstan examined in the thesis. As such, this social risk factor needs to be taken into consideration as one of the possible causes of other risks, or as a factor contributing to them. Of particular interest here are the financial, legal and political risks in PPP, which have also been considered in the literature, as I discuss below.

Describing risks in PPP, Matayev, as one of the domestic social scientists in Kazakhstan, argues that investment risk, as a type of financial risks, is associated with a probable shortage of infusion of funds into PPP projects (Matayev, 2014a, p. 182). Matayev notes the following six risk factors or types of an investment risk: "capital risk; a factor connected with selection of object for investment; interest risk; operational risk; timing factor; and liquidity risk" (ibid.). According to Matayev, capital risk implies the possibility of not making a profit on the money invested, while a factor connected with selection of object for investment is associated with the wrong choice of an object for investment compared with other options (ibid.). Interest risk is related to losses due to the change of interest rates on a market, and operational risk is connected with disruptions in the operation of a computer system for processing information related to investing funds (ibid.). Timing factor is associated with investing at an unfavourable time that inevitably leads to losses, and liquidity risk is associated with losses in the sale of securities (Matayev, 2014a, p. 182). Notwithstanding, it should be noted that in practice there may be another factor or cause of an investment risk, for example, public objection to a PPP project could be a serious deterrent to further investment in a PPP project, especially for the government which initiates a PPP project. Such a case of investment risk can also be seen within the specific PPP project in Kazakhstan that I scrutinise in the thesis. Furthermore, public objection to a PPP project can be an impediment to investment on the part of investors, as can be seen in the other PPP project in Kazakhstan that I examine in this research.

Hardcastle and Boothroyd (2003) depict the cases when a legal risk in PPP can arise. As they report, an instance of a legal risk emerged when unauthorised entities such as certain local government authorities were not allowed to sign PPP (PFI) contracts (Hardcastle & Boothroyd, 2003, p. 45). Another case of a legal risk arose when certain additions had to be made to legislation in order to empower a legal entity such as NHS Trust to sign a PFI contract that caused certain legal costs (ibid.). Nonetheless, as the Kazakhstani practice of PPP demonstrates, there could be other cases when a legal risk can occur, causing more detrimental effects. As an example, the public disapproval of two PPP projects induced legal risks within the framework

of both PPP projects examined in the thesis, where NGOs and citizens initiated litigation against local authorities, resulting in timing and legal costs, along with moral and material costs primarily for citizens, thus adversely affecting the PPP projects.

Hardcastle and Boothroyd (2003) also describe cases where a political risk can arise. For example, they cite a case where the central authority, the Highways Agency of the UK, was replaced by local authorities, namely Greater London Authority and Transport London Authority, to fulfil the contractual obligation within a PFI project. Here, it is argued that the political decision regarding the replacement of public partner in a PFI contract, caused the occurrence of a political risk (Hardcastle & Boothroyd, 2003, p. 46). More broadly, the authors argue that a case of political risk can occur when the structure of central or local government may change, and therefore a new government body or a new government could change a PFI scheme or even cancel a PFI project (*ibid.*, p. 46, 52). Indeed, these cases are related to political risks in PPP, but as the empirical evidence shows, there can be other cases where such a risk may arise. For example, a PPP project can be abandoned not only by a new government, but also by the government that initiates a PPP project, due to public objection to the project. Such an instance of political risk can be seen in the PPP project in Kazakhstan, which is examined as a case study in the thesis.

Critical success factors of PPP have been studied by various social scientists (Li, et al., 2005a; 2005b; Yuan, et al., 2009; Chan, et al., 2010; Osei-Kyei & Chan, 2015; Prabhudesai & Sarode, 2018). Chan and others, in their literature review on critical success factors of PPP, have noted “consultation with end-users” as a success factor among others (Chan, et al., 2010, p. 486). This is indeed a crucial factor in terms of enabling people to express their opinions on PPP projects, which in turn contributes to achieving more effective ultimate outcomes for people as the end users of PPPs.

Despite its importance, the above factor is indicated only once in the table constructed by Chan and others (see Table 3.1. below). To be specific, this success factor is only mentioned in one work, namely that of Corbett and Smith (2006), which was presented as a paper at the conference in Birmingham, UK (Chan, et al., 2010, pp. 486, 494). Additionally, as can be seen in Table 3.1, economic and organisational factors are the most mentioned success factors of PPP in the literature, and are notably mentioned more than ‘consultation’, as a form of public participation in PPP projects. The appearance of such an essential factor as consultation in only one paper indicates the somewhat insufficient attention social scientists have paid to this critical success factor of PPP.

**Table 3.1: Critical Success Factors of Public-Private Partnership
from Published Literature**

Table 1. CSFs of PPP from Published Literature

CSFs of PPP																
	Competitive and transparent procurement process	Project economic viability	Govern- ment guarantee	Available financial market	Clear project brief and client requirements	Business diversification	Strong private consortium	Good partners' relationship	Strong govern- ment support	Consultation with end-users	Appropriate risk allocation	Stable and transparent political/ social situation	Appropriate project identification	Effective manage- ment control	Techno- logy transfer	Total number of CSF from each literature
Li et al. (2005)	X	X	X	X												4
Jefferies (2006)	X				X	X										3
Abdul-Rashid et al. (2006)		X					X	X	X							4
Corbett and Smith (2006)	X	X		X	X	X	X	X	X	X						9
Zhang (2005)	X	X	X	X			X	X			X					7
El-Gohary et al. (2006)									X							1
Qiao et al. (2001)	X	X									X	X	X	X	X	7
Nijkamp et al. (2002)		X										X				2

Jamali (2004)					X				X			X	X			4
Jefferies et al. (2002)	X			X			X									3
Tam et al. (1994)		X					X	X	X			X	X	X		7
Tiong (1996)		X	X				X						X			4
Birnie (1999)							X									1
Grant (1996)											X					1
Kanter (1999)			X					X	X							3
Gentry and Fernandez (1997)	X															1
Akintoye et al. (2001)				X												1
Total number of citations for a certain CSF	7	8	4	5	3	2	7	5	6	1	3	4	4	2	1	62

FSSs of PPP from Published Literature, Chan, et al., 2010, p.486

Furthermore, it is important to note that consultation is not the only form of participation in decision-making insofar as there are other forms such as advisory boards and citizens advisory committees (Arnstein, 1969; Birch, 1993; Bishop & Davis, 2002). There is also a form of public participation in decision-making known as ‘web-based forums’, where people can express their opinions on government decisions (Boyer, et al., 2016, p. 47). On the whole, these different forms of participation can be applied during public participation in the decision-making on PPPs and can therefore be employed in practice. As such, it would be better not to confine public participation to only one factor, namely ‘consultation’ as seen in the Table 3.1, but rather, to add factors such as ‘citizen advisory committees (boards)’ and ‘web-based forums’, as ways through which the public can voice its opinion on PPPs. Additionally, it should be noted that in practice there are cases where, despite holding public hearings, the authorities do not in fact take public opinion into account, since they have already made decisions with respect to a PPP project or its individual components in question. In other words, the authorities formally hold public hearings so as to persuade the public to support decisions which have already been made by the authorities. Therefore, such a process of participation in decision-making is not meaningful but is rather an instance of what Verba (1961) calls ‘pseudo-participation’. This is evident in the case of the PPP projects in Kazakhstan, which I examine as case studies in this thesis. Consequently, in addition to the critical success factors of PPP considered in the literature and noted in Table 3.1, scholars should consider ‘the provision of meaningful participation of the public in the decision-making on PPPs by the authorities’ as an additional critical success factor of PPP.

Moreover, as the international practice of PPP demonstrates, when decision-makers ensure public participation in the decision-making on PPPs regardless of the form it takes, and most importantly, when they truly listen to and take into account public opinion, such PPP projects attain more effectual outcomes. Instances of such PPP cases have taken place in countries such as Tanzania (Bakker, et al., 2000), Australia (Teicher, et al., 2006), the USA (Oppenheim & MacGregor, 2004). Even within the framework of a specific PPP project in Kazakhstan one positive change is traced, showing that when local authorities began to listen to the public by taking into account their comments on the feasibility study for the project, the project started receiving the gradual support from people who had not previously backed it, thus giving the project a chance to be resumed. By contrast, when decision-makers do not ensure public participation in the decision-making on PPPs at all, and even when they conduct hearings or surveys, but discount public opinion, thereby conducting pseudo-participation, such PPP projects often do not achieve the desired results, ending up with suspension or abandonment.

This is certainly true in some PPP cases in China and Taiwan (Chen, et al., 2013), and as mentioned earlier, such adverse consequences have also occurred within the framework of the PPP project in Kazakhstan, which are examined in the thesis.

In addition to participation in decision-making, other factors such as ‘accountability’, ‘transparency’ and ‘public control and monitoring’, as critical success factors of PPP, should be ensured throughout PPP projects. Considering these factors is important, since they can, among other things, significantly reduce the corruption risks while implementing PPPs. Moreover, they can contribute to effectively ensuring other critical success factors such as ‘competitive and transparent procurement process’ or even ‘effective management control’ indicated in Table 3.1. By contrast, the inadequate provision of accountability and transparency by public and private partners when implementing PPPs could prompt adverse consequences such as corruption risks, which can adversely affect PPP projects. Such incidents have occurred in countries as diverse as the US, Lesotho, India, Brazil, Peru, Pakistan, and France (Hall, 1999; Oppenheim & MacGregor, 2004). Moreover, corruption risks in the form of corruption offences committed by officials have also taken place within the two PPP projects in Kazakhstan that are examined in the present thesis.

Apart from the work by Chan and others (2010), Osei-Kyei and Chan (2015) also have conducted a review on the literature concerned with critical success factors of PPP. Table 3.2 below presents the result of their review published in their paper, which surveys 27 papers published in nine different journals between 1999 and 2013 (Osei-Kyei & Chan, 2015, pp. 1342-1345).

**Table 3.2 Findings from Studies on Public-Private Partnership Critical Success Factors
from 1990 to 2003 (years inclusive)**

Table 5

Findings from studies on PPP CFSs from 1990 to 2013 (years inclusive)

Critical success factors	Publications																											Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
Appropriate risk allocation and sharing	x					x	x			x			x			x	x	x		x		x	x	x	x			13
Strong private consortium		x	x							x	x		x			x	x	x	x	x		x			x			12
Political support				x		x							x	x	x		x	x						x		x		9
Public/Community support						x							x	x				x				x	x			x	x	8
Transparent procurement	x				x			x		x	x		x	x												x		8
Favorable legal framework	x				x					x			x				x							x	x			7
Stable macroeconomic condition	x	x															x	x						x	x	x		7
Competitive procurement	x			x			x																x	x		x		6
Strong commitment by both parties						x		x			x		x	x											x			6
Clarity of roles and responsibilities among parties				x		x		x		x	x															x		6
Financial capabilities of the private sector			x					x							x				x			x						5
Technology innovation		x															x		x	x		x						5
Good feasibility studies	x				x								x				x					x						5
Open and constant communication				x		x	x	x			x																	5
Detailed project planning	x			x		x															x			x				5
Government providing guarantees		x	x												x									x		x		5
Trust					x	x					x											x						4
Selecting the right project									x										x	x		x						4
Long term demand for the project	x		x				x								x													4

Clear project brief and design development			x		x		x					x		4
Political stability	x								x			x		3
Competitive financial proposes					x				x			x		3
Mature and available financial market							x	x				x		3
Acceptable level of tariff			x								x	x		3
Streamline approval process		x										x	x	3
Compatibility skills of both parties				x								x		2
Choosing the right partner									x			x		2
Good leadership and entrepreneurship skills										x	x			2
Sound economic policy								x	x				x	2
Well organized and committed public agency						x		x						2
Good governance						x		x					x	2
Clear goals and objectives			x				x							2
Employment of professional advisers					x	x								2
Financial accountability				x	x									2
Consistent monitoring				x			x							2
Reliable service delivery			x				x							2
Environment impact of project												x	x	2

Findings from studies on PPP CFSs from 1990 to 2013 (years inclusive), Osei-Kyei and Chan, 2015, p.1343

As can be seen, Table 3.2 also consists mainly of economic and organisational factors, and there are no factors connected with public participation in the decision-making on PPPs. Furthermore, there are no factors associated with public control or monitoring over PPPs, the absence of which may impede the effective implementation of PPP projects in a practical dimension. It could be argued that Table 3.2 contains critical success factors such as ‘good governance’ and ‘consistent monitoring’, which could include public participation or involvement in PPPs, control and monitoring over PPPs. However, in their review, Osei-Kyei and Chan (2015) cite understandings of ‘good governance’ as a critical success factor which do not include public participation or involvement in PPPs. For instance, the definition by Chan and others is cited, in which ‘good governance’ is defined in terms of effective coordination between public and private partners (Chan, et al., 2010, p. 491). Another understanding cited in the review is one provided by Li and others, who consider ‘good governance’ as a factor associated with the effective management of PPP projects (Li, et al., 2005c, p. 465). Li and others in turn cite Badshah (1998), who argues that ‘good governance’ plays an important role in stimulating and involving private businesses in PPP networks. Furthermore, Abdul-Aziz and Kassim (2011), the authors cited by Osei-Kyei and Chan (2015) as the ones determining ‘consistent monitoring’ as a critical factor of PPP, argue that consistent monitoring enables a public partner to monitor the actions of a private partner (Abdul-Aziz & Kassim, 2011, pp. 151-156). As we can see, therefore, the above-mentioned two factors are not related to public participation in the decision-making on PPPs and public control/monitoring during the implementation of PPP projects.

It is promising that a critical success factor of PPP, namely ‘financial accountability’ is included in Table 3.2. Nevertheless, the accountability provided merely by a private partner, or as Abdul-Aziz and Kassim put it, the “developer’s profit-sharing accountability” (Abdul-Aziz & Kassim, 2011, p. 155) as a public partner’s instrument of control, and as a recommendation for working with scrupulous developers (private partners), is not enough. Financial accountability, along with other forms of accountability and transparency, should be ensured by a public partner throughout a PPP project. Additionally, such an obligation should also apply to private partners who ought to be accountable to public partners as well as to the public not only prior to signing a PPP contract, but also after being granted it.

Therefore, Table 3.2 once again indicates the insufficient attention scholars have so far paid to factors related to public participation in the decision-making on PPPs; transparency and accountability both from public and private partners; public control and monitoring over PPPs as critical success factors of PPP. In other words, it can be argued that yet public participation

in the decision-making on PPP as a political right of the public, and as a critical factor contributing to the democratic and effective realisation of PPPs is somewhat overlooked, which in turn reflects badly on the practical implementation of PPP projects. Exploring PPP projects in Hong Kong and depicting the lack of democratic involvement of the public in PPPs, Hayllar (2010) has argued that the word 'public' can be replaced by the word 'government' in words 'public-private partnership' (Hayllar, 2010, p. 114; Hayllar & Wettenhall, 2010, pp. 2-3). Hayllar (2010) argues that the democratic involvement of the public in PPPs is a pivotal factor for the effective implementation of PPPs, regarding them as necessary conditions for good governance apart from conditions such as involvement and cooperation with private businesses (Hayllar, 2010, pp. 110-111).

Moreover, according to Siemiatycki (2012), one of the challenges in implementing PPPs is the inadequacy of accountability and transparency. Siemiatycki further claims that decision-makers are reluctant to involve the public in decision-making when planning PPP projects, despite it being a vital factor for the effective realisation of PPPs (Siemiatycki, 2012, p. 9). Likewise, Boyer and others (2016) argue that public involvement in PPP processes, can conduce to the effective implementation of PPPs (Boyer, et al., 2016, pp. 47-48). Koppenjan and Enserink (2009), similarly view transparency and accountability as instruments of good PPP practice.

This exposition indicates that, contrary to the view found in many scholarly works, critical success factors of PPPs should not be limited only to economic and organisational factors involving the engagement and interaction of public and private partners alone. Instead, meaningful participation in decision-making with its various forms, together with transparency and accountability from public and private partners, and constant public control and monitoring over PPPs, should all be regarded as critical success factors of PPP.

Given the significance of the above-mentioned factors, what I would call democratic aspects of PPP, of which public participation in decision-making is especially important, I would propose to add a new principle to other principles of PPP already in place. This principle is that of 'provision of public participation in the decision-making on PPP projects', which plays a vital democratic and practical role that conduces to the democratic and effective realisation of PPPs in practice. With the addition of this principle, the gap in literature this suggestion aims to fill is seen more clearly. The current literature on principles of PPP is chiefly focused on other elements, especially those of economic nature. As an illustrative example, Varnavskii and others enumerate the following general principles of PPP:

- equality of parties' interests and the freedom of selection of actions;

- stability of PPP contract, and at the same time the possibility of its change and adaptation;
- responsibility for the execution of contract conditions;
- competitiveness;
- transparency and feedback;
- non-intervention of the state in the sphere of responsibility and activity of private partner;
- incentives and guarantees;
- recoverability;
- equal (non-discriminatory) attitude towards foreign companies (Varnavskii, et al., 2010, p. 24)

By and large, it can be discerned that the issues related to ensuring accountability, transparency, public control and participation in decision-making, play a crucial democratic role for the people. This is an important part of the practical realisation of PPPs, since PPP projects are primarily implemented for people, and it is their lives that are significantly affected by implementing PPP projects. Given this importance, as previously noted, overlooking such democratic aspects on the part of decision-makers, significantly and adversely influences the effective implementation of PPP projects in practice. These democratic aspects have indeed been studied by some scholars and practitioners, particularly in the context of countries that have already put PPP policies into effect. For example, Hayllar and Wettenhall (2010), Higgins and Huque (2015) have examined issues of accountability, transparency, and public participation in the decision-making on PPPs in Hong Kong, and regard these as democratic challenges in the context of PPP practice. Examining the case of Malaysia, Beh (2010) also draws attention to the lack of transparency and accountability on the part of government bodies that need to be addressed for the further effective PPP development in the country. Johnston and Kouzmin (2010) deem issues of accountability and transparency as unresolved challenges in executing PPP policy in Australia, while Fombad (2013) emphasises the problems of inadequate accountability, transparency and participation in the decision-making on PPP projects in South Africa.

As can be seen, in different countries the above-mentioned democratic aspects are enacted and ensured in different ways by governments when implementing PPPs, or they are not provided at all. The lack of provision of these aspects by governments, however, significantly impacts the practical implementation of PPPs, and accordingly their effectiveness. Since the Government of Kazakhstan is actively executing PPP policy, the authorities can potentially

ensure the above democratic aspects in implementing PPPs. However, it is not known whether or not this is done sufficiently and effectively, and therefore, in order to learn about whether and how the Kazakhstani authorities ensure the above democratic aspects, especially public participation in the decision-making on PPPs, then this issue needs to be examined in detail. As I note in the next section, such issues and investigations remain largely overlooked and do not receive enough attention by scholars, including those working within Kazakhstan.

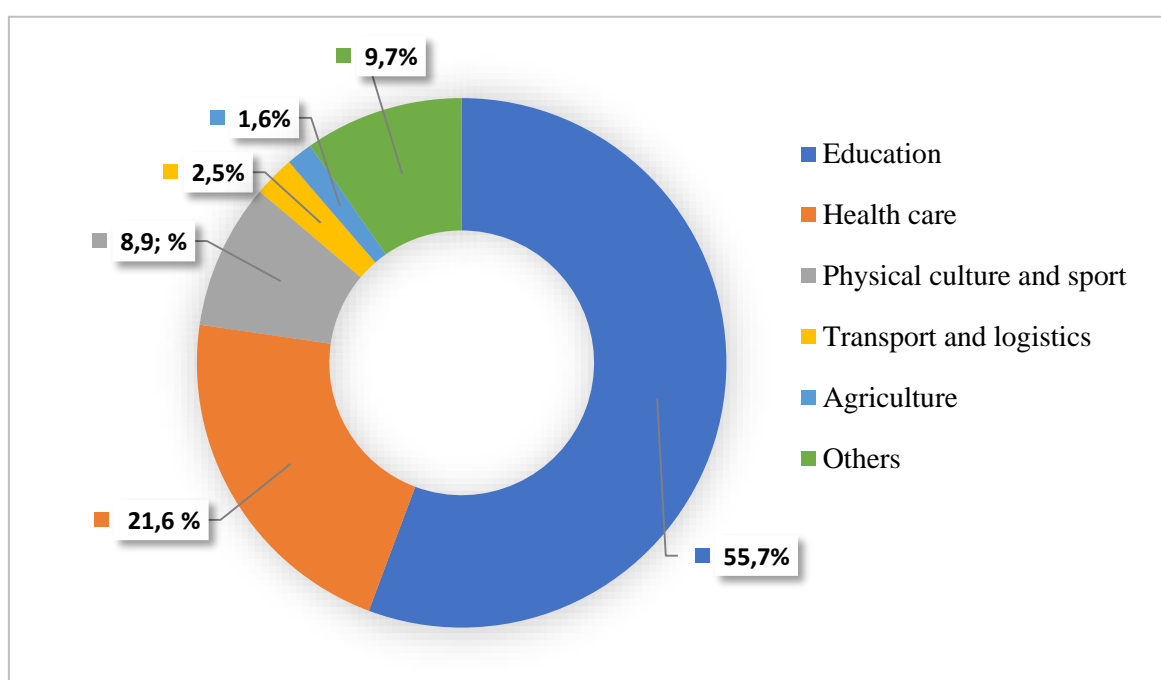
3.3. The issue of public participation in the decision-making on PPP projects in Kazakhstan as a literature gap

To date, PPP has been established in Kazakhstan where legislation has been adopted in the field of PPP, and PPP projects are being actively implemented both at the central and local levels. For example, back in 1991 the Government of the Republic of Kazakhstan adopted the first normative legal act in the field of PPP, namely the Law ‘On Concessions in the Republic of Kazakhstan’, which was later rescinded in 1993 (Law ‘On Recognition Invalid the Law of the Republic of Kazakhstan ‘On Concessions in the Republic of Kazakhstan’, 1993). Later on, in 2006 the Law ‘On Concessions’ was adopted, and in 2011 the Programme for the Development of Public-Private Partnership in the Republic of Kazakhstan for 2011-2015 was launched (Decree of the Government ‘On Approval of the Programme for the Development of Public-Private Partnership in the Republic of Kazakhstan for 2011-2015 and Making Amendment to the Decree of the Government of the Republic of Kazakhstan of 14 April 2010 No. 302’, 2011). Then, on the 31st of October 2015 the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ was adopted (Law ‘On Public-Private Partnership’, 2015).

As for the practical implementation of PPP projects in Kazakhstan, concession projects have been implemented since 2005. As Kazbayeva (2008) states, the PPP project on the ‘Construction and Operation of the Railway Line between the Shar station and the City of Ust-Kamenogorsk’ is the first concession project in Kazakhstan, the contract of which was signed in 2005 (Kazbayeva, 2008, p. 18). According to the information of PPP Centre, as of December 2018 there were 1186 PPP projects under consideration, amongst which 473 PPP projects contracts were already signed and sealed; 246 of them were at the stage of tendering processes or announcement of tendering processes, and 467 projects were at the stage of development of tender documentation (Finprom, 2019). It is also revealed that the majority of PPP projects have been implemented in the education sector, accounting for 55.7 per cent of the total number of PPP projects, whereas the healthcare sector comprises 21.6 per cent and the sphere of physical

culture and sports constitutes 8.9 per cent, with the remaining PPP projects realised in other spheres of economic activity (**See Figure 3.1** below). Moreover, at a round table in February 2018 the First Deputy Minister of National Economy, Dalenov, reportedly announced that the number of PPP projects was increasing from year to year due to the legislative and institutional improvements of PPP in the previous four years (Kursiv.kz, 2018).

Figure 3.1 Shares of sectors wherein public-private partnership are underway (as of January 2019, indicated in per cent)



Source: ‘Kazakhstan Public-Private Partnership Center’ JSC

**‘Kazakhstan Public-Private Partnership Center’ JSC, 2019
cited in Finprom, 2019**

As can be discerned, the Government of the Republic of Kazakhstan is actively implementing the PPP policy, and is constantly reinforcing its political support for PPP. Indeed, the development of PPP in the country as a phenomenon and as a concept has been under attention of social scientists, as well as practitioners, both domestic and foreign ones. For instance, the work of UK-based scholars such as N. Mouraviev and N.K. Kakabadse over the past 10 years has made an invaluable contribution to the literature on PPP in the context of Kazakhstan.

The institution of PPP and its development in Kazakhstan has been studied by social scientists such as Kazbayeva (2008), Dyusenova (2013), Serikov (2014), Agumbayeva and Dzhumajanova (2015), Isakhova (2015), Akhmetova (2018). It should be noted that these authors generally consider the economic side of PPP. In other words, they describe the economic benefits and prospects of collaboration between the state and business for further stimulation of entrepreneurship in the country that can contribute to further development of national economy.

Different scholars have emphasised the development and implementation of PPP in different sectors in Kazakhstan. For instance, Ismailova (2014), Tuyakova (2014), Sakenov and Temirbekova (2014) have proposed to develop PPP mechanisms in the health sector. Some scholars have suggested employing the opportunities of PPP in agriculture (Shukurov, et al., 2018), while others have talked about the need to deploy PPP in preschool education and public utility sector (Matayev, 2012; Eshimova, et al., 2017). Tleppayev and Zeynolla (2015) proffer the use of PPP in the energy-saving sector, and Gridneva and Kaliakparova (2017), and Dubina, Turginbayeva and Domalatov (2017) stress the necessity for active application of PPP in the industrial and innovative sphere of economy by involving various types of public-private enterprises (e.g. technology parks, business incubators, venture funds). As can be seen, all these authors look at the economic potential of PPP. In other words, they maintain that the use of PPP in various spheres of economic activity contributes to the growth of the country's economy. Similar focus on economic prospects of PPP can be seen in the literature concerned with forms and models of PPP. For instance, Matayev (2011) and Tastulekov (2014) have focused on contractual types of PPP. Some scholars have proposed to employ not only concessions, but also other forms, such as management and maintenance contracts (Turysbekova, et al., 2012; Amerkhanova, 2013; Tulegenova, 2014), while others suggest life cycle contracts as a form of PPP (An, 2014; Matayev, 2016; Eshimova, et al., 2017). In all these instances, again, the focus is on the economic elements, and ways of expanding and developing various forms of PPP.

Similarly, the scholarly works concerned with PPP on local levels have also largely focused on the economic and investment issues. For instance, Gazaliyev (2011) and Alashbayeva (2011) argue that the social-entrepreneurial corporations, as one of the forms of PPPs created in regions, should be further deployed for the socio-economic development of regions. Examining the example of PPP in Pavlodar city, Bayandina (2014) emphasises the need to apply PPP mechanisms for resolving municipal problems. Similarly, citing the project ‘Construction and Operation of Positron Emission Tomography Centre in Aktobe city’, Madykhanova and Baizhuma (2017) claim that financing for projects through the PPP mechanism can be cheaper than employing solely the budgetary funds. These examples further indicate the focus on economic issues around PPPs in the literature.

Other issues around PPP, such as the engagement of non-governmental organisations in PPP projects as partners, especially those not confined to commercial institutions, have also been discussed in the literature. For instance, Agumbayeva and others (2016) proffer to employ the potential of the non-commercial sector in the field of environmental protection when using PPPs. Ziyadin and Takhtayeva (2016) discuss the necessity for the development of PPP in the field of children and youth tourism, proposing to involve various youth centres and associations. Urazbayeva (2013) and An (2015) suggest applying PPP mechanisms in the sphere of higher education by engaging scientific and educational institutions. In a similar vein, Zhaleleva (2016) suggests that representatives of civil society should also be involved in PPPs as partners, pointing to a problem with the participation of non-commercial organisations in PPP networks as partners. It could be seen therefore, that in effect only commercial entities are now involved in PPPs. The lack of engagement of non-commercial organisations in PPPs can mean that they are probably not involved in the decision-making on PPPs, which, if indeed the case, signifies that these organisations are unable to express their opinions on PPPs.

Surveying the literature, it seems that scholars in Kazakhstan are by and large concerned primarily with the economic potential of PPP, proffering to actively employ it in various spheres of economic activity as though it is a panacea. However, it is equally important to study how PPP works in practice given the current political, social, democratic, economic, institutional, legal and other conditions and processes in Kazakhstan. Given the growing number of PPP projects in Kazakhstan, it is necessary to ask and examine whether there are problems for the democratic and effective implementation of PPP projects, and how they can be addressed. For example, scholars and practitioners could be ascertaining the reasons behind the lack of non-commercial organisations’ involvement in PPPs given that it is likely to be a significant problem in terms of democratic involvement, especially for those members of society whose

interests are affected by PPPs. More generally, the government of Kazakhstan, who oversees PPP policy in the country, should ask whether PPP projects are being effectively and democratically implemented in practice, in a way that primarily benefits the public.

There are indeed various scholars who pay attention to such practical issues around PPP, but their number remains relatively small. For example, Mouraviev and Kakabadse (2015a) have examined the legal and institutional issues that have so far hindered the effective implementation of PPPs in Kazakhstan. As an institutional challenge, the authors stress that the public sector has a huge influence on some managerial issues, such as the regulation of the size of the workers' salary, which prevents private operators from hiring more competent specialists. Furthermore, the central authorities of Kazakhstan have a substantial political and administrative influence on local authorities, reflecting on the effective implementation of local PPP projects as well (Mouraviev & Kakabadse, 2015a, p. 191). In their other works, Mouraviev and Kakabadse have delineated the problems of uneven allocation of risks between public and private partners, and of incorrect prioritisation of bids' assessment criteria, citing the PPP project on the construction and operation of 11 kindergartens in the city of Karaganda (Mouraviev & Kakabadse, 2014; 2015b).

Other social scientists have noted the problems related to managing PPP projects (Beisembinova, 2012; Matayev, 2014b; Charman & Narbaev, 2017; Karibdzhanov, 2018). For instance, in examining the case of the project 'Construction and Operation of the Interregional Power Transmission Line from North Kazakhstan to Aktobe Region', Beisembinova conducts an investment assessment of the effectiveness of the project, concluding that the investor's expenses exceeded the incomes, thereby showing that not in all cases a PPP can be lucrative, especially for private investors (Beisembinova, 2012, p. 42). Problems regarding the lack of professional staff have also been investigated by Eshimova and Nurpeisov (2017), who report such problems in the field of PPP at the local level. They therefore emphasise the need to install more professional staff to implement PPPs, and to optimise the timing of preparation and planning of PPPs.

As the exposition here demonstrates, various different aspects of PPP in Kazakhstan have been studied, including economic and practical issues. However, the review presented here also shows that there are still issues related to PPP that remain largely overlooked by scholars. One such issue is the democratic aspect of PPP, namely public participation in the decision-making on PPP projects. This issue, as discussed in the previous chapter, is crucial for citizens and interest groups to be able to democratically express their voices on PPPs, which affect their lives and interests. It is worth noting that although some scholars, such as Mouraviev and

Kakabadse (2017), have stressed that citizen participation can contribute to the successful implementation of PPPs in Kazakhstan and Russia, this issue is yet to receive the sufficient attention it deserves given its democratic importance for the public in Kazakhstan in terms of influencing government decisions regarding PPPs, and more generally for the society in terms of its further democratisation. As such, it can be argued that despite few instances where the issue is noted, ‘public participation in the decision-making on PPP projects in Kazakhstan’ has not so far been thoroughly studied. This is indeed the gap in the literature this thesis aims to fill, and the issue therefore will form my main focus in this thesis.

3.4. Conclusion

The review presented in this chapter demonstrates that there is a large body of literature on PPP that describes its theories, concepts, forms, risks, critical success factors, benefits and shortcomings. Nonetheless, some of this literature on risks of PPP fail to take into account public objection to PPP projects as a risk factor. This should be considered as such, especially since it could present a cause not only of social risks, but also for investment, legal and political risks. This is an important finding of the literature review, since there may be cases in practice, as have indeed occurred in the case of PPP projects in Kazakhstan, where the above-mentioned risk factor, *en passant*, caused by the authorities’ ignorance of interests of the public due to the its non-involvement in the decision-making on the projects, has led to not only social, but also investment, legal and political risks.

Additionally, as I have demonstrated, the literature on critical success factors of PPP is also lacking important elements. In particular, the literature reviewed largely ignores such important critical success factors as ‘meaningful participation, in various forms, in the decision-making on PPPs’, ‘transparency and accountability from public and private partners’, and ‘public control and monitoring over PPP projects’. These factors are significant in practice, including in the Kazakhstani practice of PPP, where more effectual outcomes are produced when decision-makers take these factors into account while implementing PPP projects. Similarly, the literature on principles of PPP, as I have argued, ought to include discussions aiming at defining and specifying such a crucial principle as ‘public participation in the decision-making on PPP projects’, which should complement other PPP principles.

As the literature on PPP indicates, such democratic factors and in particular public participation in the decision-making on PPPs can be ensured in various ways. This is seen in practice where different countries ensure such democratic aspects in different ways. It is

important to note that the success or failure of PPP implementers in ensuring public participation in the decision-making on PPPs as such, has a significant impact on the effective and democratic realisation of PPPs. This is seen in cases where local authorities within a country or region in a country adopt different ways to ensure these democratic aspects, leading to differences in the levels of success and failure in PPP projects within a given country. As I note in the literature review, instances of these cases can be seen in China (Chen, et al., 2013) and in Hong Kong (Hayllar, 2010).

As the preceding observations make clear, the provision of public participation as a democratic aspect in different countries hinges upon various factors, including the political system and level of democratic development of societies. As such, not only do countries have their own specific practices of PPP, but they also differ in their way of involving the public in the decision-making on PPPs. As I have shown in my review of the literature, the specific democratic issue of public participation in the decision-making on PPP projects in Kazakhstan has not received sufficient attention and has not so far been thoroughly studied. Having identified this gap in the literature, it can be seen that a close examination of this issue, as seen specifically in the case of Kazakhstan, can contribute to the literature in important ways. Crucially, such an examination would have an important practical, as well as academic and theoretical value, both in the context of Kazakhstan and in a global context.

Chapter 4 – International Practices of Public Participation: Successes and Failures

4.1. Introduction

Before proceeding to examining the case of public participation in the decision-making on PPP projects in Kazakhstan, and by way of setting the background, it is worth reviewing a few instances of international cases, where PPP projects have been implemented to different degrees of success in part due to the level of public participation allowed during their planning stages. Such a review of international cases is important both in framing the research specifically concerned with Kazakhstan, as well as guiding potential ways to better ensure public participation in the decision-making on PPPs more generally. In this chapter, I present cases of PPP projects, where the respective governments did not ensure public participation at all, enabled only pseudo-participation, or ensured meaningful participation of the public in the decision-making on PPPs. A close look at such PPP projects will allow an understanding into how participation, non-participation and pseudo-participation of the public in the decision-making on PPPs affect their practical implementation, that is, how positively or negatively they affect the effectiveness of PPP projects. More importantly, examining international cases offers an insight into understanding how different countries implement PPP projects democratically by ensuring public participation or conversely, how the lack of public participation can lead to democratic challenges.

For these purposes, I have selected three PPP projects, each corresponding to the relevant categories of study. Firstly, I examine the PPP case Jin Long Toll Road project in China (Zhejiang province), which was launched in the mid-1990s (Chen, et al., 2013). As I will show, this is an instance of a case where the lack of public participation in the decision-making on the project resulted in the project's failure. The second PPP project I examine in this chapter is that of garbage collection launched in Tanzania's Dar es Salaam in the late 1990s (Bakker, et al., 2000), as an instance where the authorities did ensure public participation in the decision-making on the project. Lastly, the third project examined is one where the authorities initially ensured only pseudo-participation in decision-making, and only later on a private partner reconsidered its decision in favour of the people, thus allowing the project to be continued. This is the PPP project of electronic toll collection launched in the early 2000s in Taiwan (Chen, et al., 2013). Having examined these cases, I conclude the chapter by emphasising the

importance of ensuring public participation, especially as it relates to the democratic and effective realisation of PPP projects. I will therefore provide a background against which the analysis of the particular cases of PPPs in Kazakhstan is presented.

4.2. Case of Jin Long Toll Road Project in China

In the early 1990s a massive programme for the construction and operation of toll roads began in China at the expense of private business due to budget constraints. Chen and others (2013) have detailed the case of a PPP project in the road sector in this period, namely the Jin Long Toll Road Project (JLRT), which was initiated in China's Zhejiang province (Chen, et al., 2013, p. 849).

In 1996 a firm from Hong Kong, KwangYing, became the winner of a competitive tendering arranged by the authorities of Jinhua city to implement PPP projects in road sector in Lanxi area (ibid.). It should be noted that at this time Hong Kong was not part of China, but rather a British colony. The project was endorsed by the government of Zhejiang province, and in 1997 a state-owned entity under the government of Lanxi, Transportation Service Company, came to an agreement with KwangYing, and signed a contract to establish a Cooperative Joint Venture (ibid.). This joint venture, the Jinlong Road Construction Company (JRCC), was to construct and operate 17 kilometres of road for twenty years, before handing it back to the government. The project was estimated to cost 110 million RMB, most of which KwangYing invested from its own funds, with the additional help from a bank loan in the value of 25 million RMB (Chen, et al., 2013, p. 849).

Based upon the PPP contract, JRCC was to be responsible for the operation of businesses and toll booths along the toll road and have as its primary source of incomes the toll payments supplemented by tax exemptions (ibid.). One of the financial incentives for KwangYing, as the project's main investor, was that it was guaranteed 18 percent return on its investments by the government, and with such a rate of return it would seem that within this contract the private partner would carry more of the financial risks associated with the project (ibid.). However, the financial burdens were in fact transferred to users when the authorities of Zhejiang province approved the toll tariffs twice as high as in the market, thereby endowing the private investor with additional rewards (Chen, et al., 2013, p. 849). By the end of 1998, with the building of the toll road completed, JRCC commenced operating it by collecting toll payments from citizens (ibid.). As Chen and others report, however, the toll revenues plummeted in the early 2000s (Chen, et al., 2013, p. 849). This plunge in revenue was due to the drivers' avoidance of

high-priced toll payments, who sought to use alternative roads instead of the toll road (*ibid.*). This avoidance of toll roads was not limited to Zhejiang province and the Jin Long toll road, but rather extended to other provinces and toll roads. This is reflective of the burdens on toll roads users, since as Ojiro (2003, cited in Chen, et al., 2013, p. 849) has noted, toll prices in China generally are very costly, and are indeed as expensive as that of developed countries. This is while the salaries and earnings of many locals in China are considerably less than their counterparts in those more affluent states (Ojiro, 2003 cited in Chen, et al., 2013, p. 849).

Losing its revenues from the toll road year by year, in 2004 JRCC complained to the local government of Lanxi, that the Longma cement plant had built a passageway from the plant, allowing drivers to bypass toll booths next to the plant and therefore avoiding toll payments (Chen, et al., 2013, p. 850). Avoiding the use of toll roads was becoming more and more widespread in Zhejiang province, where many drivers began to bypass the toll road by using other roads through various villages, as Chen and others (2013) describe. For instance, in light of the problem around the JTLR project, in 2006 an unofficial brochure titled ‘The handbook of how to avoid toll booths in Zhejiang province’ was issued and circulated among a large number of people through social media (Chen, et al., 2013, p. 850). This large surge in avoiding the use of toll roads even prompted residents of several villages to construct unofficial toll booths to eschew the use of nearby official toll booths, and accordingly to set up their unlawful, and yet, more importantly, much cheaper and affordable tolls compared to the official ones (Chen, 2004 cited in Chen, et al., 2013, p. 850). As such, in 2006, the toll road yielded only 20 percent of the expected revenues (Chen, et al., 2013, p. 850). Additionally, contrary to the previous agreements, the local government no longer granted tax exemption to JRCC, and even decided to hand over the right to run businesses along the toll road to other firms without consulting the investor (Chen, et al., 2013, p. 850). JRCC was therefore under severe financial pressure, not least because it still had to cover operational costs for managing toll booths, was not allowed to employ and dismiss the staff responsible for administering toll roads, and further was yet to repay the bank loan it had taken out as part of the investment in the project (*ibid.*).

While the JLTR project was in the financial trouble, instructions were issued by China’s central authorities to reduce the number of toll booths in the country, thus aiming to tackle the problem of unreasonably costly tolls (Chen & Hubbard, 2012, p. 44; Chen, et al., 2013, p. 850). Since 2001 the provincial authorities of Zhejiang had begun to remove toll booths across the province (*ibid.*). Afterwards, in 2004 a new regulation was issued by the central government saying that there would be no new toll booths in the future, and that the government would not continue toll road projects, thus announcing the end of operation of toll roads in the country

(Chen & Hubbard, 2012, p. 44). This new policy badly reflected on all existing PPP projects on the construction of toll roads in the country, including the JLTR project, many of which had not even reached the half-point of their 20-year contract term (Chen & Hubbard, 2012, p. 44; Chen, et al., 2013, p. 850).

As Chen and others argue, the breakdown of the JLTR project can be attributed to the authorities' ignorance of people's interests, and specifically, their failure to involve the public in the decision-making on the project (Chen, et al., 2013, pp. 850-851). As the authors report, no public discussion was held on the project nor on the toll charges on the toll road. Furthermore, no public information about road tolls was released at the planning stage of the PPP project. Such a practice, which fails to engage with the public as end users of PPP projects, was not limited to this particular project and was instead common to all similar toll road projects in China (Beijing News, 2006 cited in Chen, et al., 2013, p. 851).

Further examining the failure of the JLTR project, Chen and others note that by not ensuring public participation in the decision-making on the project, the provincial authorities made a series of decisions which failed to take into account the people's interests. Firstly, the authorities of Zhejiang province imposed the costly tariffs on drivers for using the toll road, despite the fact that existing standards prescribed much lower charges for using toll roads, for example, the charge for a car was only five RMB (Chen, et al., 2013, pp. 850-851). Secondly, there was an excessive number of toll booths in the province of Zhejiang (*ibid.*). Pointing to the regulations noted by Zhejiang's Ministry of communications, Chen and others note that the 43 toll booths were located very close to each other, and therefore violated the official regulations (Chen, et al., 2013, p. 851). Thirdly, the provincial authorities authorised several highway companies to charge an additional fee at toll points, which boosted these companies' revenues. Citing the National Audit Office of China, Chen and others note that the highway companies' income from these fees alone reached 1,955 billion RMB (*ibid.*).

The ignorance of people's interests and opinions within the project was noted in China's National Audit Office in its 2008 review of toll road operations, which made the following observation:

On the one hand, the private investor obtained profits from the high toll charge and long-term charge period; on the other hand, the local government obtained tax income from the private enterprise profits. This behaviour from both sides added to the burden on the public.... The local government wants to develop the road system quickly but does not want to take responsibility and therefore shifted

the responsibility to society [the public] (The National Audit Office of China, 2008 cited in Chen, et al., 2013, p. 851).

What the examination of this PPP case reveals is the potentially dire effects of the authorities failing to effectively implement such projects. In the case discussed here, the adverse effects of such failure were felt by the local authorities, the private partner, and most importantly the local people, who could not avail themselves of using the road service delivered by the public and private partners. Crucially, the main reason for the project's failure was the local authorities' ignorance of people's interests and opinions, manifested in their failure to ensure public participation in the decision-making on the project. As the facts around the project show, the authorities' decision to impose high fees for the use of the toll road led to the public avoiding the use of this road and instead seeking alternatives in free roads. As a result, both the public and private partners encountered serious financial problems, which ultimately led to the breakdown of the project. But more importantly, the poor decision making eroded the citizens' trust in their representatives, who instead of safeguarding the public's interests, disregarded and neglected them. In other words, the authorities' first priority should have been to take into account the citizens' interests, not the mercantile interests of private companies. Here, I agree with the statement of China's National Audit Office (2008) mentioned above, that the public and private partners only pursued their economic benefits but not the interests of citizens, thus leaving citizens alone with their problems, which were caused by the authorities' undemocratic decisions.

It should be noted that the lack of public participation in the decision-making on the project was an important element in the failure that resulted. This undemocratic way of decision-making on the project, where the citizens were not allowed to have an input, means crucially that there was no control over officials' actions and decisions, thus leaving the authorities to abuse this situation by making decisions that disregarded the interests of people. An instance where this abuse can be seen clearly is where the local authorities permitted private companies to charge an additional fee, despite the already high fees in place for the toll road, which were decided without any discussion and input from the public.

As such, the examination of the JLTR project shows that the authorities' failure to take into account people's interests by not involving the public in the decision-making on the project resulted in the PPP project that was unfit for the interests of people. The public in turn refrained from using the toll road, thereby resulting in the abandonment of the project. It can therefore be stated that the local authorities themselves are to blame for the breakdown of the project by not ensuring public participation in the decision-making on the project.

4.3. Case of Waste Collection in Tanzania

The PPP initiative on waste collection in Tanzania's city of Dar es Salaam was initiated within the framework of the International Labour Organization's Sustainable Employment and Economic Development Programme (ILO SEED) that aims to resolve economic and social challenges in deprived areas (International Labour Organization, 2017). Within the framework of ILO SEED, this initiative was supported under the interregional Public-Private Partnership Programme to give assistance to local governments in developing micro and small businesses by involving entrepreneurs in the joint implementation of government programmes and projects, including in the sphere of public services (Bakker, et al., 2000, p. 1). The initiative was further commenced within the framework of the project 'A support to the delivery of environmental services by the small-scale private sector', itself a component of the UNCHS Programme to develop environmental sustainability in the city of Dar es Salaam (Bakker, et al., 2000, p. 1).

Bakker and others have detailed the background against which this PPP project was initiated (Bakker, et al., 2000, p. 2). As they note, working groups under the auspices of the UNCHS Sustainable Dar es Salaam Programme were created between 1995 and 1997. Within these groups representatives of diverse local institutions and local community groups discussed how to make Dar es Salaam a more environmentally clean and economically developing city, and waste collection was discussed as one of the working groups' important priorities (Bakker, et al., 2000, p. 4). Bakker and others also note that the problem of garbage collection in Dar es Salaam was due in part to the urban planning and infrastructure in the city (Bakker, et al., 2000, p. 2). Notably, the irregular city planning meant that roads and houses were built too close to each other, thus substantially hindering free movement of people and transport (ibid.). Moreover, engineering networks were not connected to communications that reflected the accumulation of garbage (ibid.). On the other hand, the garbage produced in the city was not being properly collected by the authorities, while the population of the city's inhabitants was rapidly growing by 8-10 percent a year (ibid.). As Bakker and others report, before 1992 barely 3 per cent of daily waste was being removed, and so by the late 1990s garbage accumulation was equal to 2000 tons a day (ibid.). The city authorities repeatedly moved rubbish dumps from one place to another (ibid.). In one instance the dump was put in close proximity to residential areas, inciting public indignation, while in another case the dump was placed by the sea, and thus began to pollute the coastal waters (ibid.). In addition to such issues, the continuous relocation of rubbish dumps was also problematic, since the garbage was often washed away

after torrential rains, thereby causing a considerable damage to environment (Bakker, et al., 2000, p. 2). Furthermore, the city of Dar es Salaam had additional social issues, namely unemployment amongst its young population. The frustrations arising from local government's inability to handle the issues of waste collection and disposal, together with the existing social difficulties, triggered public discontent (ibid.). In response, in 1996 the Presidential decree was adopted to reorganise the City Council through creating the City Commission whose members would be appointed by the President of Tanzania (Bakker, et al., 2000, p. 2)

The city authorities soon realised that they would not be able to resolve the problem of garbage collection on their own (ibid.). In order to stimulate small domestic entrepreneurship, the authorities also refused to attract foreign companies to implement the PPP initiative on waste collection and disposal (ibid.). This refusal was also due to the authorities' top objective, namely, to tackle the social problem of mass unemployment in the city. They were therefore more interested in attracting local entrepreneurs and community-based organisations (Bakker, et al., 2000, p. 6). Furthermore, as Bakker and others have argued, the city authorities denied foreign companies' suggestions to deliver waste collection and disposal service by deploying heavy special transport for several additional reasons (ibid.). Firstly, the authorities could not afford the high budget costs required to attract foreign investors, such as the offered prices of heavy machinery (ibid.). Secondly, they could not exclude the possibility that after awarding the PPP contract to one company there might be risks associated with monopoly (ibid.). Thirdly, since heavy machinery could not be employed in many filthy areas of the city due to the problematic urban planning mentioned earlier, the city authorities preferred to involve members of community-based organisations to collect waste in hard-to-reach areas (Bakker, et al., 2000, p. 6).

The authorities therefore decided to involve the private sector and local communities in dealing with the issue (ibid.). Before the start of the PPP initiative, the city authorities announced a competition to recruit potential contractors for the delivery of waste collection service by requesting information about potential contractors' professions and skills, availability of transport and offices, and other information (ibid.). At first, only 15 candidates were selected, however, due to the city authorities' political support for engaging community-based organisations and non-governmental organisations in tackling social, economic, environmental and other problems in the city, eventually, 70 contractors were granted the rights to deliver the service (ibid.). Out of these 70 suppliers, 15 medium enterprises were designated to deliver waste collection service mainly in the city centre, whereas community-based organisations, NGOs and micro businesses (individual entrepreneurs) were responsible for collecting waste in

other areas of the city (Bakker, et al., 2000, p. 6). In 1998, the City Commission handed over the functions on waste collection and disposal fully to local private companies and community-based organisations in the city (ibid.). Subsequently, more than 60 local private companies and community-based organisations started collecting waste in designated parts of the city (ibid.).

The partnership with the contractors in the person of local private companies and community-based organisations required different approaches to managing the PPP project on the part of the city authorities (Bakker, et al., 2000, p. 5). Therefore, in order to effectively manage the PPP, the city authorities of Dar es Salaam decided to create working groups comprising of commissioners, heads of departments and representatives of the Waste Management Department which was established in March 1998 (Bakker, et al., 2000, pp. 5-6). As a result, four working groups were established whose tasks were to develop instructions on how to deliver waste collection and disposal service, working issues such as “zoning; awareness campaigns and health education; tariff setting; dumpsite improvement and recycling initiatives” (Bakker, et al., 2000, p. 5).

In their discussion on the participation of community-based organisations in the PPP initiative as contractors, Bakker and others have noted that the PPP initiative was promoted thanks to the participation of community-based organisations in its implementation (Bakker, et al., 2000, p. 13). This is due to the fact that members of community-based organisations, as members of local communities, were willing to discuss the PPP initiative and its potential outcomes with each other, as well as with members and leaders of local communities (ibid.). As a result, the interested parties usually reached mutual understanding about the project and agreed on their support for it (ibid.). For example, one of the points of consensus between the community-based organisations and local communities was the issue of refuse fees (Bakker, et al., 2000, p. 10). The success of this agreement is due to the fact that the city authorities took a decision on refuse fees after the contractors in the person of community-based organisations had discussed the issue with local residents, that is, after they had heard the people’s voices on their willingness and ability to pay refuse fees (ibid.). As such, the city authorities took their decision on the matter by taking into account family incomes, and accordingly set the differentiated tariffs on waste collection service. For instance, the households from high-income areas would pay 2000 Tanzanian shillings (TZS) a month (roughly US\$2.50), the households in medium-income districts had to pay TZS1000 (approximately US\$1.50), and the low-income families in certain districts were charged TZS500 a month (around US\$0.65) (Bakker, et al., 2000, p. 10). Similarly, the contractors collected monthly fees from legal entities, ranging in value from US\$6 to US\$125 per month, depending on the type and size of

business (ibid.). In sum, the system for paying refuse fees was convenient and also flexible for customers, since customers could also choose to pay refuse fees in daily or monthly instalments (Bakker, et al., 2000, p. 11). Bakker and others also emphasise the positive effects associated with the involvement of local community leaders and various local organisations in the implementation of the PPP. For instance, ‘ward environmental committees’, whose members were elected by local residents, played an important role in ensuring that customers pay refuse fees, while community leaders of local organisations were involved in “monitoring performance; awareness creation; enforcement of cleansing bye laws and regulations” (Bakker, et al., 2000, p. 12).

The first positive results of the PPP were visible from February 1999, after just two months since the contractors started collecting waste. In the first instance, the volume of waste collection increased from 18600 to 33479 tons, comprising 55 per cent of waste accumulation per day (ibid.). Starting from June 1999 the volume of daily waste accumulation was steadily ranging at approximately 40 per cent (Bakker, et al., 2000, p. 8). The city authorities, in order to stimulate the contractors further, provided free vehicles for ferrying garbage to a rubbish dump, which sped up the process of waste removal (Bakker, et al., 2000, p. 11). In addition to the success in effective waste removal, there were other visible impacts of the project. During the implementation of the PPP, a mass campaign was being carried out to inform the public about advantages of recycling garbage, allowing individual garbage collectors and micro entrepreneurs to be involved in running businesses in that segment (Bakker, et al., 2000, p. 7). Consequently, a new business activity such as the sale of garbage bags for recycling was actively encouraged amongst small and micro businesses. Furthermore, with the technical assistance of ILO, various training courses on hygiene and safety, garbage recycling, NGO management, and start-up businesses were also arranged (ibid.).

As such, another important impact of the PPP was achieved, namely the provision of jobs to many needed people. As Bakker and others report, contractors employed more than 1900 people, and it was estimated that the net growth of employment in Dar es Salaam was equal to 900-1000 people (Bakker, et al., 2000, p. 8). Moreover, the results of ILO survey conducted in August 2000 showed that 1522 people were employed in waste collection industry, of whom women comprised 55 per cent of workforce (ibid.). This is since the majority of street sweepers and fee collectors were women, while men were mainly responsible for heavy work such as loading and unloading garbage on trucks (Bakker, et al., 2000, pp. 8-9). As such, despite worries that community-based organisations may not stay on in the PPP, given their interest in social rather than economic welfare, it can be seen that the PPP initiative on waste collection in the

city of Dar es Salaam has been successful, as seen by the provision of more effective service to the public and employing many people in need.

The exposition of the PPP initiative on waste collection in Dar es Salaam makes clear the success of the project through its effectiveness in bringing about desired results for all stakeholders, primarily for end users of the service. The PPP initiative, furthermore, substantially contributed to reducing the level of unemployment and improving the situation around environmental protection. Crucially, it can be seen that local community-based organisations and NGOs achieved their primary social objectives and duties to the local community through their participation in the PPP initiative. Private partners in the person of micro and small enterprises also benefitted from running business in waste collection industry.

It is worth noting that one of the critical factors in the effective implementation of the PPP initiative was the fact that the partners made their decisions following, and based upon their discussions with the public, that is, in a democratic manner, as seen for instance in the case of fees charged for waste collection and disposal service. In this instance, as mentioned above, the issue was first discussed at public meetings between the local residents and partners in the person of community-based organisations (Bakker, et al., 2000, p. 10). As explained previously in Chapter 3, public participation in decision-making can take different forms, such as consultation which can take place through instruments such as public meetings (Arnstein, 1969; Bishop & Davis, 2002). What is important here is the fact that the partners in the project did not make their decisions behind closed doors, but rather reached the decisions in accordance with their discussions with the public. This is what enabled them to take into account a critical issue such as family incomes, thus making decisions that were fair and sensible, especially for the poorer populations. In other words, by making their decisions through taking into account people's voices, decision-makers in the person of the city authorities and private partners ensured meaningful participation of the public in the decision-making process. Accordingly, such a rational and fair decision of the partners caused public approval of that decision, which in turn contributed to the further promotion of the PPP initiative.

Evidently, in addition to public participation in the decision-making processes on the project through consultation, the participation of community-based organisations in the joint implementation of the PPP initiative as partners played a very important and positive role. The city authorities' decision to involve community-based organisations in the joint implementation of the PPP initiative has brought its dividends, positively affecting the course of the PPP. As mentioned above, members of community-based organisations reached mutual understanding between themselves and other members of local communities, and therefore, they came to agree

on many issues regarding the PPP initiative. Furthermore, the participation of local community leaders and ward environmental committees in the PPP, whose roles were to ensure residents' adherence to rules regarding hygiene and payment for the provision of garbage collection services, also had notable positive effects on the project. In sum, it can be said that public participation in the decision-making processes on the PPP initiative, as well as the participation of community-based organisations as partners had a huge positive impact on the effectiveness of the PPP initiative, allowing partners to achieve the desired results, primarily for the end users of the public service.

To sum up, the PPP case in Tanzania illustrates the democratic decision-making process on the PPP project through ensuring participation, importantly meaningful participation of the public. In this case the decision-makers heard people's voices and by making decisions based on public opinions, they received the public's approval, which in turn had a positive effect on the course of the PPP, leading to its effective implementation. Therefore, based on this successful PPP case in Tanzania it can be inferred that public participation in decision-making on PPPs is a crucial factor in the democratic and effective realisation of PPPs.

4.4. Case of Electronic Toll Collection in Taiwan

Since the mid-1990s the authorities in Taiwan began to actively execute PPP by implementing PPP projects in various sectors of the national economy, especially in transport sector (Chen, et al., 2013). In order to promote PPP, the Public Construction Commission (PCC) and the Coordination Committee for the Promotion of Private Participation in Infrastructure Projects (CCPPP) were established under the executive branch of the government of the People's Republic of China on Taiwan, known as the Executive Yuan of Taiwan (Huang et al., 2003 cited in Chen, et al., 2013, p. 845).

One of the large-scale PPP projects in the early 2000s, which was coordinated by the PCC and CCPPP, was the Electronic Toll Collection Project (ETC) (Chen, et al., 2013, p. 845). The ETC project was managed by the Taiwan Area National Freeway Bureau (TANFB), which operates under the Ministry of Transport and Communications, and was a public partner within the PPP project (ibid.). As Chen and others explain, since the aim of the project was to reduce waiting times at toll points, the authorities decided to collect freeway tolls from drivers electronically (Chen, et al., 2013, p. 846). As such, the main task of the project was to install the computerised payment machines for users at toll points (ibid.). According to tender documentation, a private investor was responsible for the finance, construction, operation, and

maintenance of the ETC systems (ibid.). The earnings from tolls were transferred to the TANFB's account, with a certain amount of these transferred to a private partner, namely the contractor (TANFB, 2003 cited in Chen, et al., 2013, p. 846).

Three companies bid to be the private partner on the project, and as Chen and others report, at the end of 2003 the company called 'Far Eastern' became the winner at the expense of the other two bidders, Acer and Yu Tong companies (Chen, et al., 2013, p. 846). However, Yu Tong appealed against the decision regarding the choice of the winning bidder and complained to the TANFB and later to the PCC, alleging that Far Eastern had violated the procedures of the tendering process (ibid.). The PCC indeed confirmed Yu Tong's allegations of Far Eastern's wrongdoing by revealing that Far Eastern had not provided the necessary technical information about the Chinese production of infrared system and had not submitted the certified documents for that system (ibid.). More generally, it was revealed that Far Eastern's qualifications did not comply with the tender documentation (ibid.). Notwithstanding, TANFB had signed the contract with Far Eastern only one day before the PCC review meeting (ibid.). Furthermore, by the time the PCC reached its final decision regarding Yu Tong's allegations of Far Eastern's violation of tendering procedures, Far Eastern had already installed electronic toll collection systems at twenty-one toll points around Taiwan (ibid.). Consequently, and in time, the head of Ministry of Transport and Communications and several tender board members came under criminal investigation for corruption (Chen, et al., 2013, p. 846). The resulting scandal around the ETC project attracted considerable media attention, with mass media criticising not only the work of Far Eastern, but also the representatives of the Ministry of Transport and Communications and TANFB who were involved in the project (Ho, 2006; Lee, 2007, cited in Chen, et al., 2013, p. 846). With the worsening situation, the project also got the attention of the Yuan Legislative (parliament), and different NGOs also censured the public and private partners responsible for the PPP project (ibid.). For instance, Taiwan Consumer's Foundation gave nine public statements over the course of two years, accusing the partners of ripping off users' money (Chen, et al., 2013, p. 846).

Furthermore, at the same time the tensions between ETC users and Far Eastern company were escalating because of growing discontent around the installed electronic payment system (ibid.). As Chen and others report, toll fees were collected through activated prepaid cards known as 'on-board units', which were installed on vehicles' windscreens and debited users' cards when a vehicle passed through a toll barrier. What caused outrage among the users, however, was the fact that these on-board units were only sold by Far Eastern for a fixed price (Chen, et al., 2013, p. 846). The Taiwan People's Alliance – a non-governmental organisation

responsible for public control over programmes and PPP projects, castigated the ETC project for not being implemented in the interests of users. A public survey conducted by the media during the scandal around the ETC project, showed that 60 per cent of the those interviewed were against the installation of on-board units (Hu Zhimin, 2006 cited in Chen, et al., 2013, p. 846). With the rising public discontent, people decided to boycott the use of ETC systems at toll points insofar as they had the choice to pay a service charge either manually or electronically (ibid.). On the other hand, Yu Tong appealed to the Taipei Senior Administrative Court which decided to cancel Far Eastern's qualification. The decision was made on the grounds that the partners had not taken into account the interests of users, as evidenced by their decision to set high charges for using a freeway (Taipei Senior Administrative Court, 2006 cited in Chen, et al., 2013, p. 847).

As such, it can be claimed, as Chen and others do, that the public somewhat triumphed in this debate, since its enormous pressure enabled the financial burden to move from users back to the government and the private investor, Far Eastern. This shift in the burden led to a financial dispute between the partners (Chen, et al., 2013, p. 847). As Chen and others report, the Executive Yuan and Ministry of Transport and Communications pressured Far Eastern to reconsider its price policy or otherwise losing the contract, thus forcing the company to either decrease the price of on-board units or to offer their use for free. In response to this proviso, Far Eastern stated that it would demand reimbursement if the contract was terminated, and it could reduce the price of on-board units if the government increased the service charge which was a source for Far Eastern's income (Chen, et al., 2013, p. 847). In March 2006, Far Eastern proposed two alternatives to deal with the financial problem (Ho, 2006 cited in Chen, et al., 2013, p. 847). Initially, the Ministry of Transport and Communications supported the company's plan to sell on-board units at a discounted price, but that decision aggravated public anger (Huang, 2006 cited in Chen, et al., 2013, p. 847). With the problem around the ETC project unresolved, the Ministry of Transport and Communication appealed to the Supreme Court. In September 2006, the Supreme Court ordered to bring the project back to tendering process, leaving the existing equipment for a future winning bidder (ibid.). The Supreme Court further announced that in case Far Eastern became the winner once again, it would be obliged to reduce the price of on-board units in the interest of users (Chen, et al., 2013, p. 847). Later on, with Far Eastern being the only company submitting a bid, it once again became the managing party on the ETC project (ibid.).

Importantly, at this time the number of ETC users was gradually increasing, since the service was being delivered to users at an affordable price. As Chen as others note, the main

reason for public discontent over the price of on-board units was the fact that despite a public opinion survey having been conducted, the partners did not take the interests of users into account when making the decision on the price of on-board units (Chen, et al., 2013, p. 848). As the public survey demonstrated, 46 per cent of respondents opposed the ETC project due to the expected charge for the use of on-board units, and only 54 per cent of respondents were generally supportive of the project (ibid.). As such, it is clear that although the authorities conducted the public survey, in the final decision on the price of on-board units they did not adequately take into account the voices of users. As the exposition provided here indicates, neglecting the public's voice resulted in a social problem emerging during the implementation of the project, causing public disagreement over the costly price of on-board units, which was imposed by the private partner. Indeed, that situation did not suit the users of the ETC service inasmuch as the inadequate financial burdens were imposed on end users. Accordingly, such a situation around the project, including the corruption scandal, significantly tarnished the project's reputation, and moreover it shattered citizens' trust in their representatives.

As the facts around the project show, the main reason for public discontent over the costly price of on-board units was the fact that the private partner made the decision without taking into account the interests of people, thus making the decision-making process undemocratic. Moreover, although the authorities conducted a public survey, the results of which showed a massive objection to the charge for using on-board units, the authorities ignored people's voices. In other words, it can be said, although the authorities ensured public participation in decision-making in the form of consultation through such a tool as a public survey, they did not take into account people's voices, that is, in fact, what took place was pseudo-participation of the public in decision-making. Besides, as can be discerned, although the partners ignored the problem with the price of on-board units at the planning stage of the project, hoping that the problem would eventually be settled, the problem in fact resurfaced at the implementation stage. To put it in another way, users began to boycott the use of ETC lanes due to the overpriced on-board units. Such circumstances around the project had a negative impact on the course of the project, putting the project at risk of the possible termination. Nevertheless, in the end the problem with the pricing was solved in favour of end users insofar as the private partner had to reduce the price of on-board units.

The PPP case in Taiwan discussed here could and should serve as a lesson for governments that fail to ensure meaningful participation of the public in the decision-making on PPPs. This can be seen in the case of PPP project (PFI) on maintenance of roads and trees in Sheffield (the UK), where the local authorities cut down a lot of healthy trees on some streets

of Sheffield despite a public survey showing that the local people were against this decision (Saul, 2017).

4.5. Conclusion

The aim of this chapter has been to show, through a close examination of practical cases, the importance of public participation in the decision-making on PPP projects. The PPP cases presented here indicate instances where relevant governments ensured meaningful participation, pseudo-participation or did not ensure public participation at all while planning PPPs. The cases further demonstrate the different outcomes and consequences for the projects according to whether the public was involved in a meaningful way, if at all.

The first case presented, the JLTR project in China, represents an instance where the authorities of Zhejiang province did not involve the public in the decision-making on the PPP, that is, there was no attempt to hear the people's voices. This is therefore a case where the decision-making process was not democratic. Accordingly, the authorities made a decision on toll charge without taking into account the interests of people. Subsequently, the partners imposed costly toll charges on the users of the toll road, who could not withstand such unfairness on the part of the partners, and therefore, people began to avoid the toll road, using other free roads. As a result, due to the avoidance of using the toll road, the partners began to face various problems, including financial ones. In the end, the central government of China had to suspend not only the JLTR project, but also other PPP projects on toll roads, ending up with a political fiasco. By and large, this PPP example shows not only the failure of the PPP project, but more importantly, it shows that representative democracy was undermined.

In the second case, that of the PPP initiative on waste collection in Tanzania, at the planning stage of the PPP project the authorities of Dar es Salaam decided on fee charges after discussions with the local communities. That is to say, the partners heard the voices of people and only then made a decision, thus ensuring the democratic decision-making process. As mentioned above, the authorities made the decision on refuse fees by taking into account family incomes, and accordingly, this decision taking into account the interests of the people was approved by the local communities, leading to the further promotion of the project. As can be seen, the partners ensured not only participation, but also meaningful participation of the public in the decision-making on the PPP project. Generally speaking, this PPP case in Tanzania not only shows the success of the PPP initiative, but most importantly, it shows that the authorities

attempted to be closer to the people trying to hear their voices, thus being responsive to people's demands and strengthening representative democracy.

Lastly, in the third case regarding the ETC project in Taiwan, the authorities ensured public participation in decision-making in the form of consultation through the instrument of a public survey. However, they did not take into account the voices of people who expressed objection to being charged a costly amount for using on-board units. This instance of pseudo-participation represents a case of the undemocratic decision-making which led to unwanted consequences. As mentioned above, during the implementation of the PPP project, disgruntled people with price policy of the private partner began to boycott the use of the ETC lanes. Subsequently, due to public pressure, the private partner had to cut the price of on-board units, thus allowing the project to be continued. However, it cannot be overlooked that if the problem with the price of on-board units had not been resolved, then perhaps the project would not have continued.

It can be seen from these examples of PPP cases, that ensuring public participation in the decision-making on PPPs can significantly impact the effective implementation of the PPPs, which should first and foremost be aimed at bringing about the desired results for people. Conversely, the non-participation, as well as pseudo-participation of the public in the decision-making on PPPs results in more risks causing the ineffective implementation of PPPs. As I will show in the following chapters, the examples of PPP cases presented here can act as valuable lessons for the authorities in Kazakhstan who, as will be shown, are yet to ensure public participation, including meaningful participation in the decision-making on PPPs. As these cases and my further arguments demonstrate, public participation in these cases is not only crucial for the effective implementation of PPP projects, but it can also serve in the democratic realisation of PPPs. This is since, through participation, the public can have an influence over government decisions on PPP projects that affect their lives and interests. Furthermore, through creating a line of communication created between citizens and the authorities, public participation can bring officials closer to people, making it salient that the people's demands are satisfied by their representatives.

Chapter 5 – Deficiency in Public Participation in the Decision-Making on PPP Projects in Kazakhstan

5.1. Introduction

Having laid the background to the research in the previous chapter with an examination of a few international cases, in the present chapter I examine the status of public participation in the decision-making on PPP projects in Kazakhstan. In particular, using the data obtained through my fieldwork, and through analysing normative legal acts governing public participation and PPP issues, I aim to answer the question of whether or not public participation is ensured in the decision-making on PPP projects in Kazakhstan. Analysing the answers given by respondents will enable me to discern whether there is a problem of ensuring public participation in the decision-making on PPP projects by the authorities in Kazakhstan. The analysis of normative legal acts, on the other hand, will enable an understanding into whether citizens and other members of society such as interest groups are granted the political rights to participate in the decision-making on PPPs, and whether such rights are enshrined in the current legislation adopted by the authorities of Kazakhstan. In general, the results of the analyses of respondents' answers and existing legislation will allow to ascertain the extent to which the authorities of Kazakhstan protect and promote the democratic interest and rights of people on behalf of and for the sake of whom they execute a PPP policy by implementing PPP projects.

In what follows, I will first give an analysis of the interviewees' responses to a specific question regarding the status of public participation in the decision-making on PPP projects. As I show, on the whole these responses signal that there is still a problem with ensuring public participation by the authorities in Kazakhstan. Having given the analysis of the interviewees' responses, I will then turn to examine the normative legal acts related to both public participation and PPP issues, which are currently in place in the country. As my analysis shows, despite the fact that some of these normative legal acts stipulate that there must be public participation in decision-making, these tend to be either not applicable to PPP projects, or concerned only with PPP projects involving certain types of economic activities. This therefore demonstrates that in addition to the existing unresolved problem with not ensuring public participation by the authorities, the current legislation in Kazakhstan can also be seen as limiting the right of the public to participate in the decision-making on PPP projects that affect their lives and interests. It is worth noting that while the discussions in the present chapter aim to

answer the certain research question, a complete answer requires further investigation, namely into whether or not the authorities in Kazakhstan in fact ensure public participation in the decision-making on PPPs when planning PPP projects. This aspect of the question will be examined in the subsequent chapters.

5.2. Deficiency in public participation in the decision-making on PPP projects: an analysis of respondents' replies

As stated in section 2.2., part of my method in this research to collect data has been to conduct interviews with the representatives of quasi-state institutions involved in PPP policy. In addition to the data gathered from these interviewees, I have also received responses from the representatives of central and local government bodies which develop and implement PPP policy at the central and local levels. Some of the results from these interviews are employed in this section to discern the situation regarding public participation in the decision-making on PPP projects, as seen in Kazakhstan today.

Participation can generally be effectuated through various forms such as consultation, advisory boards, citizens advisory committees (Arnstein, 1969; Birch, 1993; Bishop & Davis, 2002). Additionally, through the use of the Internet, that is through web pages, discussion forums, and portals people can express their views on public matters (Thomas & Streib, 2003; Boyer, et al., 2016). Moreover, consultation comprises different forms such as public meetings, hearings and surveys (Arnstein, 1969; Bishop & Davis, 2002), which can also be arranged by means of the Internet and information technology (Thomas & Streib, 2003) It is worth remarking that these sundry forms of participation can be applicable to participation in the decision-making on PPPs, and therefore can be deployed while planning PPP projects.

For purposes of clarity and in order not to confuse interviewees with different forms of public participation, I have used the phrase 'public consultation' in my questions. This is due not only to the fact that everyone, including government officials, are familiar with the phrase, but also that consultation is viewed as one of the most widespread forms of participation, comprising public meetings, hearings and surveys. In what follows I note the answers given by interviewees in response to my question about potential issues in Kazakhstan such as the lack of public consultation and the inaccessibility of information on PPPs before they are approved, and how, if at all, international experience can be used to help solve such issues.

The first respondent, a former expert of PPP Centre made the following remark in answer to my question:

The international experience of PPP can certainly be effectively adapted for PPP projects in Kazakhstan. However, it cannot be said that work on PPP issues is conducted covertly from the public, since for example, one of the principles of PPP defined in the Law is the principle of competitiveness, which also involves the coverage of forthcoming projects in the mass media (See **Appendix A**).

It is noteworthy that this respondent does not mention anything about public consultation, and more generally about public participation in the decision-making on PPPs. Although the respondent notes that information on the upcoming PPP projects is disseminated in the mass media, this point pertains to informing, rather than to public participation in decision-making, inasmuch as there is no public discussion of PPP projects before they are approved. The interviewee, further, refers to the principle of competitiveness, which pursuant to article 3, section 2, subsection 2 of the Law ‘On Public-Private Partnership’ (2015) determines the selection of private partner on a competitive basis within the organisation of tendering process. However, as can be seen, this information does not relate to public participation in the decision-making on PPPs. As such, from the responses given by this interviewee, and given the lack of mention of public consultation, it may be discerned that there is a problem of not ensuring public participation in the decision-making on PPPs by the authorities of Kazakhstan.

The second respondent to the question, an employee of the Department of Budgetary Investment and Development of Public-Private Partnership of the Ministry of National Economy of Kazakhstan replied to the same question in the following way:

There is no confidentiality of information on PPP projects, insofar as central and local executive bodies post the information on upcoming PPP projects on their official websites, as well as on the websites of the Ministry, ‘Kazakhstan Public-Private Partnership Center’ JSC, regional PPP centres and in periodicals. At present, all normative legal acts are placed on the E-Government portal for nation-wide discussion (See **Appendix B**).

As can be understood, this respondent also relays issues relating to informing the public, rather than public participation. The fact that the relevant information on the upcoming PPP projects is posted on the websites of government bodies, PPP Centre, regional PPP centres, and is publicised throughout the media, as the respondent notes, clearly relates to informing, but not to public participation in the decision-making on PPPs. Furthermore, the representative of the Ministry reports that normative legal acts are posted on the E-Government portal for public discussion. After conducting the interview with the representative of the Ministry I visited the portal ‘Open Normative Legal Acts’, which began functioning in 2016 (EGov, 2016) in order

to ascertain whether the information provided is connected with public participation in the decision-making on PPP projects. Drafts of normative legal acts of the government bodies of the Republic of Kazakhstan, including laws, decrees of the Government, ministerial orders, rulings of local representative and executive bodies, are posted on the portal to be discussed prior to their adoption (EGov, 2016). Although at the time when I examined the information on the portal (September 2016) there were, among these available drafts, those that relate to PPP issues, were mostly of general nature, rather than pertaining to specific PPP projects.

It is worth noting that in order to ascertain whether the public can participate in the decision-making on PPPs using the portal 'Open Normative Legal Acts', I visited the portal again in 2017. While visiting the portal, I identified the draft of the order of the Ministry of National Economy regarding the approval of the list of two republican PPP projects planned for implementation (Portal 'Open Normative Legal Acts', 2017). At first glance, it seemed that central government bodies had begun to involve the public in the discussion of PPP projects before their approval, through the use of the portal. However, having additionally examined the draft of the above-mentioned ministerial order posted on the portal and some normative legal acts, it was revealed that in fact the public cannot participate in the decision-making on PPP projects using the portal. This can be explained through the following two arguments.

Firstly, when I visited the portal, only the text of the draft of the above-mentioned ministerial order was posted on the portal, indicating only the names of two republican PPP projects (Portal 'Open Normative Legal Acts', 2017). No documents pertaining to the financial, technical, legal and other necessary information (drafts of feasibility studies and/or of design and estimate documentation) about the upcoming projects were not posted on the portal (ibid.). Such a circumstance prevents the public from having an open access to any information about the upcoming PPP projects and discussing them. Therefore, due to the absence of information about the two republican PPP projects, no comments or suggestions were made by the public on the PPP projects (ibid.). In general, such a situation shows that there is a problem with public access to the information on PPP projects prior to their approval.

Secondly, according to article 20 of the Law 'On Public-Private Partnership' (2015), the authorised body on state planning, the Ministry of National Economy, forms and approves the lists of republican PPP projects planned for implementation. Furthermore, pursuant to the Order of Acting Minister of National Economy No. 80 of 27 February 2018 'On Introducing Changes and Amendments to Some Orders of the Authorised Body on State Planning', the Ministry of National Economy should form the list of republican PPP projects based on applications that are submitted by central government bodies responsible for the realisation of PPPs. Speaking

about the ministerial order on the portal, it can be seen that decisions on two republican PPPs had already been made insofar as the list of two PPP projects was already formed by the Ministry of National Economy based on applications of certain government bodies. It turns out that the Ministry of National Economy simply approves the list of republican PPPs planned for implementation by its order and publishes it on the portal for public discussion as a draft of normative legal act. Therefore, as noted above, no information about two republican PPP projects (drafts of feasibility studies and/or of design and estimate documentation) was posted on the portal for public discussion, stating only that the decisions regarding them had already been made. Hence, it can be discerned that the public cannot participate in the decision-making on PPP projects by using the portal.

A critical aspect of the way drafts of normative legal acts are posted on the portal should also be noted here, as it relates to the problem of meaningful participation. According to section 4 of the 'Rules on Posting and Public Discussion of Draft Concepts of Draft Laws and Drafts of Normative Legal Acts' approved by the Order of the Minister of Information and Communications of Kazakhstan No. 22 of 30 June 2016, the drafts of normative legal acts are posted on the portal before they are concurred by government bodies. In other words, this circumstance indicates that public discussion of drafts of normative legal acts takes place prior to their concurrence by government bodies. However, I argue that such discussions ought to take place simultaneous with, rather than prior to the normative legal acts being concurred by government bodies. Such a procedure would address the risk that government bodies may not take into account the suggestions and comments of the public. In other words, the way posting drafts of normative legal acts on the portal is currently organised can be considered as flawed, since it is susceptible to enabling pseudo-participation in the discussion of drafts of normative legal acts.

Assuming that the portal has likely been improved over the last two years, and now enables the public to participate in the discussion of PPPs prior to their approval, I visited the portal again in 2019. While visiting the portal I identified the draft of the ruling of the local representative body of North Kazakhstan region regarding the approval of the list of local PPP projects planned for implementation in the region, published on the 17th of April 2019 (Portal 'Open Normative Legal Acts', 2019). Notwithstanding, it is important to note again that only the text of the draft of the local representative body's ruling was published on the portal, indicating only the names of local PPP projects. In other words, no other information on PPP projects, for example, the drafts of feasibility studies and/or of design and estimate

documentation of PPPs, was published on the portal, thus failing to enable the public to have an open access to information on the upcoming PPPs and accordingly to discuss them.

Furthermore, in accordance with article 25 of the Law on ‘Public-Private Partnership’ (2015), local executive bodies form the lists of local PPP projects planned for implementation, whereas according to article 24 of the same law, local representative bodies approve the lists of local PPPs planned for implementation. Speaking about the above-mentioned draft of the ruling, it can be understood that the decisions on local PPPs had already been made, insofar as the list of local PPPs was already formed by the local executive body of North Kazakhstan region. It can therefore be seen that the local representative body of North Kazakhstan region simply approves the list of local PPPs planned for implementation by its ruling and publishes it for public discussion as a draft of normative legal act. Therefore, again, no information about the upcoming local PPPs (drafts of feasibility studies and/or of design and estimate documentation) was published on the portal, inasmuch as the decisions on local PPPs had already been made by the local executive body of North Kazakhstan region. Consequently, given these arguments, it can be seen that at present the public cannot participate in the decision-making on PPPs through using the portal.

Continuing the analysis of the respondents’ answers, another respondent, an expert of the regional PPP Centre in South Kazakhstan, ‘PPP Expert’ LLP, responded to the question in the following way:

I believe that the law will gradually be adapted to the economy of Kazakhstan
(See **Appendix C**).

As can be discerned from this brief response, the third respondent also does not say anything about consultation, that is, about public participation in the decision-making on PPPs. It is noteworthy, however, that the interviewee generally notes that the Law will be improved in the future in the country, thereby somewhat recognising that there is a problem of not ensuring public participation in the decision-making on PPPs by the authorities of Kazakhstan.

Next, a worker of ‘Astana Innovations’ JSC gave the following response to the question: Given the new Law, I consider that PPP in Kazakhstan has a future. For example, a legislator allows us to conduct a so-called competitive dialogue with business representatives in the framework of which the technical, financial and legal parameters of the future project are discussed when developing PPP project. That is to say, the inaccessibility of information is no longer under consideration. And I hope that by applying the opportunities that are given by the new Law, we will be able to successfully implement PPP projects (See **Appendix D**).

As can be seen, the fourth respondent digressed from the subject by talking about a competitive dialogue whereby potential private partners can propose their views on the prospective PPP projects, which has nothing to do with public participation in the decision-making on PPPs. Such a reply from the respondent could be seen to suggest that presumably government bodies do not involve the public in the decision-making on PPPs.

The fifth respondent, an analyst of PPP Centre, provided the following response to the question:

At the present time, after adopting the Law ‘On Public-Private Partnership’ the project implementation process has become more transparent, and so, in the process of developing projects potential private partners have the right to take part in a ‘competitive’ dialogue, and to offer their own views on the implementation of projects. Moreover, investors can independently initiate the implementation of PPP projects (See **Appendix E**).

Similar to the previous respondent, the analyst of PPP Centre also digressed from the topic, once again touching upon the theme of competitive dialogue that is not connected with public participation in the decision-making on PPPs. This response also to some extent, gives grounds to the belief that there is a problem of not ensuring public participation in the decision-making on PPPs by the authorities of Kazakhstan.

The last respondent, the representative of local executive body, the Department for Education of Astana city, replied to the same question as follows:

All PPP projects are open, there is a procedure for concurring in projects, all information is posted on the official websites of government bodies (See **Appendix F**).

This respondent also does not say much about public participation in the decision-making on PPPs, but does point out that information on PPP projects is open and posted on the websites of government bodies. However, again, what the official says pertains to informing the public, which has no relation to public participation in the decision-making process on PPPs, since the information provided does not facilitate public discussion of PPP projects before they are approved.

The respondent also points to an existing procedure for concurring in PPP projects. There are indeed ‘Rules of Planning and Implementing Public-Private Partnership Projects’, which were approved by the Order of the Acting Minister of National Economy of Kazakhstan No. 725 of 25 November 2015, and later reapproved by another Order of Acting Minister of National Economy No. 80 of 27 February 2018 (hereinafter - Order No.80). However, these

Rules determine the procedure for development and concurrence of tender documentation of PPP projects by government bodies (Order No. 80, 2018). Since the Order No.80 is a normative legal act being included in the system of legislation, the aforementioned Rules approved by the Order No.80 and their relevance to the issue at hand will be discussed in the next section.

As the analysis of the respondents' replies above shows, the government bodies of Kazakhstan regularly inform the public about the forthcoming PPP projects. Such information is posted on the government bodies', PPP Centre's, regional PPP centres' websites, and is also publicised through the mass media. Nonetheless, as mentioned earlier, all these ways of providing information about the forthcoming PPP projects, rather than relating to public participation in the decision-making on PPPs, are indications of informing. In other words, informing is merely a formal one-way communication of information on the part of the authorities, or just the provision of information to the public about the upcoming PPP projects, on which decisions have already been made by the authorities. Such a circumstance does not allow the public have their say before PPP projects are approved, which implies that the authorities do not yet provide the public with political rights to participate in the decision-making on PPP projects.

It is worth noting that in some instances even informing can take place in an improper manner, that is, in a way that is not helpful or not in line with the public's concerns. Reactions by two internet users to the news about forthcoming PPP projects, expressed on PPP Centre's Facebook page can illustrate this point. Commenting on information provided by the media outlet – Vlast (2017) on upcoming PPP project, the construction of the proton centre in the city of Taldykorgan, one woman made the following remark:

Why is it always written about the intentions to implement projects, and not written about the terms and conditions of competitive tendering? (PPP Centre, 2017).

Another social media user commented on the information provided by PPP Centre on its Facebook page, describing the number of PPP projects being increased in many sectors, exemplified in an overview conducted by the information and analytical portal 'Informburo' (PPP Centre, 2018a). The user commented:

There is no awareness. We would gladly take, but where are projects? Your website is empty, akimats [local executive bodies] do not know anything, blah, blah, blah...provide more open information and sources (PPP Centre, 2018a).

Summing up, the analysis of the afore-mentioned respondents' answers demonstrates that the public learns about the forthcoming PPP projects from open sources post-factum, that is, when decisions on PPPs have already been made by the authorities. This is explained by the fact that the government bodies of Kazakhstan still practise informing the public about upcoming PPP projects through official websites and the mass media, thereby not enabling the public to participate in the discussion of PPPs prior to their approval. Such a circumstance does not allow the public to express its voice before PPP projects are approved, which considerably limits the political rights of citizens and interest groups to participate in the decision-making on PPP projects. Consequently, such a situation indicates that there is still a problem with ensuring public participation in the decision-making on PPPs in Kazakhstan, where the authorities still circumscribe the rights of citizens and interest groups to have their say in PPP projects that concern their lives and interests.

5.3. Deficiency in public participation in the decision-making on PPP projects: an analysis of existing legislation

As noted previously in the introduction, answering the question of whether or not public participation is ensured in the decision-making on PPP projects in Kazakhstan requires an examination of current legislation. In particular, it is necessary to ascertain whether citizens, as well as other members of society such as interest groups are furnished with political rights to participate in the decision-making on PPPs, and whether such rights are enshrined in the existing legislation of the Republic of Kazakhstan. The examination of existing legislation will be a revealing endeavour, especially with regards to the democratic rights of the citizenry in a given state. In other words, whether or not such rights are ensured in the legislation of Kazakhstan demonstrates the extent to which politicians and officials in the country, that is, the representatives of the public protect and promote the interests and rights of electors, on whose behalf and for whom the representatives make and execute public policies, along with a PPP policy.

The system of legislation in place in the Republic of Kazakhstan comprises of different levels of normative legal acts that are adopted by government bodies of Kazakhstan (Law 'On Legal Act', 2016). Different public relations are regulated by different types of normative legal acts, and therefore, I analyse those types of normative legal acts that regulate issues related to public participation in decision-making and PPP. Of particular interest for analysis are codes, laws, decrees of the Government and orders of ministers, which according to article 7, section

2 of the Law ‘On Legal Acts’ (2016) are considered to be the main types of normative legal acts. Amongst these myriad types of normative legal acts, I purposefully examine those whose provisions regulate public participation in decision-making. The focus on public participation in decision-making is due to the existence of normative legal acts regulating the issues related to public participation in decision-making in general, whose provisions may or may not allow for public participation in the decision-making on PPPs. In addition to these provisions, I also scrutinise the normative legal act regulating the public relations in the sphere of PPP. This is, as mentioned in the previous section, Order No. 80, which determines the procedure for planning and implementing PPP projects. The provisions of this order also need to be examined with regards to the question of whether or not they allow of public participation in the decision-making on PPPs.

Surveying the existing legislation of Kazakhstan, the Law of the Republic of Kazakhstan ‘On Public Councils’ No.383-V of 2 November 2015 is noteworthy. The preamble of this law states that the law determines the legal status and the procedure for forming and organising the activities of public councils (Law ‘On Public Councils’, 2015). As article 1, section 1 of this Law indicates, public councils are considered to be consultative and advisory, and are supervisory boards comprising of representatives of ministries and local government bodies, as well as non-profit organisations and citizens. Article 3, section 1 of the same Law declares that the purpose of the activity of public councils is to express the opinions of civil society on socially significant matters. One of the objectives here is to represent the interests of civil society and to take into account public opinion when discussing and making decisions at both national and local levels, pursuant to article 3, section 2, subsection 1 of the Law (Law ‘On Public Councils’, 2015). It is indeed a welcome fact that the Government of Kazakhstan has adopted such a law allowing citizens and the representatives of civil society to participate in the activities of public councils, and to take part in the decision-making on public affairs.

However, despite initial appearances, further examination of the Law ‘On Public Councils’ reveals that the public cannot in fact participate in the decision-making on PPP projects through participation in the activities of public councils. This is seen through the list of powers that public councils have at national and local levels, as specified in article 5, section 1 of the Law ‘On Public Councils’ (2015). These powers include the following:

- discussion of drafts of budget programmes of an administrator of budget programmes, of strategic plans or programmes for the development of territories, and of state and governmental programmes;

- discussion of the implementation of budget programmes of an administrator of budget programmes, of strategic plans or programmes for the development of territories, and of state and governmental programmes;
- discussion of the reports of executive bodies on the achievement of target indicators;
- discussion of the reports of an administrator of budget programmes on the implementation of budget programmes, on the execution of plans for receipts and expenditures of money from the sale of goods, works, and services, and on the receipt and expenditure of money from charity;
- participation in the discussion and development of drafts of normative legal acts concerning the rights, freedoms and duties of citizens;
- consideration of individuals and legal entities' appeals on public administration improvement, and organising state apparatus' transparent work such as compliance with official standards of ethics;
- development of proposals on improving the legislation of the Republic of Kazakhstan, and their submission to government bodies;
- implementation of public control in forms stipulated by the Law;
- consideration of draft statute of public council at first meeting and its submission to a government body for approval;
- creation of commissions in areas of activity;
- participation in local government bodies' work on regulation of land relations in accordance with the land legislation of the Republic of Kazakhstan.

As the provisions of the Law 'On Public Councils' set out above demonstrate, advisory boards such as public councils do not provide a way for the public to participate in the decision-making on PPPs. As such, on the whole it can be said that the powers of public councils are thus far limited. The absence of the opportunity for the public to participate in the decision-making on PPPs through public councils is also confirmed by the fact that none of the interviewees noted above in section 5.2., mentioned anything about public councils in their response. It could therefore be stated that the Law 'On Public Councils' does not yet enable the public to participate in the decision-making on PPPs, thereby circumscribing the political rights of citizens and NGOs to express their voices on PPP projects before they are approved.

Another normative legal act that should be mentioned in this discussion is the Law 'On Administrative and Territorial Structure of the Republic of Kazakhstan' No.2572-XII, adopted on the 8th of December 1993. This Law was supplemented by the new provision based on the Law 'On Introduction of Amendments and Additions to Some Legislative Acts of the Republic

of Kazakhstan on Onomastics Issues', article 14-1, in January 2013, stipulating the consideration of public opinion by local government bodies on some public matters, which is generally a positive move. However, upon further inspection it is revealed that this new provision specifies the consideration of public opinion by local government bodies only when naming and renaming the administrative and territorial units, constituent parts of localities, and when clarifying and changing the transcription of their names. It seems, therefore, that the legislators of Kazakhstan pass laws which allow the public to express their opinions only with regards to certain public matters and not others. As such, the legislators circumscribe the participation of citizens and NGOs in the decision-making on more important public matters affecting their lives and interests, including on PPP projects.

The next normative legal act whose provisions regulate citizen participation issues in public affairs is the Law 'On Local State Government and Self-Government in the Republic of Kazakhstan' No. 148-II of 23 January 2001. In particular, in 2009 this law was supplemented by a chapter providing for citizen participation in local self-government (Law 'On Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Local State Government and Self-Government Issues', 2009). Indeed, the creation of the institution of local self-government in Kazakhstan is a highly positive measure in terms of the enhancement of local democracy and of the further democratisation of state governance at large. Moreover, in 2013 and 2017, additional amendments were introduced to the law aimed at further advancement of local self-government.

In order to deal with issues of local importance, an assembly and a meeting of local community are held in the territories of cities of district significance, rural boroughs, townships, villages (Law 'On Local Government and Self-Government in the Republic of Kazakhstan', 2001). As can be discerned, local self-government is carried out exclusively in the territories of the above political divisions. Local communities dwelling in the territories of these administrative divisions can participate in local self-government through instruments such as assembly and meeting.

In accordance with article 39-3, section 2 of the Law 'On Local Government and Self-Government in the Republic of Kazakhstan' (2001), an assembly of local community is held on the following important issues of local importance if necessary:

- determination of priority tasks of local community and of deadlines for their implementation;

- determination for a period of four years of the composition of participants in a meeting of local community, to which they are delegated;
- making suggestions to ‘maslikhats’ (translated from the Kazakh language as a local representative body) of districts (cities of region significance); to ‘akims’ (translated from Kazakh language as a head (mayor) of local executive body) of districts (cities of region significance), cities of district significance, rural boroughs, townships, villages, and to local self-government bodies on issues of local importance;
- hearing and discussion of akims’ reports on the implementation of their functions of local self-government;
- hearing and discussion of annual reports of akims of city of district significance, rural borough, township, village on the results of the implementation of the Plan for pasture management and their use;
- hearing and discussing reports of maslikhat on the work done by maslikhat of district (city of region significance) and on the activities of its standing commissions;
- other issues of local importance, determined by an assembly of local community.

According to article 39-3, section 3 of the Law ‘On Local State Government and Self-Government in the Republic of Kazakhstan’ (2001), a meeting of local community is held on the following issues of local importance:

- discussion and consideration of drafts of programme documents and community development programmes;
- concurrence of the draft budget of city of district significance, rural district, township, and of the report on budget execution;
- concurrence of decisions of the apparatus of akim of city of district significance, rural borough, township, village for the management of communal property of city of district significance, rural borough, township, village;
- formation of commission of local community from amongst the participants in a meeting of local community in order to monitor the implementation of the budget of city of district significance, rural district, township, village;
- hearing and discussion of the report on the results of monitoring of budget execution of city of district significance, rural borough, township, village;
- concurrence of alienation of communal property of city of district significance, rural borough, township, village;
- discussion of topical issues of local community, drafts of normative legal acts affecting the rights and freedoms of citizens;

- concurrence of candidates proposed by akim of district (city of region significance) for the position of akim of city of district significance, rural borough, township, village for further submission to the maslikhat of district (city of region significance) for the election of akim of city of district significance, rural borough, township, village;
- initiation of dismissal issue of akim of city of district significance, rural borough, township, village;
- making suggestions on the appointment of heads of state institutions and organisations financed from local budget, which located in the respective territories;
- other issues of local community.

As can be seen from the foregoing, the above lists of issues considered at an assembly and meeting of local community do not contain such the issue of public discussion or participation in the decision-making on PPPs before they are approved. In other words, local communities do not have the right to participate in the decision-making on PPP projects. Moreover, although the institution of self-government is functioning in the country, local communities are not vested with the rights to participate in the direct decision-making on PPP projects. Thus, it can be said that although the authorities of Kazakhstan ensure the participation of local communities in self-government, they do not grant local communities the right to participate in the decision-making on PPP projects, let alone participation in the direct decision-making on PPPs.

The next normative legal act that I examine is the Order of the Minister of Environmental Protection of the Republic of Kazakhstan No. 135-p of 27 May 2007, which determines the 'Rules for Conducting Public Hearings'. As previously stated, consultation is a form of participation that includes public hearings, through which the public can participate in the decision-making process, including on PPP projects. Therefore, in general, these rules legally allow the public to participate in the decision-making on PPP projects through public hearings as a form of participation. However, through a further analysis of the provisions of the above rules, it can be ascertained that these rules apply solely to issues related to environmental protection. This is explained by the fact that according to the section 1 of the Order of the Minister of Environmental Protection of Kazakhstan (2007), the rules have been developed in compliance with the Environmental Code of the Republic of Kazakhstan of 9 January 2007, and establish the procedure for organising and conducting public hearings for discussing environmental impact assessment materials. As can be discerned, therefore, the above rules circumscribe the public to participate in the decision-making on PPP projects which are implemented in other areas of activity.

In addition to the ministerial order noted above, there are other normative legal acts that regulate the public relations concerning public hearings on environmental protection issues. For example, in April 2016 the Environmental Code of the Republic of Kazakhstan was supplemented by two articles – article 57-1 ‘Public participation in the decision-making on environmental protection issues’ and article 57-2 ‘Conducting public hearings’ (Law of the Republic of Kazakhstan, 2016). As can be seen, article 57-1 of the Environmental Code (2007) stipulates the right of the public to participate in the decision-making on environmental protection issues that legally allows of public participation in the decision-making on PPP projects that are realised in the sphere of environmental protection. Article 57-2 of the Environmental Code (2007) also specifies public hearings through which public participation in decision-making can be effectuated. Furthermore, article 57-2 of the Environmental Code (2007) allows of holding public hearings not only on projects in the sphere of environmental protection, but also in other areas of activity in accordance with the list determined by the authorised body in the field of environmental protection. Indeed, such new changes in legislation are a positive move, furnishing the public with the right to participate in the decision-making on projects, including PPP projects that are realised in other areas of activity, not confining only to the sphere of environmental protection.

Article 57-2 of the Environmental Code (2007) specifies certain areas of activity, determined by the authorised body in the field of environmental protection, within which projects are to be brought to public hearings. Consequently, in order to illuminate the types of economic activities on which projects are to be brought to public hearings as a form of participation in decision-making, including on PPP projects, I scrutinise the Order of the Acting Minister of Energy of the Republic of Kazakhstan No. 240 of 10 June 2016 ‘On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings’ (hereinafter - Order No. 240). This Order specifies the following areas of activity within which projects are to be brought to public hearings:

- agriculture;
- forestry;
- mining industry;
- processing industry;
- construction;
- transport;
- electricity and energy supply;
- water supply;

- water drainage;
- waste management;
- production and use of potentially dangerous biological substances, including genetically modified organisms and products;
- construction and placement of installations at the catchment areas of enterprises using for production purposes potentially hazardous chemical, biological substances and radioactive materials, leading to pollution and clogging of waters.

It is clear that the legislators of Kazakhstan have substantially expanded the scope of economic activities on which projects are to be brought to public hearings, thus allowing of public participation in the decision-making on PPP projects involving other areas of activity, not limiting only to the sphere of environmental protection. However, further in-depth examination of the Order No. 240 (2016) reveals that the Order is yet to allow public hearings to take place on PPP projects involving certain types of economic activities. For example, section 5 of the Order No. 240 (2016) specifies the following types of economic activities in the sphere of construction within which projects are to be brought to public hearings:

- 1) construction of railways (trunk roads);
- 2) construction of airports with the length of the main runway at 2,100 metres or more;
- 3) construction of public automobile roads with the exception of economic automobile roads and streets in localities;
- 4) construction of commercial ports, berths for loading and unloading, connected with coastal and remote ports (with the exception of berths of ferry crossings), which can take ships with the displacement of more than 1350 tons;
- 5) construction (reconstruction) of dams and other objects designed for the retention or permanent storage of water for which a new or additional amount of retained or stored water exceeds 10 million cubic metres;
- 6) construction of overhead transmission lines of a 220V or more, and with a length of more than 15 kilometres, and regardless of extension within the boundaries of localities;
- 7) construction of landfills for the disposal of hazardous and solid wastes.

As we can discern from the above list, public hearings cannot be held when constructing other crucial facilities, such as hospitals, kindergartens, schools, prisons, resorts, bridges, sports buildings or as mentioned earlier, proton centres and many other public facilities. This is while, as mentioned in Chapter 3, there are PPP projects that are being implemented in various

segments of social sphere, and which involve the construction of such public facilities as enumerated above. Such a legal circumstance circumscribes the rights of citizens and interest groups to have their say in certain PPP projects that affect their lives and interests. On top of that, as indicated above, the public cannot participate in public hearings on the construction of streets and economic automobile roads in localities, thus limiting the political rights of local communities to have their say in relevant local PPP projects.

Apart from the normative legal acts analysed above, I also examine the Order of Acting Minister of National Economy of Kazakhstan No. 80 of 27 February 2018 ‘On Introducing Changes and Amendments to Some Orders of the Authorised Body on State Planning’. It should be noted that the Order No.80 (2018) defines the ‘Rules of Submitting, Considering and Selecting Concession Projects’ (hereinafter - Rules 1) and the ‘Rules of Planning and Implementing Public Private-Partnership Projects (hereinafter - Rules 2).

As previously discussed in section 5.2., one of the respondents, the representative of the local executive body, the Department for Education of Astana city, noted that there is a procedure for concurring in PPP projects. Studying the above Rules 1 and Rules 2 reveals that the procedure for concurring in concession and PPP projects includes the development, examination, concurrence and approval of PPP and concessions projects (Order No. 80, 2018). Furthermore, it can be seen that the procedure for developing, examining, concurring and approving tender documentation (e.g. feasibility study and/or design and estimate documentation) is carried out by government bodies with the involvement of quasi-state institutions (Order No. 80, 2018). For example, pursuant to section 18 of Rules 1, the responsible government body for the implementation of concession project develops tender documentation and concurs with the authorised bodies on state planning, budget execution, and of monopoly regulation and control if a concession project relates to the areas of natural monopoly (Order No. 80, 2018). With regards to PPP projects, in accordance with section 25 of Rules 2, the organiser of tendering process, that is a government body responsible for implementing PPP projects, submits tender documentation for concurring to the central or local authorised body on state planning (Order No. 80, 2018). Moreover, according to section 21, paragraph 2 of Rules 2, central government bodies conduct the examination of tender documentation of national PPP projects, and accordingly, local government bodies conduct the examination of tender documentation of local PPP projects (Order No. 80, 2018).

As mentioned earlier, quasi-state institutions are involved in the preparation and concurrence processes of tender documentation. For example, in section 27 of Rules 2 it is indicated that the central or local authorised body on state planning submits tender

documentation for its examination to PPP Centre or legal entities which are designated by local executive bodies to do that job (Order No. 80, 2018). It should be remarked that the PPP Centre is a quasi-state institution that legally operates under the state ownership. This is due to the fact that section 1 of the Decree of the Government of the Republic of Kazakhstan ‘On the Creation of the Specialised Organisation on Concession Issues’ (2008) declares that the PPP Centre has been established with a 100 per cent of state participation in its authorised capital.

With respect to legal entities which are designated by local executive bodies to conduct the examination of tender documentation, there is no explanation of these legal entities in the Order No. 80 (2018). However, in section 34-1 of the old redaction of the ‘Rules for Planning and Implementing Public-Private Partnership Projects’ it was stipulated that the examination of tender documentation was allowed to be conducted by financial institutions (e.g. second-tier banks, consulting companies) with experiences in financial and investment analyses (Order of the Acting Minister of National Economy of the Republic of Kazakhstan, 2015). It is therefore possible that now local executive bodies could be involving financial institutions, such as commercial companies, in conducting the examination of tender documentation of local concession and PPP projects. Notwithstanding, in order to ascertain what legal entities are involved by local executive bodies in conducting the examination of tender documentation of PPP projects, I endeavoured to find relevant information from online sources. The official website of ‘Regional Centre of Public-Private Partnership of the East Kazakhstan Region’ JSC (2019) informs that the company develops and conducts the examination of tender documentation of local investment projects, including local concession projects. Additionally, the official Facebook page of ‘Regional Centre of PPP of the Kyzylorda region’ LLP (2019) also informs that this firm develops and conducts the examination of local investment projects, along with local PPP projects. Such information is noteworthy, insofar as it means that local executive bodies incorporate the regional PPP centres, which are effectively commercial organisations, in conducting the examination of tender documentation of local PPP projects. This fact further implies that members of society such as non-commercial organisations do not have the opportunity to participate in any stage of planning of PPP projects compared to quasi-state and commercial organisations.

Rules 1 and Rules 2 also specify the involvement of legal entities which are designated by central or local executive bodies to render consultancy on national and local concession projects and national PPP projects respectively (Order No. 80, 2018). Nonetheless, it has been revealed that the legal entity involved in concession and PPP projects consultancy is also a quasi-state institution. To illustrate, according to the Decree of the Republic of Kazakhstan

No.33 of 2 February 2017, 'Kazakhstan Project Preparation Fund' LLP has been designated to render consultancy on national and local concession projects and on national PPP projects. Furthermore, it has been ascertained that the founders of this LLP are the National Managing Holding 'Baiterek' JSC and PPP Centre, possessing 97.7 % and 2.3 % of shares respectively (KPFF, 2018). As previously discussed, the PPP Centre is the legal entity with 100 per cent of state participation in its authorised capital. The National Managing Holding 'Baiterek' JSC on the other hand, has as its sole shareholder the Government of the Republic of Kazakhstan (Decree of the Governemnt 'On Approval of the Development Strategy of the Joint Stock Company 'National Managing Holding Baiterek' for 2014-2023', 2014). As we can understand from these normative legal acts, the authorities mainly involve the quasi-state institutions in certain stages of planning of PPP projects, whereas the representatives of non-state sector, that is, NGOs are deprived of such opportunities.

Additionally, Rules 2 also specify the procedure for concurrence and examination of business plans for national and local PPP projects, which are developed by potential private partners (Order No. 80, 2018). Nevertheless, the analysis of the provisions of Rules 2 governing this issue, that is sections 138-149, shows that only government bodies, PPP Centre and legal entities which are designated by local government bodies are involved in those processes (Order No. 80, 2018). For example, section 146 of Rules 2 stipulates that the PPP Centre is involved in conducting the examination of business plans for PPP projects (Order No. 80, 2018). Furthermore, pursuant to section 146 of Rules 2, legal entities may also be included in the examination of business plans for PPP projects by local executive bodies (Order No. 80, 2018). However, the provisions of Rules 2 do not define which legal entities are designated by local executive bodies to conduct the examination of business plans for PPP projects. Nonetheless, as mentioned earlier, the official Facebook page of 'Regional Centre of PPP of Kyzylorda Region' LLP (2019) informs that this firm conducts the examination of local investment projects, as well as business plans for such projects, including local PPP projects. It can therefore be seen that local executive bodies involve the regional PPP centres, which are quasi-state organisations, in conducting the examination of business plans for PPP projects, thereby excluding the participation of NGOs when planning PPP projects.

By and large, it is worth remarking that the procedure for concurrence and examination of tender documentation and business plans for PPP and concession projects is carried out by government bodies with the involvement of quasi-state institutions such as PPP Centre and its regional branches. Therefore, such processes have nothing to do with public participation while planning PPP projects. However, further analysis of the Order No. 80 (2018) demonstrates that

there are additional provisions governing the possible creation of project groups, whose members can be involved in some stages of planning PPP projects. For instance, in accordance with section 7, subsection 1, paragraph 2 of Rules 1, the government body responsible for the implementation of concession project “can create a project group by involving subordinate organisations under ministries, independent experts, design, engineering, consulting and other companies, as well as government bodies for the development of tender documentation” (Order 80, 2018). It is indeed a welcome sign, based upon these provisions, that independent experts can be involved in the work of a project group. However, it is evident that the members of a project group can, by and large, be made up of representatives of government bodies, subordinate organisations under ministries, and commercial companies. This is while, according to the redaction of the aforementioned provision of Rules 2 (section 7, subsection 1, paragraph 2), the representatives of NGOs are not considered as members of a project group. Most importantly, there is a legal nuance related to the above-discussed provision of Rules 1, which shows that a government body responsible for the implementation of concession project is not obliged to create a project group. This means that a project group may not be created at all, in which case independent experts would not be able to participate in the development of tender documentation of upcoming concession projects.

In section 9, paragraph 1 of Rules 2 it is stipulated that “... if necessary, to ensure the quality of project management, an interdepartmental project group is created by involving specialists from subordinate organisations under ministries, independent experts, design, engineering and other companies, government bodies, representatives of the National Chamber of Entrepreneurs of the Republic of Kazakhstan, subjects of entrepreneurship” (Order No.80, 2018). As the provisions of Rules 2 discussed above indicate, while independent experts may be involved in the work of an interdepartmental project group, members of this group would again be mainly comprised of representatives of government bodies, subordinate organisations under ministries, and commercial organisations. It could however be argued that NCE RK is a non-governmental organisation, and thus the interests of this NGO are indeed represented in the work of any interdepartmental project group. While it is undeniable that NCE RK is a non-governmental organisation, the legal interpretation should also be recognised, which states that NCE RK exclusively represents the interests of commercial entities. For instance, in accordance with article 3, section 2, subsection 2 of the Law ‘On the National Chamber of Entrepreneurs of the Republic of Kazakhstan’ (2013), one of the objectives of NCE RK is to represent, provide and protect the rights and legitimate interests of business entities as the subjects of entrepreneurship. Generally speaking, given the profitability of PPP for private companies, it

is justifiable to have NCE RK as an institution that, where possible, promotes and protects the interests of private companies, including by participating in the work of an interdepartmental project group, while other NGOs are not eligible to do so. Moreover, the other advantage NCE RK has over other NGOs, is provided by the legislators of Kazakhstan as seen from the provisions of the Law ‘On Public- Private Partnership’ (2015). According to article 28 of the Law ‘On Public-Private Partnership’ (2015), the representatives of the NCE RK can participate in the work of competition commissions on the selection of private partners and monitor the implementation of PPP projects.

It is worth emphasising here the legal nuance embedded in the provisions of Rules 2 mentioned earlier, that is, the inclusion of the words ‘if necessary’ in the redaction of the section 9, paragraph 1 of Rules 2 (Order No.80, 2018). This shows that the government body responsible for implementing a PPP project is not obliged to create an interdepartmental project group, and therefore may not create it. Therefore, again, independent experts may not be able to participate in some stages of planning PPP projects, unless the government body responsible for implementing a PPP project decides to create an interdepartmental project group. Generally speaking, such non-mandatory provisions of both Rules 1 and Rules 2 on the creation of project groups could play into government bodies’ hands, especially for local ones, which may prefer not to create such project groups, insofar as their creation might induce timing, administrative, organisational and other costs, thereby fulfilling the central authorities’ demand for the implementation of certain number of PPP projects over a year. Moreover, it is possible that the creation of project groups and the involvement of independent experts in their work might lead to animadversions among the members, which could potentially stall the government bodies’ plans. This could become problematic, especially given government bodies’ interest in the speedy promotion and implementation of PPP projects at large.

It is arguable that the government bodies of Kazakhstan somewhat are reluctant to involve the general public, including the representatives of NGOs in the decision-making on public affairs, along with PPP projects. An illustrative example here could be the construction of toll roads, based on comments given by the head of the Independent Automobile Union of Kazakhstan, Edokov, in an interview to the news channel – KTK (KTK, 2017). In his conversation with KTK reporter, Edokov censured the introduction of toll roads in the country, including policymakers for ill-advised and inequitable decisions (KTK, 2017). Castigating decision-makers, Edokov said that despite the fact that citizens whose incomes were on a downward trajectory could hardly maintain their livelihoods, the rulers were about to impose road fees on citizens to drive into their own cities (KTK, 2017). To Edokov, the chargeable

entry as a money-making activity at the expense of citizens' pockets, could lead to traffic jams and other difficulties as a result of limiting vehicles to enter a city, while other alternatives could be deployed such as employing public transport as suburban trains or high-speed buses. Decrying toll roads, Edokov basically views all revenues as intended for private actors, when they should be directed at replenishing a city budget, and approximately up to 10 per cent of proceeds ought to be used for remunerating an operator company, which can be hired by local administration for operating toll roads (Edokov, 2017 cited in KTK, 2017). The most critical question asked by KTK reporter was, based upon Edokov's previous acknowledgement of the fact, regarding his imperfect relationships with the authorities who do not include the representatives of the public such as the union headed by him and other NGOs in discussions on toll roads (KTK, 2017). Edokov answered this question in the following way:

If I think something, I will say it – I will not hold my tongue. And financial issues, for example, try to be discussed behind closed doors. Money likes silence. And I will ask how much you want to receive from this, what scales, why you set such a price, and why 80 per cent should go into your pockets, not to a city? I will say this and bring it to public discussion. But who will want it ... (Edokov, 2017 cited in KTK, 2017).

What Edokov's answer here indicates is the possible claim that the authorities are reluctant to involve the NGO headed by him, and in principle, other NGOs in the discussion of public matters, including toll roads that are often constructed and operated through a PPP mechanism, which concern the interests of NGOs.

In general, it should be remarked that the authorities of Kazakhstan thus far do not cooperate with NGOs sufficiently, and the involvement of NGOs in the decision-making on public matters remains inadequate. For example, delineating the role and development of NGOs in Kazakhstan, Luong and Weinthal (1999, p. 1270) maintain that NGOs are not involved in the internal (domestic) politics by the authorities, and therefore they predominantly concentrate on external (international) problems. Furthermore, speaking at the international expert event – 'Interaction of Civil Society Institutions of Russia and Kazakhstan: State and Prospects', the President of the public fund 'Eurasian Expert Council' – Lepsibayev (2017, cited in *Kazakhstanskaya pravda*, 2017a) states that the Government of Kazakhstan has failed to create the robust institutional and legal mechanisms for effective cooperation with NGOs.

5.4. Conclusion

The aim in this chapter has been to examine the current state of ensuring public participation in the decision-making on PPP projects in Kazakhstan. The analysis I have presented in this chapter has been based upon my qualitative interviews conducted as part of my fieldwork in Kazakhstan, as well as an in-depth analysis of the normative legal acts in place that regulate public participation issues in the country. As the analysis of the data from the interviews shows, information on forthcoming PPP projects is regularly posted on the websites of government bodies and quasi-state institutions and is also publicised through the mass media. However, such a process on its own does not constitute the participation of the public in the decision-making on PPPs, insofar as there is no public discussion of PPP projects prior to their approval. In other words, such a process is merely informing on the part of government bodies that inform the general public about upcoming PPP projects post factum, that is, effectively after making decisions on PPP projects. Moreover, as can be discerned from the indignant reactions by citizens to the way the authorities inform about the upcoming PPPs, even informing does not take place in a proper manner. This shows that even in the sphere of informing the public, government bodies do not provide the full and necessary information on forthcoming PPP projects adequately, leaving aside public participation in the decision-making on PPPs.

Hence, as the analysis of respondents' answers demonstrates, the government bodies of Kazakhstan still practice informing about upcoming PPP projects, implying that they do not yet involve the public in the decision-making on PPPs. Therefore, there is still a problem of not ensuring public participation in the decision-making on PPPs by the authorities of Kazakhstan, meaning that the political rights of the public to participate in the decision-making on PPPs are limited thus far.

As the analysis of the existing legislation in Kazakhstan shows, there are various normative legal acts governing public participation in the decision-making on certain public matters. However, the laws of the Republic of Kazakhstan such as 'On Public Councils' (2015), 'On Administrative and Territorial Structure in the Republic of Kazakhstan' (1993) and 'On Local State Government and Self-Government in the Republic of Kazakhstan' (2001) do not allow of public participation in the decision-making on PPP projects. As for the Order of the Acting Minister of National Economy of Kazakhstan No. 80 of 27 February 2018, it only specifies the involvement of government bodies and quasi-state institutions in planning PPP projects, thereby excluding the participation of NGOs in planning PPPs. As I have noted, there are provisions of the Order No.80 stipulating the possible creation of project groups while

planning PPP projects with the possibility of involving independent experts, nonetheless, they are non-mandatory. Ergo, the participation of independent experts in the work of project groups cannot be guaranteed, inasmuch as it hinges upon on the decision of the government body responsible for implementing a PPP project, which is likely to be disinclined to create such project groups so as to promote PPP projects without being stalled on the part of independent experts. Furthermore, according to the same provisions of the Order No.80 regarding the creation of project groups, NGOs cannot be involved in the work of project groups, with the exception of NCE RK which protects and promotes exclusively the interests of commercial organisations, thus restricting the participation of other NGOs in planning PPP projects. On the whole, it can be said that the abovementioned normative legal acts circumscribe the participation of the general public in the decision-making on PPP projects.

Indeed, there is the Order of the Acting Minister of Energy of Kazakhstan No. 240 of 10 June 2016 that obliges public hearings on projects, which can also be legally applied to PPP projects. Notwithstanding, as I have shown, Order No. 240 does not oblige public hearings on projects involving certain types of economic activities in its provisions thus far. For example, public hearings cannot be held on the construction and operation of schools, kindergartens, hospitals, or sports facilities, whereas according to the statistics given in Chapter 3 most PPP projects are being implemented in the spheres of education, healthcare, physical education and sports, involving the construction and operation of the abovementioned public facilities. Additionally, the Order No. 240 does not allow of public hearings on the construction of economic roads and streets in localities, which also limits the rights of local communities to have their say in PPP projects regarding such constructions. Therefore, the Order No. 240 is yet to allow public hearings on PPP projects involving certain types of economic activities. Hence, the analysis of the existing legislation in Kazakhstan overall shows that the authorities still limit public participation in the decision-making on PPPs, thus signifying that there is a deficiency in public participation in the decision-making on PPP projects thus far.

Given these findings, it is worth noting that although the analyses of respondents' answers and of existing legislation have allowed us to draw certain conclusions regarding the current state of public participation in PPPs in Kazakhstan, these analyses do not answer the research question fully. In other words, more is needed to ascertain whether the authorities of Kazakhstan ensure public participation in the decision-making on PPPs in practice. To do so, in the next chapter I closely examine the cases of two ongoing PPP projects in the country.

Chapter 6 – Case Studies: Instances of Not Ensuring Meaningful Public Participation And Its Consequences for PPP Projects

6.1. Introduction

Having investigated the views of the interviewees and the existing legislation of Kazakhstan as it relates to public participation in the decision-making on PPP projects, in this chapter I examine more closely the state of public participation in the decision-making on PPPs in the country through looking at two particular cases. In particular, my aim here is to ascertain whether the authorities of Kazakhstan currently ensure public participation in the decision-making on PPPs in practice, that is, when planning PPPs. Importantly, I examine two large-scale PPP projects, the implementation of which concerns two different areas of activity within which projects are to be brought to public hearings in accordance with the existing legislation.

The first project pertains to the organisation of a leisure centre for the public. It envisaged the construction of a ski resort on a tract, namely on the Kok-Zhailau plateau located in the territory of Ile-Alatau National Natural Park, which is located approximately 10 kilometres from Almaty, Kazakhstan's former capital city. The project's feasibility study was under discussion for years, but in the end the project was aborted by the authorities in late 2019 (Informburo, 2019). The implementation of the project was under the supervision of the local executive body of Almaty, which is a city of national (republican) significance. Given that the resort was expected to be built in the territory of the Ile-Alatau National Natural Park, it is discernible that the implementation of the project concerns the sphere of environmental protection. As I discussed in the previous chapter, the existing legislation of Kazakhstan, particularly, the Order of the Minister of Environmental Protection of Kazakhstan No.135-p of 7 May 2007 prescribes that public hearings are mandatory for public initiatives or projects that concern environmental protection issues. It should be noted that this ministerial order also applies to PPP projects. However, as I will discuss in more detail, there were problems in ensuring public participation in the decision-making process of this project, especially at the initial stage of planning, which resulted in public opposition to the project, leading to different risks that adversely affected the course of the project. Most importantly, by not involving the public in the decision-making on the project, the authorities made a decision not taking into account the interests of people, thereby undermining representative democracy.

The second project concerns the country's transport sector and involves the construction and operation of a toll road encompassing the territories of several districts in Almaty region. As such, the implementation of this project is the responsibility of the local authorities of Almaty region. This PPP project is currently at its initial stage, with the toll road being under construction, and the PPP contract for its construction was concluded in February 2018. Similar to the first case, public hearings are mandated for such projects which involve the construction of automobile roads for public use, as legislated by the Order of the Acting Minister of Energy of Kazakhstan No. 240 of 10 June 2016. Moreover, the project should also be brought to public hearings according to the Order of the Minister of Environmental Protection of Kazakhstan No.135-p of 7 May 2007, which also concerns environmental protection issues in connection with the construction of the toll road. Similar to the first project, however, this project has also encountered different risks due to the failure on the part of the authorities to ensure public participation in the decision-making on the project, especially at the initial stage of planning. Moreover, due to the non-involvement of the public in the decision-making on the project, the regional authorities made a decision not taking the interests of local residents, thereby undermining representative democracy.

Given that both of these cases fall within the categories of projects for which provisions of the existing legislation mandate public participation in the form of public hearings, they offer valuable insights into current practices related to public participation in the country. In particular, examining these two PPP projects will allow me to ascertain whether or not the authorities of Kazakhstan currently involve the public in the decision-making on PPPs while planning PPP projects. Furthermore, the study of these PPP projects will allow for a broader understanding into how public participation or possibly non-participation of the public in the decision-making on PPPs affects the course of PPP projects during the planning stage. That is, it helps to ascertain the possible consequences for PPP projects that could result from the involvement or non-involvement of the public in the decision-making on PPPs by the authorities. I will look at each of these cases in turn, enumerating such effects and consequences associated with public participation in each case.

6.2. The Construction of the Ski Resort 'Kok-Zhailau'

As noted in the introduction, the first case to be examined in this chapter is that of the construction of a ski resort, which is planned on the Kok-Zhailau plateau ('Kok-Zhailau' in Kazakh means 'green pasture') located in the territory of Ile-Alatau National Park, 10

kilometres from Almaty, in the foothills of the Ile-Alatau mountain range. The location envisaged for the project, namely the Kok-Zhailau plateau, is the reason why people have alternatively named the project the ‘Kok-Zhailau’ ski resort or simply the ‘Kok-Zhailau’ project. Although the project was frozen once back in 2002 due to the lack of investment, the talks on resuming the construction of the ski resort began in 2011 (The Village, 2018). According to the information published in The Village (2018), in 2011 the local executive body of Almaty and the Ministry of Industry and New Technologies of the Republic of Kazakhstan decided to build a ski resort in the Kok-Zhailau plateau. Moreover, as The Village (2018) reports, at that time the budgetary funds were already allocated from the city budget of Almaty for the development of feasibility study for the project. At the beginning of 2012, speaking to reporters, the head of the Department for Tourism of Almaty, Zhulamanov, confirmed the local authorities’ plan to construct a ski resort, envisaging the funding for its construction both by the government and private investors, that is, through the PPP mechanism (KTK, 2012). In what follows, different decisions by the authorities and the public reaction to them will be described. As I will discuss, the project encountered various risks, most important of which was a social risk, from which other difficulties followed.

6.2.1. Social Risk

Since the talks on the construction of the resort were resumed, information was disseminated in the mass media, saying that the authorities of Almaty did not hold a public discussion on the project, that is, they did not involve the public in the decision-making on the project. For instance, in July 2017 at a press conference, Solyanik, a consultant for the ecological protection organisation ‘Crude Accountability’, declared that the Compliance Committee for the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereafter - Aarhus Convention), had acknowledged that the government’s decision regarding the construction of the ‘Kok-Zhailau’ ski resort had breached the provisions of the Aarhus Convention (Sputnik Kazakhstan, 2017a). In particular, the Committee pinpointed that article 6, paragraphs 2, 3, 8, and article 7 of the Aarhus Convention had been violated (Solyanik, 2017 cited in Sputnik Kazakhstan, 2017a). For example, article 6, paragraph 2 of the Aarhus Convention specifies that “The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner” (UNECE, 1998, p. 9). Also, article 7 of the Aarhus Convention stipulates

that “Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public” (UNECE, 1998, p. 11).

The very activist, Solyanik, was one of 12 citizens who had appealed to the Compliance Committee for the Aarhus Convention in 2013 regarding the Kok-Zhailau project and had stated that the local authorities of Almaty had contravened the Aarhus Convention when selecting a site for the construction of the ski resort, thus not involving the public in the decision-making on the project (Radio Azattyq, 2013). Solyanik also recognised that by not arranging a public discussion on such a crucial public issue, the local authorities precipitated the indignation of the public, thus leading to public objection to the project (Solyanik, 2013 cited in Radio Azattyq, 2013). For instance, when other activists of the ‘Stand up for Kok-Zhailau’ movement inquired about the feasibility study for the project, the local authorities did not fulfil that request, explaining that a summation of the feasibility study was on the website of the Department for Tourism of Almaty (Radio Azattyq, 2013).

As the facts enumerated above, including the results of the investigation conducted by the Compliance Committee for the Aarhus Convention demonstrate, the local authorities of Almaty did not ensure public participation in the decision-making on the ‘Kok-Zhailau’ project. Moreover, as can be seen, the authorities contravened not only the provisions of the Aarhus Convention, but also the provisions of the Order of the Minister of Energy of Kazakhstan No.135-p of 7 May 2007, which prescribes that the authorities must hold public hearings on projects concerning environmental protection issues.

It goes without saying that the non-involvement of the public in the decision-making on the project by the city authorities caused a flurry of vexation, prompting people to fiercely oppose the project. These were especially people who for years were struggling and attempting to prevent the construction of the ski resort, which could substantially damage the rich flora and fauna of the Ile-Alatau National Park. For example, in the spring of 2012 ecologists gathered around two thousand signatures of tourists who expressed their disagreements over the construction of the ski resort in the territory of the Kok-Zhailau plateau as a part of the Ile-Alatau National Park (Zakon.kz, 2012). Also, on the 17th of March 2013, approximately fifty activists climbed to the Kok-Zhailau plateau to protest against the project by laying on the ground and portraying the words ‘Kok-Zhailau SOS!’ on the snow (Kapital, 2013). Similarly, on the 1st of March 2016, the representatives of the ‘Stand up for Kok-Zhailau’ movement, together with the representatives of the National Social Democratic Party organised a picket on

the popular walking street of Almaty, Arbat, carrying banners, posters and flags, and clamouring “Freedom for national parks, national parks – for people, there is no lease!”, and “We are not the country – buy and sell!” (Informburo, 2016a).

Furthermore, the glaring problem around the project was noted over and beyond Kazakhstan, and people in other countries who were familiar with the unique nature of the Kok-Zhailau plateau did not remain silent and also showed solidarity with domestic NGOs and nature lovers (Radio Azattyq, 2013). By way of illustration, the German Conservation Union sent a letter to the leadership of Kazakhstan with a request to abandon the construction of the ski resort in the territory of the Ile-Alatau National Park (Radio Azattyq, 2013). As Zakon.kz (2012) reported, this matter was of importance for ecologists who recognised that the construction of the ski resort would cause great damage to the environment and destroy the national park with its rare inhabitants and rich vegetation. Ecologists also noted that the natural features of the plateau were not suitable for the construction of the ski resort, for the reason that the main hills of the plateau have gentle slopes of 10-15 degrees, which is unattractive to skiing and snowboarding lovers (Zakon.kz, 2012).

More importantly, as Zakon.kz (2012) informed, tourists and local residents did not wish to be divested of the uniqueness of ecological tourism in the Kok-Zhailau plateau. Therefore, rather than being against the development of tourism in the region, ecologists argued that instead of constructing the ski resort, along with shopping and entertainment centres, hotels and car parks as a way of developing tourism, it would be more sensible to cultivate ecological tourism in the territory of the Kok-Zhailau plateau and to advance the other existing ski resorts in the region (KZinform, 2012). Despite this, as Zakon.kz (2012) reported, local bureaucrats insisted on promoting the project, and believed that the existing ski resorts such as ‘Akbulak’, ‘Shymbulak’ and ‘Tabagan’ would not reap the desired economic benefits, whereas the Kok-Zhailau ski resort could attract a huge number of tourists, as is the case in places like Switzerland. Furthermore, the local authorities of Almaty in their letter to the Kazakh environmental protection and ecological society ‘Green Salvation’ pledged that during the construction of the ski resort international standards would be met by employing less harmful technologies and materials. They further promised that necessary measures would be undertaken to preserve the unique flora and fauna, and henceforth public hearings would be held on the project, Zakon.kz (2012) informs.

As KZinform (2012) reports, the representatives of the ‘Green Salvation’ society, not trusting to the local authorities, and in order to draw the attention of central authorities to the problems around the Kok-Zhailau project, sent an open letter to the President and Parliament

of the Republic of Kazakhstan on the 30th of January 2012. In the letter the members of the 'Green Salvation' society pointed out that the construction of the ski resort was contrary not only to the national legislation in the field of protection of conservation areas, but also to the international legal documents, such as the Convention on the Conservation of Biological Diversity (KZinform, 2012). It could perhaps be argued that several activists, as discussed above, had to resort to the international assistance by appealing to the Compliance Committee for the Aarhus Convention due to the possible red tape around the 'Kok-Zhailau' project in higher echelons of power and the concern about not gaining enough support inside the country.

Showing disapprobation of the project, at a press conference on the 13th of February 2014 the members of the 'Kok-Zhailau' public expert council voiced their discontent on the project (Matritca.kz, 2014). As an example, the head of the environmental protection movement 'Tabigat', Eleusizov, said that for the aim of developing ski tourism, it is possible to deploy an alternative place such as 'Tekeli', adding further: "from the very first I said that it is not a ski resort, it is a privatisation project" (Eleusizov, 2014 cited in Matritca.kz, 2014). Similarly, an activist for the 'Stand up for Kok-Zhailau' movement, Ashim, underlining the importance of Kok-Zhailau plateau, remarked that "Kok-Zhailau for Kazakh people is a sacred place, it is not just a green pasture, it is a heavenly pasture" (Ashim, 2014 cited in Matritca.kz, 2014). Another public figure, Svoik, added further that "it is necessary, at least, to build a resort that would work for a taxpayer, and not just for a few of our fellow countrymen" (Svoik, 2014 cited in Matritca.kz, 2014). Another figure present was the master of sports of international class in sport tourism and Doctor of Pedagogical sciences, Professor Vukolov, who claimed that "there are often avalanches about which we were convinced many times, but no one listens to us" (Vukolov, 2014 cited in Matritca.kz, 2014).

As the discussion of these developments around the project reveal, the local authorities of Almaty who were in charge of the project encountered serious issues at the planning stage of the project. One of those difficulties was a social risk that effectively evolved into a serious social problem precipitating public opposition to the project. As Hardcastle and Boothroyd (2003) argue, social risk within PPPs is associated with the protesting attitude of people, where individual members of society disapprove of a PPP project, or its separate components, and accordingly a PPP project does not find appropriate public support (Hardcastle & Boothroyd, 2003, p. 46). It can be seen that within the framework of the 'Kok-Zhailau' project the emergence of a social risk in effect evolved into a social problem, where the public, including environmentalists, NGOs, as well as tourists and local residents demonstrated their disapproval of the local authorities' decision on the project by organising recurring protests over several

years. It is clear that the main reason for the social risk was that the local authorities of Almaty by not involving the public in the decision-making process regarding the construction of the ski resort on the Kok-Zhailau plateau, ignored the interests of the public. Such a circumstance, as a result, led to the social risk factor of public objection to the project. Voicing a similar conviction, as mentioned earlier, one of activists, Solyanik, asserted that the local authorities themselves had provoked a “social and environmental conflict” by not discussing such a socially important project with the public (Solyanik, 2013 cited in Radio Azattyq, 2013). It can therefore be seen from these discussions that the social risk encountered by the local authorities of Almaty, in the form of public objection to the project, resulted in a protracted disagreement over the project between the public and the local authorities, which in turn affected the planned course of the project. As noted earlier, public objection to the project somewhat caused the project to be stalled, since although the project was announced and launched in 2011, its feasibility study was not yet approved.

An important fact that should be remarked upon here, is that during a continued and passionate dispute between the public and the local authorities, the third public hearing on the project was scheduled to be held by the local authorities on the 4th of May 2014 (Panorama, 2014). Nevertheless, as Panorama (2014) informs, the representatives of NGOs invited by the local authorities left the event in protest against the authorities’ ignorance of public opinion for many years. One of the activists who left the event was the head of the ‘Tabigat’ movement, Eleusizov, who stated that although public hearings were a right and requisite process, the local authorities were not listening to the public for years, thereby ignoring the opinions and interests of the public (Eleusizov, 2014 cited in Panorama, 2014).

It could be argued that the local authorities attempted to hold a public hearing on the project, thereby allowing the public to participate in the decision-making process regarding the PPP project. Notwithstanding, as the facts around the Kok-Zhailau project show, firstly, the local authorities of Almaty effectively made a decision on the project prior to any attempt to hold a public hearing. For example, as evidence, the representatives of the Compliance Committee for the Aarhus Convention revealed the violation of the provisions of the Aarhus Convention by Kazakhstani authorities who had not involved the public in the decision-making process on the project. Moreover, the local authorities breached the provisions of the Order of the Minister of Energy of Kazakhstan No.135-p of 7 May 2007, according to which they had to ensure public participation in the discussion of the project by holding public hearings. Secondly, it is clear from the words of the afore-mentioned activist, Eleusizov, that despite public hearings which only began to be held long after the decision was made on the

construction of the ski resort, the local authorities were not listening to public opinion, and instead were promoting their blueprint for the project. In other words, by arranging formal public hearings, the local authorities merely attempted to assuage public discontent and to persuade the public to support the already made decision. Ergo, in this context one cannot talk about ‘meaningful’ participation. Indeed, there is participation as a factual action or process, but there is no participation in terms of ‘purpose’ or achieving the goal for which the public participates in the decision-making on the project. Therefore, such participation is not meaningful and influential. It is not for nothing that Pateman (1970) defines ‘participation in decision-making’ as an influence in making a decision, resulting in the achievement of the requisite results for the participating individuals in decision-making (Pateman, 1970, pp. 68-69). Moreover, by defining a meaningful and influential form of participation in decision-making, Pateman distinguishes it from ‘pseudo-participation’ which as a term was introduced by Verba (1961), delineating it as participation or discussion on an issue about which a decision has already been made (ibid.). Besides, according to Verba (1961, cited in Pateman, 1970, p. 69), pseudo-participation is viewed more as an instrument of persuading individuals to support a decision that has already been taken, rather than as a discussion of an issue in order to come to a decision.

It is perhaps because of these previous encounters that the public observed the arrangement of the third public hearing as another attempt by the authorities to convince the public to support the decision that had already been made by the city authorities. Furthermore, the public was well aware that the local authorities were still ignoring public opinion, and therefore, as mentioned earlier, the public left the event in protest against the ‘pseudo-participation’ of the public in the decision-making process on the project. It turns out that although the local authorities began to hold public hearings, they did not ensure meaningful participation in the decision-making on the project. That is to say, they effectively continued to ignore the opinions and interests of the public.

6.2.2. Legal Risk

Following on from the social problem precipitated by the authorities’ failure to ensure meaningful participation of the public, people started turning to court in an attempt to stop the construction of the ski resort. Interested activists, for instance, appealed to court several times to stop the local authorities’ plan to construct the ski resort, in order to preserve the wildlife on the site of the construction. Such a situation indicates the public’s unwillingness to capitulate

to the decisions made without consulting it, and its determination to struggle against the local authorities' plan. However, in most cases courts took the local authorities' side. By way of illustration, on the 25th November of 2013 the Inter-District Economic Court of Almaty recognised the conclusion on the Kok-Zhailau project as legitimate and refused to designate the examination of the preliminary environmental impact assessment as invalid within the framework of the feasibility study for the project (Kursiv.kz, 2013). In this instance, the announcement of the judge's decision lasted only two minutes (Kursiv.kz, 2013). The lawsuit was filed by the ecological society 'Green Salvation' and the movement 'Stand up for Kok-Zhailau' against the Department of Natural Resources and Nature Management of Almaty (Kursiv.kz, 2013). On the 31st of March 2014 another lawsuit was brought forward by environmentalists to the Medeu District Court of Almaty for violation of the procedures for holding public hearings (Zakon.kz, 2014a). However, on the 7th of April 2014 the court ruled to leave the case without consideration (Zakon.kz, 2014a). Afterwards, a private complaint was filed against this latter court decision, and on the 27th of May 2014 at the second hearing the Almaty City Court ruled that the Medeu District Court's decision should be revoked, and the case should be sent for reconsideration to the same court (Zakon.kz, 2014a). Nonetheless, as Zakon.kz (2014a) reports, public activists themselves admit that it would be too early after the first victory in court to claim that the project would be completely abolished.

Later on, on the 11th of March 2016 the Specialised Inter-District Economic Court of Almaty rejected another lawsuit brought forth by the 'Green Salvation' ecological society against the local authorities (Radio Azattyq, 2016). This lawsuit had called for the recognition of the state environmental examination as illegal within the framework of the project 'Construction of the road to the ski complex 'Kok-Zhailau'', with the defendant being the Department for Automobile Roads of Almaty (Radio Azattyq, 2016). Castigating the court decision, the chairman of the 'Green Salvation' ecological society, Kuratov, declared that the court justified the deforestation of a large number of endangered trees (Kuratov, 2016 cited in Informburo, 2016b). Furthermore, as Informburo (2016b) reports, after the court session Kuratov indignantly opined that government bodies themselves violate their duties, and contrary to their responsibility to ensure the environmental protection for the sake of living creatures, including humans, fail to protect and promote the interests of the state and society as a whole.

As can be seen from the above facts, in addition to the social risk, the legal risk emerged within the 'Kok-Zhailau' project, which also evolved into a legal problem causing the drawn-out litigation between NGOs and the local authorities. These legal battles also affected the

planned course of the project. It is important to note that one of the factors contributing to this legal risk was the lack of public support for the project. That is to say, the clear opposition to the project by the public who desperately wished to prevent the construction of the ski resort, including by undertaking legal (judicial) measures. Delineating a legal risk in PFI, Hardcastle and Boothroyd (2003) cite the cases when a legal risk may arise. For example, according to Hardcastle and Boothroyd, a legal risk arises when certain local government bodies (public partners) do not have the right to sign a PPP contract (Hardcastle & Boothroyd, 2003, p. 45). Hardcastle and Boothroyd also describe a case where a legal risk occurred when it was necessary to make amendments to the legislation in order to vest private partners (in this case NHS Trust) with the right to sign a PPP contract, thus causing certain legal costs (*ibid.*).

Howsoever, within the framework of the Kok-Zhailau project, as can be observed, a legal risk manifested in the form of litigation between the public and the local authorities, which induced more detrimental consequences such as stalling the project, and thus tarnishing the reputation of the project. On top of that, the protracted litigation caused not only timing, but also moral and material costs, primarily for citizens. It can therefore be argued that, in addition to cases described by Hardcastle and Boothroyd (2003), a legal risk in PPP can also involve litigation between different parties. For instance, delineating legal risk in the practical implementation of PPPs, Hodge (2004) emphasises the legal difficulties in the form of lengthy litigation between various participants, including the state, citing the City Link infrastructure project in Melbourne, Australia, which incurred supplementary costs to participants, thus adversely affecting the project (Hodge, 2004, pp. 42, 44-45). Moreover, Hodge and Bowman (2003, cited in Hodge, 2004, p. 45) argue that the continuous legal disputes within the City Link project tainted the 'political success' of the project. It is clear that in the case of the Kok-Zhailau project, the legal problem arose directly as a result of the social problem itself due to the authorities' failure to take public opinion into account when making the decision regarding the project.

6.2.3. Investment Risk

Apart from the social and legal risks, the Kok-Zhailau project was subject to a financial, or more precisely an investment risk that also adversely affected the project by causing its delay. Delineating investment risk as one of the types of financial risks while implementing PPPs, Matayev (2014a) argues that this risk implies the likelihood of shortage of cash infusions into a PPP project (Matayev, 2014a, p. 182). Furthermore, Hardcastle and Boothroyd (2003) have

argued that an investment risk, or a risk associated with a sponsor can cause PPP projects to be delayed or annulled, insofar as investors would not have incentives to finance them (Hardcastle & Boothroyd, 2003, p. 47). In this regard, public objection to the Kok-Zhailau project somewhat caused an investment risk by not giving full confidence to the local authorities of Almaty to pour money into the project. This lack of confidence was due to the fact that investments would not be justified if the project was to be finally aborted because of the lack of public support. At a press conference, explaining the reasons behind the temporary suspension of the project in 2015, the mayor of Almaty, Baibek, stated the following:

Why? Because the public perceived that ambiguously ... Therefore we stopped in order to examine, and secondly, so as to optimise the project. I think it was very expensive (Informburo, 2017).

As this remark by the mayor demonstrates, the main reason for the suspension of the project was public objection to the project, with the secondary reason being the financial factor, that is, the costly nature of the project. The latter reason is confirmed by the decision made by the city authorities of Almaty on budget issue. As Informburo (2015) reports, according to the information of the press office of the local administration of Almaty, on the 16th of October 2015, upon reviewing the city budget for 2015, the local representative body of Almaty decided to suspend the project in order to reduce the ineffective spending of budgetary funds (Informburo, 2015). Despite this suspension, however, the deputy of the local representative body of Almaty, Alshanov, claimed in an interview that according to the governor of the city, the project could be resumed as long as any investor, either foreign or domestic, is interested in financing it (Kazinform, 2015). This information provided by the deputy indicates that in the period when the decision to suspend the construction of the ski resort was made, that is at the end of 2015, there was no potential investor who was interested in financing the project. On the other hand, the situation shows that the local authorities did not completely abandon the project, but temporarily suspended it until they were able to attract a potential investor. Furthermore, it could be argued that through suspending the project for a period, the local authorities decided to financially optimise the project with the purpose of taking advantage of time to assuage the public indignation so as to resume the project later on.

The ambition of the local authorities to resume and continue the project can also be explained further by the fact that they were craving the return of budgetary funds which had already been expended on the project. As Informburo (2018a) reported, the local authorities had already expended a considerable amount of budgetary funds on the development of feasibility study, design and estimate documentation, and several construction works. By way

of illustration, the information about the budgetary funds spent on the Kok-Zhailau project for 2012-2018 (indicated in the national currency of Kazakhstan) is given below (See **Table 6.1**).

Table 6.1: The information about the spent money on the resort ‘Kok-Zhailau’

Items of expenditure	2012-2015 years	2017-2018 years	Total
Feasibility study, and design and estimate documentation	3 499 900 480	195 664 000	3 695 564 480
Construction of electricity substation	4 231 896 000	4 299 672 000	8 531 568 000
Total	7 731 796 480	4 495 336 000	12 227 132 480

The table of the spent money on the resort ‘Kok-Zhailau’, Informburo, 2018a

As for the local authorities’ intention of continuing the project, at a press conference in November 2017 the mayor of Almaty, Baibek, speaking about the possible resumption of the project, declared that the local administration had done a lot of work to optimise the project taking into consideration the comments of the public since the project was suspended in 2015 (Informburo, 2017). As an example, the head of the local administration stated that the costs of the project were almost halved, and the area where trees were about to be felled was substantially pared (ibid.). More importantly, Baibek once again mentioned that the project could be resumed at investor’s expense (Informburo, 2017). This remark shows that at the time of the press conference, in November 2017, there were still no private partners interested in investing in the project. This is while, as Sputnik Kazakhstan (2017b) reported, the deputy head of the local administration of Almaty, Madiyev, speaking at the ‘Almaty Invest’ forum a month earlier, had acknowledged that the ‘Kok-Zhailau’ project required huge investments which the local government was not able to afford, and therefore, the local authorities were seeking potential investors to negotiate the project.

As the facts discussed here demonstrate, the ‘Kok-Zhailau’ project was subject to an investment risk as a result of which the project was forced to be suspended, thereby causing additional financial costs per day by being on hold. Furthermore, there were no positive breakthroughs in the project since 2011, despite the considerable expansion of budgetary funds by the local authorities. As Informburo (2017) reported, it is not for nothing that environmentalists believed that the local authorities’ decision to construct the resort was not only environmentally, but also economically ineffective. Furthermore, it should not be

forgotten that apart from the budgetary expenses on the development of feasibility study and the construction of electricity substation (Informburo, 2018a), the local government spent around KZT10 million on the formation of the authorised fund of a special project management company ‘Ski Resort Kok-Zhailau’ LLP (Kursiv.kz, 2012).

Later on, the information was circulating in the mass media that the further financing of the project could be provided by central authorities, as well as through the local budget. As Forbes Kazakhstan (2018) reported, the funding for the project would probably be provided from the national budget, along with the budget of Almaty city. Such information to some extent shows that not only the local authorities, but also the central authorities had an intention to resume and promote the project. As Forbes Kazakhstan (2018) additionally informed, speaking at the annual public meeting on the 21st of February 2018 the Mayor of Almaty announced that the final decision on the construction of the ski resort would be known after the release of the renewed feasibility study for the project scheduled for June 2018. However, according to the information later published by KazTAG, the preparation period for the renewed feasibility study was postponed until the end of 2018 (Zonakz, 2018a). This information indicates that the project was put on hold once again, thereby causing extra financial burdens on the city budget of Almaty due to its further daily idleness.

6.2.4. Political Risk

In addition to the social, legal, and investment risks enumerated above, the project also underwent a political risk which effectively occurred due to public opposition caused by the city authorities’ ignorance of the opinions and interests of the public, who had not involved the public in the decision-making on the project. As Li and others (2005b) argue, “poor public decision-making process” and “strong political opposition/hostility” are considered to be political risk factors (Li, et al., 2005b, p. 28). As I will show, these two political risk factors can be seen within the framework of the Kok-Zhailau project.

Describing a political risk in PFI, Hardcastle and Boothroyd (2003) report that a political risk may arise when a public partner is replaced to perform contractual obligations within the framework of a project (Hardcastle & Boothroyd, 2003, p. 46). To demonstrate, they cite a case when the central government body in the person of the Highways Agency was replaced by the Greater London Authority and the Transport London Authority (ibid.). Hardcastle and Boothroyd further stress that a political risk may arise due to a change in the structure of central or local authorities, thus opening the possibility that a new government body or a new

government changes the scheme of a project or cancels it altogether (Hardcastle & Boothroyd, 2003, pp. 46, 52). While I concur with the authors' arguments, it should be noted that a political risk may also emerge in cases where not a new government, but the government that initiates a PPP project itself could abandon a project, in particular due to the lack of public support for a project. Such a likelihood, that is, the probable cancellation of PPP project by the authorities on account of public disapproval, can be seen in relation to the Kok-Zhailau project. Statements made by the mayor of Almaty at the annual public meeting on the 21st of February 2018 demonstrate this possibility. At the meeting, the mayor of Almaty, Baibek, touched upon the Kok-Zhailau project, and apprised that since the project was suspended in 2015, the local administration was reviewing the feasibility study for the project, saying that a renewed feasibility study would be released in June 2018 (Vlast, 2018a). Moreover, in the same meeting Baibek also pledged to bring a new feasibility study for the project to public discussion this time (ibid.). The mayor also proclaimed that if the public were not to agree with new changes in the project, then the project would be annulled, uttering the following:

If in the end there are more minuses than pluses, this project will not be realised.

We speak about this straightaway and directly. (Vlast, 2018a).

This utterance by the mayor implies that as long as the public disapproved of the new feasibility study for the project this time, the project would not go ahead and could be abolished by the authorities.

Moreover, the statement by the mayor also indicates that the local authorities of Almaty were developing a renewed feasibility study for the project. However, it was not yet known at the time whether the public would approve of that new feasibility study for the project, and whether they would support the project at all. Furthermore, there was also a big question as to whether the local authorities would involve the public in the discussions of a new feasibility study for the project, and more importantly, whether they would ensure meaningful participation of the public in the decision-making processes regarding the project. On the whole, it can be stated that the 'Kok-Zhailau' project was subject to a political risk, for whose emergence the authorities effectively only had themselves to blame given the fact that they had been ignoring the opinions and interests of the public for years.

6.2.5. Corruption Risk

Lastly, apart from the social, legal, investment and political risks, a corruption risk also arose within the project due to the unlawful actions committed by the officials involved in the

project. Generally speaking, a corruption risk in public governance arises due to the inadequate public control over decisions taken by officials who are prone to abuse such a situation. For instance, Cobârzan and Hamlin (2005) discuss the views of Tanzi (1998) and Rose-Ackerman (1999), who have argued that the main motive for corruption in governance to be the uncontrolled power in the hands of bureaucrats, in particular of those who influence decision-making (Cobârzan & Hamlin, 2005, p. 32). In a similar vein, the Director General of the Central Asian Foundation for Democracy Development, Umbetaliyeva, speaking about corruption problems in the system of governance, including in Kazakhstan, argues that the corruption factor in Kazakhstan arises due to the lack of transparency during the decision-making processes on public affairs (Umbetaliyeva, 2018 cited in *KazakhSTAN 2.0*, 2018). It is worth noting that one of the reasons for inadequate public control that leads to corruption risks can be the non-involvement of the public in the decision-making on public matters. As Umbetaliyeva (2018) noted in the interview given to *KazakhSTAN 2.0*, in Kazakhstan people are not involved in the decision-making on public matters, especially in the decision-making processes concerning public money. Umbetaliyeva (2018, cited in *KazakhSTAN 2.0*, 2018) further claimed that compared to other countries, the public in Kazakhstan cannot have open access to the information regarding the purposes for which budgetary funds are allocated and how they are expended.

As for PPP, at various stages of the implementation of PPP projects, as well as during the planning phase, officials are vested with powers to make different decisions. These powers, further, could be abused by officials in order to be illegally enriched. For example, when planning and implementing PPP projects, various commissions on public procurement are created, including on the selection of potential private partners, whose members are mainly government officials. In such a situation, and in principle in any other situation when the public cannot control the decisions of officials, and when there is no adequate transparency and accountability from officials, they may abuse their powers by perpetrating corruption offenses. It is for such reasons that scholars such as Cobârzan and Hamlin (2005); Martimort (2008); Kwak, Chih and Ibbs (2009); Hwang, Zhao and Gay (2013) pay attention to corruption as a serious risk that could happen during the implementation of PPP projects.

As mentioned earlier, the officials involved in the ‘Kok-Zhailau’ project perpetrated a corruption offense. As Zonakz (2018b) reports, in April 2018 the International News Agency, KazTAG, requested and published the response of the Ministry of Finance of Kazakhstan, informing that several laws within the framework of the construction of power grids for the ski resort ‘Kok-Zhailau’ had been violated. According to the information of the Ministry of Finance

of Kazakhstan, the financial audit revealed the infringements of relevant provisions of the laws ‘On Public Procurement’ and ‘On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan’ within the framework of the project ‘Construction of electric networks for external power supply for the mountain resort ‘Kok-Zhailau’ (Zonakz, 2018b). Particularly, as the Ministry of Finance informed, a public customer in the person of the Department of Energy and Communal Services of Almaty had announced the tendering process despite the absence of positive state examination for the design and estimate documentation of the project (Zonakz, 2018b). As the Ministry of Finance reported, the information about the announcement of competitive tendering was posted on the 28th of January 2014, whereas at the time there was no positive state examination yet, and it was only issued on the 20th of February 2014 (Zonakz, 2018b).

Furthermore, according to the information obtained by KazTAG, several deputies of the lower chamber of the Parliament of Kazakhstan repeatedly made inquiries to the Government of Kazakhstan regarding the promotion of foreign manufacturers’ interests by officials to purchase transformers to be used for the ‘Kok-Zhailau’ project (Zonakz, 2018b). The Prime Minister of Kazakhstan responded to one of these inquiries by stating that the Ministry of Finance had assigned the check of public procurement arranged by the Department of Energy and Communal Services of Almaty during the period between 2012 and 2017 (Zonakz, 2018b). The Attorney General of Kazakhstan also reacted to the abovementioned inquiry by the deputies, saying that checks were being carried out by relevant government bodies, and moreover, the information concerning the misstatements of incumbents about the manufacture of transformers was being checked (Zonakz, 2018b). Notwithstanding, as KazTAG (2018, cited in Zonakz, 2018b) reports, the deputies’ queries remained on the agenda, and the deputies were not satisfied with certain measures undertaken, especially regarding the fact that one incumbent, whose negligence had costed KZT9 billion of budgetary funds in favour of foreign companies, got off with only a stern rebuke offered by the Anti-corruption Department of Almaty. As these facts demonstrate, the corruption offenses committed by officials involved in the ‘Kok-Zhailau’ project incurred the ineffective use of budgetary funds, thereby adversely affecting the project.

To sum up, it can be seen that the ‘Kok-Zhailau’ project which was announced and launched by the local authorities of Almaty in 2011 was doomed to failure from the start, noting the fact that it was once forced to suspend in 2015. The main reason for this failure is that the city authorities ignored the opinions and accordingly the interests of the public when they made decisions regarding the project, thus leading to the undemocratic decision-making process on the project. Furthermore, they did not ensure such a form of participation as public consultation,

particularly its instrument - public hearings on the project, contrary what they are instructed to do according to the Order of the Minister of Environmental Protection of Kazakhstan No.135-p of 7 May 2007. In other words, the local authorities contravened the political rights of citizens to participate in the decision-making on the PPP, thereby precipitating public objection to the project. In turn, public objection to the project as a social risk factor prompted other risks such as legal, investment and political. These risks with the various problems that they gave rise to, adversely affected the course of the project, causing its delay, as well as the ineffective use of budgetary funds, namely of taxpayers' money. Moreover, the project underwent a corruption risk that emerged due to the uncontrolled decisions of officials, which the public could not influence by reason of the lack of opportunity to participate in the decision-making processes on the project, including in the work of commissions on public procurement. As a result of the corrupt actions of local officials involved in the project, a considerable damage was done to the state budget, thereby tarnishing the project's reputation.

It is worth noting that although the local authorities began to hold public hearings long after the decision was made on the project, in fact they were not listening to public opinion. In other words, the local authorities merely wished to persuade the public to support the decision which had already been taken by them. That is, instead of ensuring meaningful participation the city authorities only sought pseudo-participation of the public in the decision-making on the project. It can therefore be discerned that despite holding public hearings, the local authorities were not yet listening to people's voices. That is to say, the local authorities were still not ensuring meaningful participation of the public in the decision-making on the project, insofar as their decision did not involve the results which the public wished to see and achieve, signifying that the local authorities did not take public opinion into account. Indeed, such a process of decision-making cannot be considered as democratic.

6.3. The Construction and Operation of the 'Big Almaty Ring Automobile Road (BARAR)

As noted in the introduction, the second case to be examined in this chapter is that of the construction and operation of a 65-kilometre ring automobile road in Almaty (hereinafter - the road) under the PPP mechanism. The Kazakhstani authorities' intention to implement the project first became public back in 2006, when the project was included in the list of projects to be implemented through the concession scheme (Centre-1, 2016). As the time went on, information began to spread in the mass media saying that the project had started to undergo

difficulties for various reasons during the planning period, and that it had already been postponed several times. For example, as Caravan (2009) reported, at the end of 2009 the Minister of Transport and Communications of the Republic of Kazakhstan, Kusainov, declared that the construction of the road had been postponed due to problems with the purchase of lands to the tune of KZT18.4 billion. Furthermore, although the Deputy Chairman of the Committee of Automobile Roads of the Ministry of Transport and Communications of Kazakhstan, Omirbayev, had stated in 2012 that the construction of the road would begin in 2014 and end in 2017, in March 2014 the authorities made the announcement that, due to the devaluation of the national currency, the competition for selecting a concessionaire was again postponed (Centre-1, 2016). Similar to the first case, as the discussions below make clear, a vast majority of the problems encountered by the project were rooted in public opposition and dissatisfaction, arising from the authorities' decisions which failed to take into account the citizens' interests. In what follows, I will enumerate different risks that arose following the non-involvement of the public in the decision-making on the project.

6.3.1. Social Risk

Based upon the stories reported by the mass media, the main problem of the project was connected with public dissatisfaction. This was due to the fact that the decision made by the local administration of Almaty region did not satisfy local residents and peasant farmers who were offered to sell their plots of land to government at a reduced price to build the road in the territories of their land. For instance, as Meta.kz (2013) reports, while a large-scale road construction was planned for the next year, many people whose houses had fallen under demolition refused to abandon them, due to their strong disagreement with the low compensation being offered by the authorities, considering them very absurd. According to Kursiv.kz (2014), people expressed their disagreement over the unfair prices for the redemption of their plots of land by the local authorities. As a result, several protests took place by the residents of the Ili district of Almaty region against the local authorities' decision. Similarly, the residents of Raiymbek and Eltai villages of the Karasai district of Almaty region, whose houses and plots of land had been subjected to redemption were protesting against the inadequate compensation for their properties. As the Time reported, these residents whose houses were acquired and built for a considerable amount of money, were offered only KZT200 (around US\$1.3 as of August 2013) per hundred square metres (Time, 2013). Proektant (2013) also reported on the disgruntlement of those whose properties were going to be redeemed by

the local authorities, insofar as officials insisted on redeeming the plots of land at the cadastral value which was much lower than the market price. As such, these people would be unable to acquire similar housing in other areas of the region.

Some of the anger directed to the authorities by citizens were covered by the mass media, indicating the level of indignation due to the low amount of compensation offered for the redemption of plots of land. For example, Meta.kz (2013) reported an owner of a peasant farm, Udartseva, furiously uttering the following:

I have 1,5 hectares of land, and they are giving me KZT36 thousand for it! In general, KZT200 is given for a hundred square metres!

Similarly, Tengrinews (2013a) quotes another landowner, Ryazanova, talking about the notification of the local authorities on the demolition of her plot of land, as stating the following:

The agreement has been dispatched to us, indicating the estimation of 4,200 square metres of land for KZT42 thousand, it is really funny, there are no such prices anywhere.

Another landowner, Aisulu, also cited in Tengrinews (2013a), noted that there were 18 people in her family, and they did not wish to be dispossessed, and therefore were not going to move out. The Time (2013) reports about another resident, Akhmetova, who in 2007 sold a two-bedroom apartment in Almaty and bought a plot of land of 2,000 square metres for the price of US\$140,000, but she did not manage to build a house, and was now residing in a trailer with her family. However, as the Time noted, she might even be deprived of that housing, since she had to vacate that plot of land by September 2013 (Time, 2013). Another disgruntled resident of Rayimbek village in Almaty region, Rakymzhanova, was also quoted as saying the following with great vexation:

We bought the plots for our money, we have not squatted them! We have the gas and electricity supplies connected to our houses, and now are being given pennies (Meta.kz, 2013).

Such anger on the part of residents of Almaty region, arising from the perceived lack of concern demonstrated by the authorities' decision to buy off their plots of land at such low prices, also signals the residents' determination. Noting this anger, the Time concludes that the residents of the Karasai district in Almaty region were so determined that "they will throw themselves under bulldozers, but they will not give the lands!" (Time, 2013).

It is worth mentioning that the indignation over the authorities' decision on the unfair compensation for buying houses and plots of land induced public unpopularity of the BARAR project. Reporting on the BARAR project and noting the public anger, Center-1 (2016) also

referred to the statement by the Minister of National Economy of the Republic of Kazakhstan, Dosayev, made during his presentation on the project conception at the EBRD' headquarters in London in December 2014. As Centre-1 reported, Dosayev noted that the main problem around the project was the public's negative attitude towards the project, stating:

We see many problems yet that have not been solved ... A serious problem in the first place is the mentality of people. People should change their attitudes to PPP (Dosayev, 2014 cited in Centre-1, 2016).

A point should also be considered here, regarding the non-involvement of the public in the decision-making on the BARAR project, especially during the planning stage. As the representatives of the ecological society 'Green Salvation' pointed out in their letter of 7 June 2013 to the Compliance Committee for the Aarhus Convention, the local authorities did not hold public hearings on the BARAR project. In the letter, the representatives of 'Green Salvation' further noted that that they had repeatedly made inquiries to the local authorities about public hearings on the project, but no answers to the inquiries were received (Katorcha, et al., 2013, pp. 2-3). Importantly, according to the feasibility study for the BARAR project developed in 2015 (mentioned in the Report on Environmental Impact and Social Assessment of the BARAR Project, 2019, pp. 107-108), public hearings were initiated by the Ministry of Transport and Communications and held on the 3rd and 4th of May 2013. Nevertheless, as can be understood, the public hearings on the project were held only twice, and they were held long after the decision to initiate the project was already made in 2006. Moreover, according to the Report on Environmental Impact and Social Assessment of the BARAR Project (2019, p. 107), the authorities did not conduct any public consultations until 2013 and did not provide any public information about the project. This included information on the redemption of properties, despite the fact that land acquisitions began in 2007. This shows that the authorities violated the Order of the Minister of Environmental Protection of Kazakhstan No.135-p of 7 May 2007, according to which they were obliged to ensure such a form of participation as consultation, in particular, public hearings during the planning stage of the PPP project. As a result, they made decisions regarding the redemption of houses and plots of land without taking into account the interests of local residents. Subsequent public hearings were held only in the summer of 2018 (The Report on Environmental Impact and Social Assessment of the BARAR Project, 2019), that is, only after signing the PPP contract with a private partner in February 2018. It can be discerned here that apart from the above-mentioned Order of the Minister of Environmental Protection, the Order of the Acting Minister of Energy of Kazakhstan 'On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought

to Public Hearings' No. 240 of 10 June 2016 was breached too. This is due to the fact that the regional authorities began to hold public hearings according to the Order of the Acting Minister of Energy only two years later after it was adopted, thereby preventing the public from participating in the discussion of the project prior to signing the project contract.

As the facts discussed demonstrate, the project was subject to a social risk precipitating public opposition to the authorities' decisions regarding the inadequate amount of compensation for the redemption of citizens' houses and plots of land, ultimately resulting in public disagreement over the authorities' decision. It can be seen that public opposition to that decision was due to the fact that the local authorities had not taken into account the people's interests when they had made that decision, in particular, they ignored the people's difficult financial situation, thereby made a decision leading to the suffering of many families. As a result, such an unfair and undemocratic decision of the local authorities, not taking into account the interests of people prompted public disagreement, causing the negative attitude of people towards the project. As for the minister's statement mentioned above, he was right that the problem around the project was related to the negative attitude of people to the project. However, it is important to recognise that the cause of such an attitude was the unfair and undemocratic decision of the authorities who disregarded the interests of the people, and who did not hold public hearings on the project at the initial stage of its planning. Therefore, not citizens, but their representatives have to change their attitudes towards citizens, whose primary duty is to protect and promote the interests of citizens whom they represent.

6.3.2. Legal Risk

A legal risk was caused by the unfair decision of the local authorities regarding the low amount of compensation for people's properties over and above the social risk. As Proektant (2013) reports, the main subject of those legal disputes was the problem related to citizens' plots of land, who were categorically against the authorities' proposal to redeem their plots of land for low prices, and therefore the residents of a suburban village, Pokrovka, filed a lawsuit against the local authorities. The lawsuits, rather than being limited to this particular village, were also filed by residents of other suburban villages, who in 2012 took legal actions against the local authorities due to the paltry compensation for their plots of land (Kazakhstanskaya pravda, 2017b). As Kazakhstanskaya Pravda (2017b) reports, the legal disputes lasted for months, thus affecting the course of the project by delaying the construction of the road. According to Tengrinews (2013b), the Head of Almaty region, Musakhanov, at a meeting asked

for the central government's assistance in solving the problem regarding the redemption of plots of land for the construction of the road. Speaking about that problem, Musakhanov apprised that 704 plots of land were planned to be redeemed, but only 237 of them had been purchased from landowners, and 467 plots to the tune of KZT4,2 billion were not yet redeemed. He also added that the legal cases which had been commenced in October 2012 were still under consideration, notifying that there were still problems with 177 plots of lands, regarding 131 of which lawsuits had been initiated by citizens against the local authorities (Tengrinews, 2013b).

It is worth noting that during the drawn-out legal disputes another complicated legal issue emerged that put people who were already exasperated with legal problems at an impasse. According to the results of a lengthy inspection by law enforcement bodies, the prosecutor's office of Almaty region announced on the 14th of May 2014 that the local government officials had redeemed the plots of land for the construction of the road for inflated prices (Kursiv.kz, 2014). Furthermore, as Zakon.kz (2014b) reports, the prosecutor's office of Almaty region appealed to court, claiming the annulment of some of the agreements on the purchase of plots of land, which had already been concluded, and demanded the return of the overpaid compensation to the local budget by the previous landowners. Such circumstances aggravated people's problems, who at that period of time were already litigating against the local authorities' decision, suffering from its consequences. Talking about this legal issue, the Time (2015) notes the frustration of landowners towards the authorities and their decisions to first take their plots of land, then return them and demand the paid monetary compensation to be returned. One landowner cited in Kursiv.kz (2014) voices this immense frustration by noting that the authorities are demanding the money back, but they are not yet willing to return the plots of land.

The legal circumstances surrounding this issue, and in particular the cancellation of previously concluded agreements and the return of the state-paid compensation, Atameken Business Channel (2017) informs, may adversely affect the course of the project, postponing it indefinitely. This is evidenced by the fact that at a meeting in parliament the deputy chairman of the board of 'KazAvtoZhol' JSC, Mendygaliyev, bemoaning the legal issue in question, stated that the previous landowners would have to return the money to the state which should recount and redeem the plots of land again, which in turn would cause the postponement of the project (Atameken Business Channel, 2017).

As the events discussed here indicate, the BARAR project underwent legal problems in the form of protracted litigation between the residents and the authorities of Almaty region. As mentioned above, the reason for litigation was the local authorities' decision on an unfairly low

amount of compensation to be paid for people's properties, which resulted in the worsening of citizens' financial situation, and thus making them suffer. It is therefore fair to state that the legal problems faced by the project were rooted in the social problem arising from public objection against the unfair and undemocratic decision made by the authorities who had not ensured public participation in the decision-making regarding the project, including on the issue of compensation.

6.3.3. Investment Risk

The BARAR project has been subject to an investment risk causing its suspension due to a financial constraint, over and above the social and legal risks. As stated earlier, on the 3rd of November 2009 at a government meeting the Minister of Transport and Communications of the Republic of Kazakhstan, Kusainov, announced that the project had been postponed due to the budget deficit for 2010 (Caravan, 2009). Moreover, according to the information of Centre-1 (2016), in 2010 the official information on the suspension of the project was posted on the website of the local administration of Almaty, pointing out the reason for suspension – a 'financial crisis'. Furthermore, as Tengrinews (2011) reports, in 2011 the Director of the Department of Almaty of the Committee for Automobile Roads, Zhasybayev, informed that the project had been postponed several times due to a shortage of funds, and added that in 2012 tenders would be invited for the construction of the road that would be completed before the end of 2015. However, the tendering process did not happen, insofar as in March 2014 the tendering to select a contractor for the construction of the road was again cancelled, according to Centre-1 (2016).

Moreover, it is important to note that the regular delays in the project were causing the increase in the costs of the project. As Tengrinews (2011) reports, in 2011 the estimated cost of the project was KZT79,5 billion. In 2017 the Minister for Investments and Development of the Republic of Kazakhstan, Kasymbek, declared that the costs of the project would probably be around KZT180 billion instead (Tengrinews, 2017). Later on, the Deputy Minister for Investments and Development of Kazakhstan, Khairov, apprised at a government meeting that the costs of the project exceeded KZT350,7 billion, meaning that compared to initial estimates, the costs of the project increased by more than four times (Kazakhstanskaya pravda, 2017b). However, the final costs of the project are now estimated to be over KZT512 billion, including the compensation for investment and operating costs, and the remuneration for project management by a consortium in the person of private partners (Tengrinews, 2018).

It should be remarked that public disagreement over the local authorities' decision on the redemption of plots of land, which was accompanied by protests and litigation, was badly affecting the process of attracting potential investors. For instance, as Krysha (2015) reports, after negotiations with the authorities of Kazakhstan, potential investors from China who did not wish to have disputes between landowners declined to invest in the project due to the lack of public support for the project. It can therefore be seen that the consequences of the authorities' decisions prevented the authorities from attracting potential investors, thus adversely affecting the course of the project and stalling its beginning.

6.3.4. Political Risk

The BARAR project, in addition to the risks described above, has been subject to a political risk adversely affecting its course. As can be discerned from the preceding discussions, the project was effectively stalled for years due to the undemocratic and unfair decisions made by the authorities of Almaty region, who disregarded the interests of residents of districts, thereby prompting their disapproval of the project and preventing the advancement of the project. It is not for nothing that Li and others (2005b) argue that "poor public decision-making process" and "strong political opposition/hostility" are the key factors of political risk that can occur during the implementation of PPPs (Li, et al., 2005b, p. 28).

As the facts around the BARAR project show, the top-down decision of the regional authorities who initially did not ensure public participation in the decision-making on the project by holding public hearings, exacerbated the socioeconomic conditions of poor families residing in different districts of the region, thereby causing them the moral and material harm. One way this could have been better handled was if local government bodies of districts were in charge of the PPP project. It is plausible that in different circumstances the authorities of districts would fulfil their obligations to residents of districts with more commitment and responsibility, compared to the authorities of Almaty region. Accordingly, the officials of district administrations would probably involve the local communities of certain districts in the decision-making on the PPP project, thereby attempting to be more responsive and accountable to their constituents. Such reasoning is in line with the argument provided by Leach and others (1992) who claim that in comparison with office-bearers of higher government bodies, officials of subordinate local government bodies have more commitment and sense of responsibility to respond to local communities' demands (Leach, et al., 1992, p. 41).

6.3.5. Corruption Risk

Apart from the social, legal, investment and political risks, the BARAR project has undergone a corruption risk. According to Zakon.kz (2014b), as per the results of inspection by the prosecutor's office of Almaty region, it was transpired that the local authorities had redeemed the plots of land at inflated prices for the needs of the BARAR project. Therefore, the prosecutor's office already brought around 100 suits to the court to rescind the agreements which had been heretofore concluded between the local authorities and landowners (Zakon.kz, 2014b). As Zakon.kz (2014b) informed, the regional prosecutors calculated the quantity of unreasonable compensation payments from the local budget in the framework of the BARAR project and another project pertaining to the construction of another major road 'Western Europe - Western China'. The total amount was calculated to be more than KZT2 billion, and the high amount resulted in two corruption cases instituted against local incumbents involved in the projects, Zakon.kz (2014b) reports. According to Zakon.kz (2014b), the inspections by the prosecutor's office were likely to continue and there would likely be more prosecutions on corruption cases. Furthermore, the most outrageous fact was that previous landowners, from whom the prosecutor's office demands the return of compensations, would have to pay from their own pockets for officials' corruption offenses (Zakon.kz, 2014b). As a consequence of this legal issue, the problems of landowners were further exacerbated, who for several years were suing the local authorities offering to redeem their plots of land at a lower price. The people were at this stage fatigued by the drawn-out litigation, Rezvan, the representative of landowners in court has been quoted as stating, noting that several cases had reached the Supreme Court, and some of them had been under the consideration of appeals court of Almaty region for several months (Time, 2015).

Evidently, the above-mentioned corruption offenses on the part of the local officials adversely affected the course of the BARAR project, deferring its beginning and causing the ineffective spending of the budgetary wherewithal, and thus tarnishing the project's reputation and undermining public trust in officials at large. On the whole, it can be stated that one of the reasons for the manifestation of corruption risks in governance, including in PPPs is the non-involvement of the public in the decision-making processes that prompts office-bearers to abuse their powers by making uncontrolled decisions at their discretion. Echoing this claim in the sphere of road construction, the representative of the public organisation of motor car enthusiasts in Kazakhstan, Lazuta, has stressed that in order to ensure control and quality when constructing and commissioning public roads it is necessary to involve the representatives of

the public in relevant commissions, including competitive commissions (Kazakhstankaya pravda, 2018a). In addition, recognising the problems of corruption in various public spheres, the Deputy Minister of Agriculture of Kazakhstan, Nysanbayev, has announced that in the near future a bill would be developed, pursuant to which half of the members of land commissions will be composed of the representatives of public organisations that would help to substantially dwindle corruption risks (Zakon.kz, 2018b). However, the problem of corruption remains at present acute within the system of governance of Kazakhstan, as well as when implementing PPP projects in the country.

There could be additional risks associated with the project. As mentioned earlier, there has been a problem regarding the attraction of investors for the project. Recently, according to the Minister for Investments and Development of the Republic of Kazakhstan, Kasymbek, proclaimed that on the 7th of February 2018 the BARAR concession contract was signed by the Turkish and South Korean firms (BNews.KZ, 2018). However, it is important to note that the definitive interest of investors has come after 12 years, making people pay dearly for it. Furthermore, as was previously discussed, the costs of the project have significantly risen in price due to the protracted delays, thus costing the government a deal. As such, it remains unknown whether or not the investments of the government and investors will pay off, inasmuch as there are risks associated with the failure to receive the projected profits from the expected toll road. Therefore, there could be risks connected with the fact that the government might not ensure the receipt of desired profits by private partners in the form of fees for using the toll road. Describing this kind of risk in PPPs as a political risk, Varnavskii and others (2010) argue that such risks are related to the actions of government that affect the ability of private partners to serve consumers and earn incomes (Varnavskii, et al., 2010, pp. 112-114). As these authors delineate, such actions by the government can lead to the adoption of previously unspecified requirements for a private partner, for example, the suspension or early termination of a PPP contract, or the imposition of a fine or of new instructions prescribing the reduction of fees for the use of a facility, especially toll roads (ibid.). By way of illustration, Varnavskii and others cite the PPP projects on toll roads in Mexico, where as a result of public pressure to reduce the toll road fees, the government and private partners had to make considerable changes to the PPP projects on toll roads. The authors also note the decision of the Government of Thailand in 1999, which made a twofold decrease in the toll road fees (Varnavskii, et al., 2010, pp. 112-114).

It is clear that such a political risk could also arise within the framework BARAR project as long as the private partner in the person of the consortium imposes high toll road fees on

drivers. There may be another scenario, when drivers may be disinclined to pay fees for using the toll road, opting for alternative ways in order to economise, similar to the case of Jin Long toll road discussed in Chapter 4. As an illustration, the Head of the Independent Automobile Union of Kazakhstan, Edokov, in an interview with a reporter of KTK castigated the public policy on toll roads and opined that people were not ready for toll roads and were premature (KTK, 2017). Furthermore, Edokov argued that the authorities had made reckless decisions without thinking about their possible consequences, while the socioeconomic situation of the country was not in the best condition and not all citizens could afford to use toll roads (KTK, 2017). Edokov also cited the example of Al-Farabi Avenue in Almaty to claim that the majority of citizens will drive gratis to their destinations by using other roads that bypass the toll road, so long as the city authorities make it payable (KTK, 2017).

In general, considering that the BARAR project is still at the initial stage, where the toll road is yet to be constructed, operated and transferred to a public partner, the project remains susceptible to various risks, including political and investment risks. This is due to the fact, as Lam (1999) has argued, the most of the risks in BOT models of PPP occur at the later phase of construction and at the initial phase of operation of facility, insofar as new conditions for the fulfilment of financial obligations may arise, which are also affected by the prices of goods, works and services that frequently fluctuate (Lam, 1999, p. 77). Additionally, further social and legal risks could arise during the operation of the expected toll road if decision-makers again ignore the interests of people, for example, by setting high fees for using the toll road.

Summing up, the authorities of Almaty region did not initially ensure public participation in the decision-making on the project. This is while, according to the Order of the Minister of Environmental Protection of Kazakhstan ‘The Rules for Holding Public Hearings’ No.135-p of 7 May 2007, the authorities should have held public hearings on the project during its planning stage. As a result, by not ensuring public participation in the decision-making on the project, the regional authorities made decisions regarding the compensation issue without taking into account the interests of residents of relevant districts. In particular, as discussed above, the regional authorities decided to compensate the residents for redeeming their houses and plots of land for unfairly prices that did not satisfy the residents of districts and even aggravated their financial difficulties. This unfair and undemocratic decision made by the authorities brought about public disagreement. In turn, such a circumstance precipitated the social risk in the first place, and subsequently prompted legal, investment and political risks growing into serious problems that adversely affected the course of the project.

According to the Report on Environmental Impact and Social Assessment of the BARAR Project (2019), the regional authorities began to openly discuss the project with the public only in 2013, that is, long after making decisions on the project and the issue of compensation for redemption of the people's properties. For example, according to the feasibility study for the project developed in 2015 (mentioned in the Report on Environmental Impact and Social Assessment of the BARAR Project, 2019), the central authorities arranged the public hearings on the project in May 2013, which effectively took place only twice – on the 3rd and 4th of May 2013. Even though there were the isolated cases of public hearings in May 2013, the authorities felt disinclined to change their decisions regarding the low compensation for redemption of properties, thus not listening to people's voices and arranging pseudo-participation of the public in the project. Moreover, as discussed above, the Order of the Acting Minister of Energy of Kazakhstan 'On Approval of the List of Types of Economic Activities Within Which Projects Are to Be Brought to Public Hearings' No. 240 of 10 June 2016 was also violated. This was since the regional authorities began to hold public hearings according to the above-mentioned ministerial order only two years later after it was adopted, thereby not enabling the public to participate in the discussion of the project prior to signing the concession contract. Although the authorities have now succeeded in attracting investors to the project, it is as of yet unknown whether people will willingly pay for using the toll road. It also remains unknown whether people will use the toll road at all, seeing that the unfair and undemocratic decision of the authorities was the reason for the unpopularity of the project, especially amongst the local populace.

6.4. Conclusion

The aim of this chapter has been to examine the state of public participation in the decision-making on PPP projects in Kazakhstan. Having examined the Kok-Zhailau and the BARAR projects, it can be discerned that the authorities of Almaty and Almaty region responsible for these projects respectively, failed to involve the public in the decision-making processes on the projects during the initial stages of their planning. This failure on the part of the local authorities resulted in the decisions that did not take the opinions and interests of people into account. Moreover, in both cases the local authorities violated the political rights of citizens and interest groups to participate in the decision-making on PPPs despite the existing legal requirements for holding public hearings on the projects. Therefore, these facts show that the Kazakhstani authorities themselves improperly adhere to the rule of law, thus featuring the

characteristic of an authoritarian regime. As Popov (2004), and Hague and Harrop (2007) state, the poor rule of law can be a lineament of an authoritarian regime.

In the case of the Kok-Zhailau project, the authorities of Almaty began to hold public hearings long after the decision on the construction of the ski resort was made. In effect, the city authorities violated the rights of citizens and interest groups by not holding the public hearings on the project in spite of their mandatory application. Furthermore, in holding these public hearings the authorities, rather than considering public opinion, simply attempted to convince the public to support the decision that was already made earlier. Therefore, this case presents an instance where the authorities sought pseudo-participation of the public. In other words, the authorities of Almaty were not ensuring meaningful participation of the public in the decision-making on the project, inasmuch as the people were not achieving the results or seeing the changes which they wished to see in the decision of the authorities. Therefore, such the process of decision-making on the project makes it undemocratic, thus undermining representative democracy. As regards the BARAR project, the authorities of the Almaty region also did not ensure public participation in the decision-making on the project at the initial stage of its planning despite the fact that in accordance with the existing legislation in the country they were required to hold public hearings. The regional authorities began to hold public hearings long after making the decisions regarding the project and the compensation issue. Even so, the regional authorities were disinclined to change their decisions concerning the compensation issue, thereby ignoring people's voices and not ensuring meaningful participation of the public in the decision-making on the project.

The preceding analysis of the two recent PPP projects therefore allows for the following inference – although the local authorities of Almaty and Almaty region started to involve the public in the decision-making on PPPs by holding public hearings, they do not yet ensure meaningful participation of the public. In other words, even though the local authorities of Almaty and Almaty region hold public hearings, they still do not take into account public opinion. By and large, taking into consideration the respondents' answers, the existing legislation and the two PPP cases discussed above, it can be generalised that the authorities of Kazakhstan do not yet ensure public participation in the decision-making on all PPP projects, including meaningful participation of the public. As discussed in the previous chapter, the analysis of the respondents' answers shows that government bodies still practice informing the public about upcoming PPPs through official websites and the mass media, implying that public participation in the decision-making on PPPs is not ensured by the authorities in all PPP cases. The analysis of the existing legislation in the country demonstrates that there is still a deficiency

in public participation in the decision-making on PPPs, although the authorities hold public hearings as one of the instruments of public participation in the decision-making processes on PPPs. By way of illustration, the Order of the Acting Minister of Energy No. 240 of June 10 2016 ‘On Approval of the List of Types of Economic Activities Within Which Projects Are to Be Brought to Public Hearings’ still circumscribes public participation in public hearings on PPPs involving certain types of economic activities. As previously stated, the two PPP cases indicate that although the local authorities ensure public participation in the decision-making on PPPs, they do not yet ensure meaningful participation of the public.

It should also be noted that, as the preceding analysis of the two PPP projects shows, both of the projects underwent social, legal, investment and political risks which subsequently grew into serious problems adversely affecting the course of the projects. As the analysis makes clear, the main cause of these problems was public opposition to the projects due to the fact that the local authorities’ decisions did not take the opinions and interests of people into account. Such public opposition to the projects in turn adversely affected the course of the projects. In relation to the ‘Kok-Zhailau’ project, the city authorities were not taking into account public opinion for years, therefore, it was not being advanced. As for the BARAR project, although investors have been attracted to the project, it is still unknown whether the regional authorities will take into account the opinions of people when setting fares for using the toll road, or they will once again ignore their opinions and interests without ensuring their participation in the decision-making on the project that could have a negative impact on it.

It is important to note that if the local authorities had taken decisions in accordance with the interests of people by involving them in the decision-making on the projects, then the consequences of those decisions would have been completely different and more importantly much better than they are now. Firstly, although without the support of the people the projects would have discontinued, the projects not getting launched would have prevented the adverse effects seen by the local authorities and residents alike. In other words, the adverse consequences of decisions could have been avoided if the projects’ launch was conditioned on the support of the public. Secondly, if the public had taken part in the decision-making processes on the projects and consequently had been supportive of the projects, then the projects would have circumvented the majority of risks, and therefore the state of the projects would have been significantly better. As can be discerned, in both cases the adverse consequences of the decisions would have been minimised if the local authorities had ensured participation, namely meaningful participation of the public in the decision-making on the projects.

Given that the institution of PPP in Kazakhstan was introduced not so long ago, and the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ was adopted in 2015, it can be seen that the authorities are actively implementing PPP projects, and their intention to implement PPP projects will be further growing in the future. However, at present it cannot be said that the existing PPP projects are being implemented effectively, as evidenced by the case of the two projects discussed in this chapter. Moreover, the authorities themselves acknowledge that there are problems around PPP. For example, at a government meeting on the 6th of December 2016, the Prime Minister of the Republic of Kazakhstan, Sagintayev, after hearing the reports of relevant ministers, praised the work done on PPP regarding the legislation and procedures that were adopted and simplified respectively, and about the independence given to regions (Nur.kz, 2016). Nonetheless, the Prime Minister expressed his criticism about the work of government bodies on PPP by uttering the following on the state of play in PPP:

We see that there are around 300 projects, good reports. Though at the same time, as it is said: ‘A bride is ready for a farewell, but there is no groom’. Now we are in such position. We talk about it for years, we constantly change laws, but at the same time all - plans, plans, plans (Sagintayev, 2016 cited in Nur.kz, 2016).

Also, addressing ministers in that government meeting, Sagintayev talked about the possible need for gathering investors who desire to work within the framework of PPP so as to ask them what impedes, what changes need to be made so as to move forward (Nur.kz, 2016). Moreover, Sagintayev drew the attention of government ministers by saying that it is fair that the cabinet constantly receives the president’s criticism of the unsatisfactory performance of government bodies on PPP (Nur.kz, 2016).

With the in-depth analyses presented in this chapter and the previous one, a general picture of the current state of public participation in the decision-making on PPP projects in Kazakhstan has emerged, both in terms of the views of respondents seen in the interviews and existing legislation (previous chapter) and in practice (present chapter). However, in the next chapter, I will look at how participation, namely meaningful participation of the public affects the course of PPP projects. In particular, I will look at the example of the development of the Kok-Zhailau project, and the fact that the city authorities developed a feasibility study for the project taking into account public opinion, thus ensuring meaningful participation of the public in the decision-making on the project. Using this example, I will argue that public participation in the decision-making processes on PPPs, namely meaningful participation can lead to the democratic and effective realisation of PPPs. Furthermore, using the above example, it will be

argued that public participation in the decision-making on PPPs can conduce to the development and advancement of political pluralism, civil society, social capital and to the enhancement of representative democracy in Kazakhstan. I will also suggest legal measures directed at expanding and ensuring public participation in the decision-making on PPP projects, whose implications would additionally strengthen representative democracy and promote local, participatory, as well as e-democracy in Kazakhstan, thus benefitting the society in the country.

Chapter 7 – Public Participation, Democratic and Effective Implementation of PPPs, and its Implications for the Society in Kazakhstan

7.1. Introduction

Having examined the current state of public participation in PPP projects, it can be ascertained that there remains a deficiency in public participation in the decision-making on PPPs in Kazakhstan. Moreover, as discussed in the previous chapter, although both the authorities of Almaty region and Almaty have held public hearings on the projects, they have failed to listen to public opinion, thereby only ensuring pseudo-participation of the public in the projects. Such a state of affairs as related to the problem of pseudo-participation of the public in the decision-making on PPPs significantly impedes the democratic and effective implementation of PPP projects, badly reflecting on them and on the PPP policy in Kazakhstan at large. This is also true in the cases of the Kok-Zhailau and BARAR projects discussed in the previous chapter.

It is worth noting that during the time of this research a positive development took place within the Kok-Zhailau project. In particular, at the last public hearing on the Kok-Zhailau project that took place on the 4th of November 2018, the authorities of Almaty city brought a new feasibility study for the project to public discussion, which took public opinion into account (Vlast, 2018b). This seems to show that the city authorities had noted the majority of people's opinions and developed a new feasibility study for the project. That is to say, the public had been finally able to influence the authorities' decisions regarding the project, achieving the changes that it wished to see in the authorities' decisions. Accordingly, it could be said that meaningful participation had taken place within the framework of the Kok-Zhailau project.

Given these developments, the aim of this chapter is to examine the ways in which meaningful participation can positively impact the course of PPP projects, and be beneficial to the society in Kazakhstan. I will examine the case of Kok-Zhailau project in particular, demonstrating the positive effects of meaningful public participation seen in this project. Using this example, I will therefore argue for the importance of public participation, and in particular meaningful public participation as a means of democratic, as well as effective realisation of PPP projects. Likewise, I will argue that public participation in the decision-making on PPPs can be shown to be beneficial to the society in Kazakhstan by contributing to the development and advancement of civil society, encouraging political pluralism, and by strengthening social

capital and representative democracy. Following these arguments, I will also suggest some practical measures in the form of legal steps that could be taken in order to expand and ensure the rights of citizens and interest groups to participate in the decision-making processes on PPP projects affecting their lives and interests. The arguments presented make clear that such legal measures can enhance representative democracy and promote local, participatory, as well as e-democracy, thus additionally benefitting the society in Kazakhstan.

7.2. The importance of public participation for PPPs and society

Considering the exposition given in the previous chapter of PPP projects in Kazakhstan and the state of public participation in the decision-making on these projects, in this section I will outline some of the broader implications of public participation. Noting certain recent developments in the case of the Kok-Zhailau project, where the public were given the opportunity to have a say in the decision-making on the project, I will examine some of the positive effects that could be observed in the project. I will first outline what a close examination of the developments around this project can reveal about the positive effects of meaningful participation for the democratic and effective realisation of PPP projects. Secondly, I will argue for the claim that beyond being a valuable element in planning and implementing PPP projects, meaningful public participation in PPPs can contribute to the development and advancement of political pluralism, civil society, social capital, to the enhancement of representative democracy, and to the promotion of local, participatory, e-democracy in Kazakhstan. These are crucial implications arising from public participation in the decision-making on PPPs for the society in the country. In both of these subsections I will draw on the analyses given in previous chapters and the conceptual framework provided earlier in the thesis, as well as empirical evidence from the examination of the domestic and international cases.

7.2.1. Public participation as a means of democratic and effective implementation of PPPs: an analysis of the Kok-Zhailau project

As was discussed in the previous chapter, the dispute between the local community and city authorities of Almaty began in 2011, when the latter decided to construct the ski resort on the Kok-Zhailau plateau through the PPP mechanism. As the analysis of the project shows, the main reason for public objection against the project was that the city authorities did not hold public discussions on the project during the planning stage, leading to decisions being made

which did not take into account the opinions and interests of people. Moreover, although the city authorities began to hold public hearings on the project following public pressure, they still failed to take into account public opinion for years. Instead, the city authorities were simply attempting to persuade the public to support the decisions that were already made and were specified in the feasibility study for the project. In other words, the city authorities were ensuring pseudo-participation of the public, thus making the decision-making process on the project undemocratic.

Due to the lack of public support for the PPP project, the project was regularly postponed and was once even suspended in 2015 (Vlast, 2018a). For example, at one of the public meetings held on the 21st February of 2018, the mayor of Almaty city, Baibek, touching upon the Kok-Zhailau project acknowledged that the city authorities had to suspend the project, since a consensus about the PPP project was not reached (Vlast, 2018a). More importantly, at the meeting the mayor also announced that the feasibility study for the project was changed substantially in accordance with public opinion, and a new feasibility study was being developed and due to appear in early summer of 2018 (Vlast, 2018a). The mayor, declaring that many changes in the project were related to the comments made by the public, pledged to bring the new feasibility study for the project to public discussion (Vlast, 2018a).

According to Vlast (2018a), at the above-mentioned meeting Baibek reported that the concept of the Kok-Zhailau project would be completely different from its earlier version with a new emphasis on hiking tourism. Furthermore, Baibek announced that the city authorities had decided to reduce the length of the ski tracks to a third and to shorten the area of commercial buildings to a tenth of what was previously planned, and only one lake instead of three would be used in snowmaking (Vlast, 2018a). The mayor reassured the audience in the meeting that the new changes would considerably lessen the environmental damage and economise on the costs of the project (Vlast, 2018a). Baibek further declared that the project would not provide for the construction of private cottages, stating that “if it appears in the feasibility study, the project will be abandoned”, according to Vlast (2018a). The mayor continued:

If in the end there will be more minuses than pluses, then this project will not be implemented. We talk about it immediately and directly. ... We only think about the interests of the city (Vlast, 2018a).

In May 2018, speaking at a press conference about a new scheme for the project, the head of the Department of Tourism of Almaty, Zhailaubai, and the Director of ‘Almaty Mountain Resorts’ JSC (the company that had acquired the contract to develop the new feasibility study for the project), Nurov, informed that the project had changed considerably (Forbes

Kazakhstan, 2018). As Zhailaubai informed, the costs of the project were decreased by a factor of 7.5 from KZT1.5 billion to KZT200 million (Forbes Kazakhstan, 2018). Furthermore, according to Zhailaubai, the city authorities had refused to build private elite hotels and golf courses, and desisted from constructing gas mains. The park's carrying capacity was also reduced from ten thousand to five thousand people (Forbes Kazakhstan, 2018). Zhailaubai also announced that the area would be landscaped for 50 kilometres of hiking trails and 30 kilometres of bike lanes (Forbes Kazakhstan, 2018). Informburo (2018a) also confirms a considerable increase in the project's costs to KZT200 million, reporting that the city authorities plan to build not a 'resort', but a 'mountain park'.

Speaking at a press conference on 23rd of August 2018, the mayor of Almaty, Baibek again reminded that a new feasibility study for the project was underway which did take into account the comments of the public (Nur.kz, 2018a). Here Baibek also stressed that if the public did not support the project, the city authorities would abandon the project altogether (Nur.kz, 2018a). On the 4th of November 2018 the city authorities held a public hearing on the project to discuss the new feasibility study for the project with the public (Vlast, 2018b). According to the Volunteers League of the city of Almaty (2018, cited in Nur.kz, 2018b), the number of Almaty residents supporting the project following this public hearing reached to over 100 thousand. Furthermore, on its reporting on the 16th of November 2018, Nur.kz (2018b) quoted an activist and representative of the Volunteer League of Almaty, Kondybayev, who had made the following remark on his Facebook page:

Most of them [people] signed a petition against the old project in 2014, while the project of 2018 is radically different from it. For that matter, I would have signed myself against the old version!

Nevertheless, as The Village (2018b) reports, there were still opponents, in particular environmentalists who, as of 6 November 2018, collected 9942 signatures against the project. At the time it was still unknown whether the project would continue, but as Total (2018) has noted, public hearings on the project would be held. As Total (2018) further reports, the public hearing held on 4th of November 2018 saw many people in attendance and expressing their views on the project, among whom were public figures, scientists, sportsmen, students, and the representatives of various interest groups. Such public engagement is encouraging since it indicates that the city authorities have begun to involve the public to discuss socially important decisions, including decisions on the PPP project. Some of the opinions voiced in this public hearing show public support for being included in such decisions. For example, the President

of the Franchise Association of Kazakhstan, Kisikov (2018, cited in Total, 2018) noted the following at the public hearing:

The discussion is hot, but not negative. People express their opinions. I am even glad to see such a heated discussion.

Another participant in the public hearing, the Chairman of the Coordination Council of Veterans of Local Conflicts, Abdushukurov, who supports the project, stated the following:

These are new jobs if 500-600 people will work in the Kok-Zhailau mountain park. I advocate that the construction should be controlled by society. Such public hearings should be held more often and there will be no questions from the people (Total, 2018).

Another supporter of the Kok-Zhailau project, a businessman – Baitasov, expressed his support for the debate encouraged by such public hearings. In an interview with Informburo (2018a) he stated the following:

I am very comfortable with the statements of opponents of the construction of the ski resort, and I think that their activities have a positive effect on the development of the project which is becoming more quality, and really it is better to listen carefully to very different opinions in order to have a good result.

As can be discerned from the facts mentioned above, the city authorities have substantially changed their previous decisions regarding the feasibility study for the project, bringing it to public discussion and taking into account public opinion. Importantly, the city authorities had held public hearings before the new feasibility study for the project was brought to public discussion, through which they were able to hear people's voices. Therefore, one of the benefits of public participation in the project was that it enabled the authorities to hear people's voices. Indeed, in attempting to hear people's voices, the authorities build a constructive dialogue with the public, enabling the public to express their voices on the PPP project that affects their interests.

An important factor revealed by the latest events around the project, is the fact that this time not only did the city authorities begin to hear people's voices, but they also started to listen to them and to take them into account when making decisions regarding the project. This observation may indeed be considered as a democratic benefit for people. In the case of Kok-Zhailau project, this outcome was thanks to the activism among the public who were able to influence the authorities' decisions by voicing their concerns and interests, and bringing about positive changes, which is regarded as meaningful participation. As Verba and Nie (1972, p. 2) and Teorell (2006, pp. 788-789) have argued, participation takes place when people influence

government decisions. Moreover, Pateman (1970, pp. 68-69) delineates meaningful participation as the participation of people in decision-making when they influence decisions whose consequences satisfy their interests. It can be seen that following the aforementioned public hearing on the Kok-Zhailau project and the changes that were made based upon public opinion, most people who were previously against the project began to support the project. Although there were still opponents of the project, for instance ecologists, the project remained under discussion and this public hearing would not be the last one. Despite the fact that at the time it remained unknown whether or not the project would be approved, it was an important development that the city authorities had begun to listen to the people and take their opinions into account, thus starting to ensure the democratic decision-making process on the project. This is a highly positive change from previous practice where public opinion was not seriously listened to, despite public hearings being held.

As can be seen from the above discussions, the number of people supporting the Kok-Zhailau project increased following the introduction of the new feasibility study for the project, taking public opinion into account. As such, another positive factor of public participation, particularly meaningful participation in the project was an increase in the number of supporters of the project. In general, public support for PPP projects can potentially lead to the approval and implementation of projects. It is not for nothing that public support is considered to be one of critical success factors in PPPs (Jefferies, et al., 2002; Li, et al., 2005c; Jacobson & Choi, 2008).

It is important to remark that by ensuring public participation in the decision-making on the project through public hearings the city authorities were able to obtain useful expert opinions which could enable the authorities to streamline the costs of the project (Vlast, 2018a; Informburo, 2018a). For example, based on expert opinions and advice, the city authorities decided to reduce the construction of ski trails to a third, and refused to construct gas pipes, thereby reducing the costs associated with the project (Vlast, 2018a). Moreover, as the mayor of Almaty, Baibek (2018, cited in Vlast, 2018a) announced, in accordance with the views and comments of the residents, the city authorities had declined to build private cottages, thus bringing a substantial reduction in budget expenses. As we can see, through public participation in the form of consultation the city authorities were able to reconsider and optimise their decisions regarding the project, allowing them to save public money by a factor of 7.5 (Vlast, 2018a). Furthermore, as mentioned above, the participants in the public hearing on the project noted that public discussion of the project only contributed to its improvement (Informburo, 2018a). For example, one of the project's supporters, Baitasov (2018, cited in Informburo,

2018a), stated in an interview that having a discussion on the project and getting different opinions about the project would help make it better.

From the above facts, it can be seen that through public hearings the city authorities were able to obtain useful information from the public, including expert opinion on the matter that allowed the authorities to reconsider their decisions, leading to more effective budget planning. It can be discerned that public consultation as a form of public participation contributed to the good management of the project in terms of the effective planning and spending of budgetary funds. As North (2004) has argued, one of the indicators of effective governance is cost reduction. More generally, different authors have considered public consultation as one of the forms of public participation to be an effective tool in good governance (Thomas, 1990, 1993; Shand & Arnberg, 1996). Moreover, UNECE (2008, pp. 13-14) defines ‘participation’ as a key principle of good governance in PPPs.

As can be discerned from the above discussions, public participation in the project allowed the authorities to hear people’s voices, and accordingly, the public was able to express its voice on the project that affects its interests. Furthermore, not only did the authorities begin to hear, but they also began to listen to public opinion. As was mentioned earlier, public pressure caused many decisions made by the authorities to be reviewed and in instances even annulled. The process allowing for these effects is a democratic one, since it enabled people to influence the authorities’ decisions, especially those that previously did not satisfy the interests of a majority of people. For instance, following public pressure and environmental concerns, the project concept changed dramatically and envisaged the construction of a mountain park (Informburo, 2018b), focusing more on hiking tourism (Vlast, 2018a). As a result, the costs of the project were optimised, enabling more effective project management. Moreover, the number of supporters of the project increased, strengthening public support for the project. As we can see, the above positive factors emerged due to public participation, and importantly meaningful participation of the public in the decision-making on the project.

As the facts around the project indicate, public participation positively affected the course of the project, giving it better chances for public approval, compared to the effects that would stem from non-participation and pseudo-participation. This claim is evidenced by the discussions of both Kok-Zhailau and BARAR projects presented in the previous chapter, where it could be seen that non-participation and pseudo-participation of the public resulted in the emergence of various risks that adversely affected the course of the projects.

It is important to note that the approval of the project by the public would mean that people were likely to visit the mountain park, and accordingly, such a circumstance would bring

about budget revenues, making the project effective. On the other hand, the disapproval of the project by the public would mean that it is likely to be abandoned, however, it would also be a favourable outcome. This is due to the fact that the government would substantially save the budgetary funds, instead of constructing the mountain park without the consent and support of the public who most likely will not visit the mountain park, thereby causing the ineffective use of budgetary funds. As previously stated, the project was still under public discussion, and in April 2019 the mayor of Almaty, Baibek, announced the postponement of the project for further scrutiny of public opinion, including of the opinions of ecologists based on the recommendation of recently elected president of Kazakhstan, Tokayev (KTK, 2019). This decision also shows that the new political leadership of the country welcomes public scrutiny of the project before a final decision is made.

It should be mentioned that in the course of the completion of this thesis, it was revealed that the project was cancelled. In particular, speaking at a meeting on the 29th of October 2019 in Almaty, the newly elected president, Tokayev, prohibited the Kok-Zhailau project, taking into account the opinions of ecologists (Informburo, 2019). Such a situation signifies the influence of the public on the authorities' decision regarding the project. Moreover, such an action on the part of the authorities demonstrates that they have truly started to listen to public opinion. Furthermore, as explained earlier, the cancellation of the project implies that the government has not expended the additional financial resources and accordingly has saved them, which is effective in terms of economising on budgetary funds.

It is important to point out that the empirical evidence presented in Chapter 4 also supports the claim that non-participation and pseudo-participation of the public can adversely affect the implementation of PPP projects. From the PPP case in China (section 4.2), it can be seen that the authorities made decisions without consulting the public, thereby ignoring the interests of people, and were ultimately forced to abandon the project as it did not bring about the expected results. It can therefore be stated that the decision-making process on the PPP project in China was undemocratic. As for the project in Taiwan (section 4.4), the private partner took the decision on the tariff for using on-board units without taking into account public opinion despite a public survey, thereby failing to satisfy the demands of people. To a certain extent, this process also implies an undemocratic decision-making process which led to problematic consequences. On the other hand, in the case of the project in Tanzania (section 4.3), where the authorities ensured public participation in the project during its planning stage, the project was supported by the public, and as a result, the project was approved and implemented, bringing about the desired outcomes. By involving the public in the project,

including local community-based organisations as partners, not only did the authorities of Dar es Salaam ensure the effective realisation of the project, but they also implemented it more democratically.

Summing up, based on the example of the Kok-Zhailau project, and taking into consideration other examples of PPP cases, it can be stated that public participation can be regarded as a means of both democratic and effective realisation of PPP projects. Indeed, a positive example of public participation within the framework of the Kok-Zhailau project, namely meaningful participation, should serve as a valuable lesson not only for the authorities of Almaty, but also for the central authorities and other local authorities of Kazakhstan.

7.2.2. Public participation in PPP projects and its implications for the society in Kazakhstan

Analysing the Kok-Zhailau project, it can be seen that public participation can be conducive not only to the democratic and effective realisation of PPP projects, but also to the development and advancement of political pluralism, civil society, social capital, and to the enhancement of representative democracy in Kazakhstan, thus benefitting the society in the country. It is worth noting that these aspects in turn can contribute to the democratisation of the society in Kazakhstan. Democratisation of the society is a point of emphasis here, given the fact that Kazakhstan is a country with an authoritarian system of governance (The Economist Intelligence Unit, 2018), which has not yet completed the transformation into a more democratic form of government. As Vestal (1999) asserts, “democratisation is a transition from an authoritarian system to a form of government that ensures civil liberties and provides its citizens with means to influence or attempt to influence policy outcomes” (Vestal, 1999, p. 17).

With respect to the Kok-Zhailau project, the fact that the city authorities began to ensure public participation in the decision-making on the PPP project and listened to public opinion signals the officials’ responsiveness and accountability to the people. Speaking about responsiveness, Manin and others (1999, p. 9) stress that when the preferences of citizens are taken into account in government policies (programmes), then government is responsive. Consequently, one of the criteria for responsiveness is a signal from citizens, which should be taken into consideration by their representatives (Manin, et al., 1999, p. 9). In describing the concept of accountability, Mulgan (2000) goes beyond the traditional view – to be accountable and responsible for someone’s actions (Jones, 1992), and describes accountability as “control, responsiveness and dialogue” (Mulgan, 2000, pp. 555-570). In Mulgan’s view, accountability

as control implies that citizens can adequately control the actions of officials (Mulgan, 2000, p. 563), while accountability as responsiveness is understood as officials' responsiveness to people's demands (Mulgan, 2000, p. 566). As a dialogue, further, accountability is seen where citizens can openly engage in discussions with officials so that they can provide answers and explanations about policies or programmes (Mulgan, 2000, p. 569). Therefore, it can be seen that in addition to responsiveness and accountability, public participation can also strengthen public control over the activities and decisions of officials.

Echoing the same claim, in advocating the idea of participation, Pateman (1970, p. 110) maintains that it can allow people to exercise control over their representatives' activities and decisions that affect the lives of people. Similarly, Mikheeva and Mikheev (2018) note that public hearings can be considered as one form of public control over the activities of government bodies. Furthermore, it is considered that under public control, the decisions of officials are made in a more transparent manner, thus preventing corruption risks. As Cobârzan and Hamlin (2005, pp. 34-35) argue, transparent decision-making procedures help reduce corruption risks by enhancing accountability. As these claims and arguments, together with the analysis of the project indicate, public participation contributes to responsiveness, accountability and public control, thereby strengthening representative democracy, which plays a crucial democratic role for citizens.

As the facts around the Kok-Zhailau project indicate, the public in the person of scientists, sportsmen, students, ecologists, public figures and representatives of various interest groups participated in the public hearing which took place on the 4th November of 2018 and expressed their opinions on the project (Total, 2018). The participation of different people and interests groups in the decision-making process on the project, and the expression of their opinions on the project show the diversity of ideas and interests that affects the development of pluralism, namely political pluralism which is regarded as the opportunity of people and interest groups with different interests to participate in political processes. McLennan (1995) regards "facilitation of difference; and representation of difference in all basic decision-making arrangements" as the key features of political pluralism (McLennan, 1995, p. 7). Furthermore, according to Longley (2019, cited in ThoughtCo, 2019), pluralism in governance signifies the peaceful coexistence of people with different interests and their equal participation in political processes (ThoughtCo, 2019). The development of political pluralism in Kazakhstan is highly positive under the existing democratic conditions, and its development and advancement only contribute to the democratisation of society in the country. Moreover, the development of political pluralism is conducive to reducing the authoritarian style of governance, one of the

features of which is connected with “constraints on political institutions”, thus implying limited political pluralism (Link, 1964 cited in Casper, 1995, p.40-41). Casper (1995, p. 40) also maintains that authoritarianism is a regime that controls and limits the political participation of people and interest groups.

Returning to the case of the Kok-Zhailau project, the participation of interest groups in the decision-making on the project, among which are various NGOs, illustrates the development and advancement of civil society in the country by enabling independent NGOs to pursue and express their interests. The World Bank provides the following definition of civil society: “the wide array of non-governmental and not for profit organizations that have a presence in public life, express the interests and values of their members and others, based on ethical, cultural, political, scientific, religious or philanthropic considerations” (World Bank, 2019). It is also worth remarking that the development of civil society contributes to the development of democratic society in general. As Kymlicka (2002, p. 80) states, the rights and freedoms of citizens are ensured in civil society by means of participation in various voluntary organisations. Putnam and others (1994, p. 89) have also stressed that different civic organisations contribute to democratic governance, influencing both individual members and the whole society. Moreover, according to Dahl (1982, p. 1), independent organisations contribute to strengthening democratic processes and political freedoms, thus diminishing state influence. Speaking about the concept of civil society, Cohen and Arato (1992, p. 15) argue that civil society can be perceived as an objection against authoritarian regimes in Eastern Europe as a way to building more democratic societies. Likewise, Whitehead (2002, p. 66) contends that without a robust civil society it is unworkable to promote the democratisation of society wherein democratic changes are supposed to occur. Indeed, the development and advancement of civil society is highly beneficial to the society in Kazakhstan in terms of its democratisation.

Public participation also contributes to social capital that includes mutual understanding and interaction of members of society with the aim of achieving common goals, thereby producing public good. For example, even the participation of people and interest groups as members of society in the discussion of a socially significant issue such as the Kok-Zhailau project was carried out in order to achieve a common goal, insofar as this was an important issue that concerned not only environmentalists, but also other members of society. Speaking about the role of social capital, Field (2008, p. 1) asserts that an individual or a group of people enter into relationships with other people to pursue common interests, thereby allowing them to achieve shared goals. Putnam and others (1994) have also argued that social capital

contributes to the effective functioning of society by means of trust, cooperation and joint actions of members of society (Putnam, et al., 1994, pp. 167-176). In the case of the Kok-Zhailau project, it was thanks to the joint efforts of ecologists, scientists, tourists, public figures and local residents that the public was able to draw the authorities' attention to the detrimental impact on the environment due to the construction of the ski resort, which is a common issue of importance for all groups. Moreover, according to Putnam and others (1994), social capital can generally conduce to promoting democracy by enhancing the role and potential of civic community, especially at local levels, where citizens are more interested in interacting and pursuing common interests (Putnam, et al., 1994, pp. 181-185). This can be seen in the example of Kok-Zhailau project, where the local community of Almaty fighting for its members' shared interests for several years, was able to influence the city authorities' decisions, thereby achieving the political and democratic success. As can be discerned, social capital plays a positive democratic role for the society in Kazakhstan.

Summing up, based on the example of the Kok-Zhailau project it can be stated that public participation in the decision-making on PPPs can contribute to the development and advancement of political pluralism, civil society, social capital and to the enhancement of representative democracy in Kazakhstan. All of these aspects can be regarded as the implications of public participation in the decision-making on PPPs for the society in the country. Furthermore, these implications have a democratic value for the society in Kazakhstan, inasmuch as they can contribute to promoting democratic processes in the country, both individually and in conjunction.

7.3. Legal measures ensuring public participation in PPPs, and their implications for the society in Kazakhstan

As was discussed in Chapter 5, there are normative legal acts in Kazakhstan that regulate the issues of public participation in decision-making. However, some laws do not yet provide for public participation in the decision-making on PPP projects. Other legal acts, for instance, the Order of the Acting Minister of Energy of the Republic of Kazakhstan No. 240 of 10 June 2016 'On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings' still limits public participation in PPPs involving certain types of economic activity. The current state of legal affairs to a certain extent circumscribes the political rights of citizens and interest groups to participate in the decision-making on PPPs. In this section, it is argued that in order to eliminate such legal restrictions, legal measures

providing for the introduction of relevant amendments to normative legal acts are needed. The adoption of such legal measures would additionally expand and ensure public participation in the decision-making on PPPs. After giving an exposition of the concrete measures proposed here, I will examine the implications of such legal measures, arguing that they will strengthen representative democracy and promote local, participatory, including e-democracy, thus benefitting the society in Kazakhstan.

It is worth pointing out that some of the legal measures proposed here are based on the already existing institutions functioning in the country, through which the public can participate in the decision-making on PPPs. For example, as discussed in Chapter 5, there are institutions such as public councils and self-government. Tools such as the portal ‘Open Normative Legal Acts’, I argue, should be also actively promoted. However, the portal ‘Open Normative Legal Acts’ requires substantial improvement to ensure open access to the full and necessary information on upcoming PPPs and meaningful participation in the discussion of PPPs as well. It is also important to remark that the proposed measures can further help to implement certain initiatives (programmes) announced by the authorities of Kazakhstan. Recognising the existence of issues pertaining to the distance felt between government bodies and citizens, and in order to address such problems, the authorities in Kazakhstan tend to prioritise these matters in certain strategic programmes. For instance, on the 5th of October 2018 in the address to the people of Kazakhstan entitled ‘The Growth of the Welfare of Kazakhstani People: Increase in Incomes and the Quality of Life’, the President of the Republic of Kazakhstan, Nazarbayev, announced “The state apparatus orientated towards the needs of citizens” to be an essential priority for the government (The official website of the President of the Republic of Kazakhstan, 2018). In particular, in the framework of the first objective of this priority, which is “The cardinal increase of the effectiveness of government bodies’ activities”, the President proclaimed the following:

The civil servants of new formation should reduce the distance between the state and society. This means the constant feedback, lively discussion and explanation to people of specific measures and results of public policy (The official website of the President of the Republic of Kazakhstan, 2018).

In the light of such positive initiatives of the authorities, the proposed legal measures can also contribute to achieving the government’s priority as set out by the President.

As discussed in Chapter 5, the government bodies of Kazakhstan still do not fully ensure public participation in PPPs before they are approved, instead they practise informing the public about upcoming PPP projects. Such conditions preclude the public from participating in the

discussion of PPPs prior to their approval. Despite the existence of ministerial orders regulating public hearings issues, it is important to legislate for public participation in the decision-making on PPPs in the main body of the law governing the relations in the sphere of PPP more generally. I would therefore propose that additions be made to the Law ‘On Public-Private Partnership’ (2015), providing for mandatory public involvement in the decision-making on PPPs by government bodies regardless of various forms and instruments of participation. Such a legal measure would ensure public participation in the decision-making on PPPs, making government bodies more responsive to the demands of the public and thus strengthening responsive democracy. It is worth noting that the same additions are proffered to the Law ‘On Concessions’ (2006), which would ensure public participation in the decision-making on concession projects.

The examination of the existing legislation in place reveals the existence of the Order of the Acting Minister of Energy of the Republic of Kazakhstan No. 240 of 10 June 2016 ‘On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings’. Despite this ministerial order, it still confines public participation in PPP projects that involve certain types of economic activities. For instance, the public cannot participate in public hearings on PPP projects involving the construction of kindergartens, hospitals, schools, prisons, sports facilities, whereas according to statistics noted in Chapter 3, many PPP projects currently being realised involve the construction of the above-mentioned public facilities. Therefore, it is important to make relevant additions to the above-mentioned ministerial order to expand the types of economic activities on which PPP projects are to be brought to public hearings. Such a legal measure would expand the rights of citizens and interest groups to participate in public hearings on PPPs involving certain types of economic activities, thus ensuring more democratic opportunities for the public to participate in decision-making on PPPs.

As discussed in Chapter 5, the portal ‘Open Normative Legal Acts’ operates in Kazakhstan, enabling the public to participate in the discussion of drafts of normative legal acts, and thus contributing to the development of e-democracy. There have been reports that the central and local government bodies of Kazakhstan have begun to post the drafts of normative legal acts on the portal regarding the approval of the lists of republican and local PPP projects planned for implementation (Portal ‘Open Normative Legal Acts’, 2017; 2019). Nevertheless, as has been ascertained earlier, the public presently cannot participate in the decision-making on PPPs through employing the portal before they are approved. Indeed, public participation in the decision-making on PPPs using the portal would provide people with the

rights to have their say in PPPs prior to their approval, thus contributing to the further promotion of e-democracy. Norris and Reddick (2013) give the following definition of e-democracy, emphasising the centrality of participation of citizens:

The use of electronic means, principally although not solely through government websites and the Internet, to promote and enhance citizen engagement with and participation in governmental activities, programs and decision-making (Norris & Reddick, 2013, p. 203).

As Forcella (2006) likewise delineates, e-democracy is a great opportunity for people to speak out by participating in the decision-making processes, which also ensures that people are more informed about government decisions and policies (Forcella, 2006, p. 101). Notwithstanding, as mentioned in Chapter 5, the portal needs to be improved considerably, in order to provide the public with open access to all the necessary information on upcoming PPPs in full. To address this shortcoming, I propose that an addition be made to the Law ‘On Access to Information’ No. 401-V of 16 November 2015, advocating for the full publication of the necessary information on PPP projects on the portal before they are approved, rather than limiting the published documents on the portal to drafts of normative legal acts containing only the names of PPP projects planned for implementation. Additionally, in order to ensure meaningful participation in the discussion of PPPs on the portal, an amendment ought to be made to the Order of the Minister of Information and Communications of Kazakhstan No. 22 of 30 June 2016 ‘Rules on Posting and Public Discussion of Draft Concepts of Drafts of Laws and Normative Legal Acts’. In particular, it is proposed that an amendment be made excluding the concurrence of drafts of normative legal acts by government bodies after public discussion, which should occur simultaneously so as to prevent the risk of pseudo-participation of the public in the discussion of PPPs. Such a legal measure would ensure meaningful participation of the public in the discussion of PPP projects and the drafts of normative legal acts as well, therefore not only improving the portal’s work but also tailoring it towards enabling more meaningful participation by the public. Consequently, the above-mentioned legal measures can contribute to promoting e-democracy at large.

An addition could also be made to the Law ‘On Access to Information’ (2015), one that mandates government bodies to provide all the necessary information on PPPs before their approval and upon public request without referring to the protection of confidential information. This and other suggested legal measures would allow the public to have access to the information about upcoming PPPs, thereby enhancing the accountability and responsiveness from officials to the public. Far from being limited to these proposals, however, other measures

could be taken to strengthen accountability from public and private partners whilst implementing PPPs, and in particular to ensure the right of both citizens and interest groups to obtain any necessary information about PPP projects.

One of the issues I faced during my fieldwork was the unwillingness on the part of private partners to provide information on PPP projects. Given the fact that such unwillingness can lead to citizens and interest groups not being fully informed about PPP projects, a provision could be added to the Law ‘On Access to Information’, mandating private partners to provide information about PPPs upon public request, without referring to the confidentiality of information. Moreover, government bodies and private organisations alike should be required to report on the progress of PPP projects on a regular basis. Currently, the Law ‘On Local State Government and Self-Government in the Republic of Kazakhstan’ No. 148-II of 23 January 2001 prescribes that heads of relevant levels of local government must report to the populace on the execution of certain budgets. Notwithstanding, it is necessary that all central and local government bodies, as well as private organisations implementing PPP projects report to the public on budget execution, together with the work done and scheduled activities within PPPs on a regular basis. These obligations could be specified in the Law ‘On Public- Private Partnership’ (2015) in order to enhance the accountability from both government bodies and private organisations, as well as public control over their activities while implementing PPPs, and to strengthen representative democracy more broadly.

One of the areas where additional legal measures could be taken is with regards to the institution of public councils. In accordance with article 1, paragraph 1 of the Law of the Republic of Kazakhstan ‘On Public Councils’ No. 383-V, adopted on the 2nd of November 2015, public councils are regarded to be consultative and advisory, and supervisory boards formed by ministries and local government bodies together with citizens and non-profit organisations. One of the objectives of public councils is “to represent the interests of civil society and take into account public opinion when discussing and making decisions at republican and local levels” (Law ‘On Public Councils’, 2015). Therefore, public councils can relay public suggestions and ideas to government bodies when making decisions that concern the interests of the public. This is a significant role for public councils, as Bishop and Davis (2002) have noted, advisory boards or committees comprising different community members act as providers of opinions to government bodies that plays a significant role both for government and the public to deal with issues of concern to both (Bishop & Davis, 2002, pp. 20-22). Nevertheless, as the analysis of the existing legislation has shown, the Law ‘On Public Councils’ (2015) does not grant the public the right to participate in the discussion of PPP

projects through public councils. In order to grant this right to public councils, it is proposed that an addition be made to this law, allowing public councils at both central and local levels to discuss PPP projects before they are approved. Such a legal measure would intensify the role of public councils both at central and local levels. Furthermore, it would expand the political freedoms and rights of the public to participate in the decision-making on PPPs.

As the analysis of the existing legislation presented in Chapter 5 has revealed, until recently only a single NGO, NCE RK, has participated in the decision-making processes on PPPs by providing expert opinion on PPP project concepts. Nonetheless, in November 2017, amendments were made to the Law ‘On Public-Private Partnership’ (2015), one of which excluded the right of NCE RK to render expert opinion on PPP project concepts (Law of the Republic of Kazakhstan, 2017). It should be noted that non-governmental organisations with the exception of NCE RK could not participate in the decision-making on PPPs, and this remains true despite the recent amendments to the law. This is explained by the fact that pursuant to article 28, subsections 3 and 4 of the Law ‘On Public-Private Partnership’ (2015), only the representatives of NCE RK can participate in competition commissions on the selection of contractors, and monitor the implementation of PPP projects. Moreover, only the representatives of NCE RK can participate in the work of project groups that can be created for the effective management of PPP and concession projects. Given such legal limitation on participation of NGOs in general, the following measures are proposed.

It is important that additions be made to the Law ‘On Public-Private Partnership’ (2015) prescribing not only the participation of NGOs in competition commissions on the selection of contractors, but also the provision of expert opinion on PPP concepts, together with participation in competition commissions on the procurement of work, services and goods within the framework of PPP projects. Similarly, additions should be added to the Decree of the Ministry of National Economy No. 80 of 27 February 2018, specifying the participation of NGO’s representatives in the work of project groups, rather than limiting participation to the representatives of government bodies, quasi-state and commercial institutions, together with NCE RK. Such measures would in the first instance allow other NGOs to have the right to participate in planning PPPs, thus developing pluralism. This is an important factor, since as Birch (1993) has stressed in his depiction of ideas of American pluralists Madison and Hamilton, the objective of pluralism is to curb the dominance of a particular group, organisation or party, which should not be given to violate the rights of other actors in society (Birch, 1993, p. 161). Secondly, the participation of the representatives of NGOs in a competition commission on the selection of contractors, including on the procurement of work, services and

goods within the framework PPPs will ensure the robust public control, accountability, and transparency in decision-making, which can reduce corruption risks. As an example, speaking about the detention of two vice-ministers of energy at a meeting, the Deputy Chairman of the Agency for Civil Service and Counteraction to Corruption of Kazakhstan, Bektenov, has recognised corruption as a systemic problem that could be addressed with the help of adequate public control (Kazakhstanskaya Pravda, 2018b). Bektenov (2018, cited in Kazakhstanskaya pravda, 2018b) further opined that if the information on expected expenses of public money was more accessible to the public, and the acceptance of work and services was carried out transparently with the participation of the representatives of the public, then many corruption offenses would be prevented.

Lastly, legal measures can be made to the workings of local governments, in particular the institution of self-government, which as discussed in Chapter 5, operates in the territories of cities of district significance, rural boroughs, townships and villages. According to article 39-3 of the Law ‘On Local State Government and Self-Government in the Republic of Kazakhstan’ (2001), local communities can participate in local affairs through an assembly and meeting convened independently by the mayors of the respective administrative units, or on the initiative of at least 10 per cent of the members of a meeting or assembly, residing in the respective administrative units. As the analysis of this law shows, however, local communities do not have the right to participate in the discussion of PPP projects, nor in the direct decision-making on PPP projects. To eliminate such legal restrictions, it is proposed that additions be made to the above law granting local communities the right to participate in the discussion of PPPs and in the direct decision-making on PPP projects. Such legal measures would not only be conducive to the institution of self-government, but they will also promote local and participatory democracy as a whole. As Barber (1984) argues, a participatory model of democracy is more connected with self-government by people rather than government by their representatives (Barber, 1984, p. 151). Similarly, Teorell (2006) citing Nagel (1987) stresses that participatory democrats perceive participation as participation in “direct decision-making” (Teorell, 2006, p. 790). Bulmer also describes local democracy as democratic governance at local level, including through self-government (Bulmer, 2015, p.3; Bulmer, 2017, p. 3).

As can be discerned, the implications of legal measures directed at expanding and ensuring public participation in the decision-making on PPPs for the society in Kazakhstan can be the enhancement of representative democracy, and the promotion of local, participatory and e-democracy in the country. As Birch (1993) asserts, many democrats believe that by virtue of participation it is possible to advance both the “quality” and “efficiency” of democracy in

practice (Birch, 1993, p. 81). Verba and Nie (1972) have also correlated more participation in decision-making with more democracy in practice (Verba & Nie, 1972, p. 1). Moreover, public participation in the decision-making on PPPs can also strengthen the existing institutions in Kazakhstan such as public councils, which are generally aimed at promoting public involvement in the decision-making on public matters. Hence, the implications of public participation in the decision-making on PPPs for the society in Kazakhstan can be the development and promotion of local, participatory and e-democracy in the country. In turn, these implications can contribute to the democratisation of the society in Kazakhstan, which is extremely crucial and beneficial to the society, considering the existing democratic conditions in the country. As Whitehead (2002) maintains, democratisation is a “long-term, dynamic, and open-ended process”, which moves towards a “more rule-based, more consensual” society, and *en passant*, aims at a “more participatory type of politics” (Whitehead, 2002, p. 27).

7.4. Conclusion

The aim of this chapter has been to examine the importance of public participation both for the democratic and effective realisation of PPP projects, as well as for the society in Kazakhstan. To do this, in the first section of the chapter, and focusing on the recent developments around the Kok-Zhailau project, I detailed the various positive effects of meaningful participation of the public both for the PPP project and for the society in the country. As I noted, the authorities of Almaty started to listen to the public and to take their opinions into account regarding the Kok-Zhailau project, thus making the decision-making process on the project democratic. This is evidenced by the fact that the new feasibility study for the project, one that takes into account public opinion was brought to public discussion on the 4th of November 2018. Following previous public discontent, the feasibility study for the project was changed dramatically to one that envisages the construction of a mountain park focused on hiking tourism, rather than a ski resort. Various decisions made by the authorities were altered, such as the previous plans to construct private cottages, golf courses, gas mains that were later abandoned, seeing the costs of the project decline from KZT1.5 billion to KZT200 million. Importantly, these changes were in line with the majority of public opinion, signalling the fact that the authorities did indeed take the interests and opinions of the public into account, thus ensuring meaningful participation of the public in the project and democratic decision-making process. Furthermore, the fact that the number of those in support of the project increased since

the public hearing, means that people also felt that they were heard and empowered by being able to influence the city authorities' decisions.

It is important to emphasise that the changes in decisions regarding the project had been due to people's activism and their years-long fight to be heard by the authorities. Consequently, not only did public participation in the case of this particular project result in more effective decisions, but it also empowered people to make their voices heard, thus making the decision-making process on the project democratic. As I have demonstrated in this chapter, this conclusion is not only seen in the case of Kok-Zhailau project, but also in the international cases examined earlier in Chapter 4 of the thesis. These examples together make the case for the claim that while in the absence of meaningful participation various risk factors prevent the effective implementation of PPP projects and lead to public dissatisfaction and uproar, whereas meaningful participation acts as a means of boosting both the democratic and effective implementation of PPP projects.

The analysis of the Kok-Zhailau project further reveals that meaningful participation of the public also contributes to the development and advancement of political pluralism and civil society, to building social capital and to strengthening representative democracy. Public participation in the decision-making on the project through public hearings encourages political pluralism by giving a platform and legitimacy to a wide range of opinions and interests. Such development of political pluralism in turn contributes to reducing the authoritarian style of governance that still exists in Kazakhstan. In a similar vein, giving voice and platform to different and independent NGOs when making decisions on PPP projects, is an important element in the development and advancement of civil society in the country. Indeed, the development of civil society can contribute to democratic processes in Kazakhstan, thus contributing to building a more democratic society in the country, where different and independent NGOs can function. Public participation in PPPs also strengthens the officials' responsiveness, accountability to people, as well as public control, which not only strengthens representative democracy, but also helps prevent corruption in government. Lastly, public participation in PPPs, through enabling people to cooperate and pursue shared interests, contributes to building social capital which is itself an important factor in the promotion of democracy, including local democracy. Hence, the above-mentioned aspects can be regarded as the implications of public participation in the decision-making on PPPs for the society in Kazakhstan. Furthermore, these implications have a democratic value, and therefore, they only ameliorate the existing democratic conditions in Kazakhstan, thus benefitting the society in the country in terms of its democratisation.

Given the importance of public participation as highlighted, it is important to have legal measures in place that safeguard the rights of the public to participate in the decision-making on PPP projects being implemented in different areas of activity. In the second section of this chapter I outlined some of the ways in which the existing legislation in Kazakhstan can be modified to allow of public participation in the decision-making on PPPs. For instance, the following additions are proposed to the Law ‘On Public-Private Partnership’ (2015), with the aim of expanding and ensuring the rights of NGOs to participate in the decision-making processes regarding PPP projects:

- mandatory involvement of NGOs in the decision-making on PPP projects;
- provision of expert opinion by NGOs on concepts of PPP projects implemented in certain spheres of economic activity;
- participation of NGOs in competition commissions on the selection of potential contractors and in the monitoring of PPP projects, without limiting to participation of NCE RK;
- participation of NGOs in competition commissions on public procurement of goods, work and services within the framework of PPP projects.

These additions, as well as others suggested in the course of the chapter, for instance, to the laws ‘On Public-Private Partnership’, ‘On Concessions’, ‘On Public Councils’, ‘On Local State Government and Self-Government’, ‘On Access to Information’ can each play a significant role in expanding and ensuring public participation of citizens and interest groups in the decision-making on PPPs. Legal measures are especially significant as they can promote and protect the rights of the public to make its voices heard, influence and provide public control over government bodies’ decisions, as well as to eliminate the possibility of preferential treatment, as has been the case with NCE RK and no other NGO being able to participate in certain procedures for planning PPPs. In general, as previously stated, the legal measures directed at expanding and ensuring public participation in PPP can contribute to enhancing representative democracy and to promoting local, participatory and e-democracy, all of which are beneficial to the society in Kazakhstan.

In sum, the arguments in this chapter indicate the importance of meaningful participation not just for the democratic and effective implementation of PPP projects, but also for the society in Kazakhstan. Although the analysis here has been mainly focused on Kazakhstan, I have made clear that the conclusions drawn from this analysis goes beyond Kazakhstan and is indeed valid in different countries, as the cases throughout this thesis have demonstrated. Furthermore, as I have shown, legal steps can and should be taken in order to expand and ensure the rights of

people and interest groups to participate in the decision-making on PPP projects. Such legal measures can have a considerable effect in empowering citizens and interest groups to have their say in PPPs. They can also have a huge impact on the enhancement of representative democracy and on the promotion of local, participatory and e-democracy in Kazakhstan, thus benefitting to the society in the country.

Chapter 8 – Conclusion

8.1. Introduction

The aim of the present research has been to study the socio-political issue of public participation in the decision-making on PPP projects in Kazakhstan. The importance of this topic is manifold. First and foremost, the issue is of great significance to the people of Kazakhstan, given the fact that PPP projects are implemented for the interests of people as the end users of public services delivered under the PPP mechanism. Secondly, the issue of public participation has a vital democratic and political significance for citizens and interest groups, in terms of the opportunity it allows to take part in the decision-making on PPPs and influence government's decisions regarding PPP projects that affect their lives and interests. Thirdly, investigating the issue is critical from a practical point of view, since different modes of participation, including non-participation and pseudo-participation of the public in the decision-making on PPPs affect the course of projects. As the cases examined throughout the thesis demonstrate, the traditional economic driving force behind PPPs overlook the significance of meaningful public participation and more generally the democratic implementation of PPP projects for their success. Importantly, apart from advancing democracy, meaningful public participation can also ensure the economic efficacy of PPP projects by means of providing information and feedback from citizens for whom public services are delivered under the PPP mechanism. Similarly, the study of the issue is vital in terms of highlighting the implications of public participation in the decision-making on PPPs for the society in Kazakhstan more broadly. It is worth pointing out that these aspects of the issue of public participation in PPP projects in Kazakhstan form the basis upon which the key research questions in this work have been investigated and which I have endeavoured to answer.

Given the in-depth analysis presented in the previous chapters by way of answering the research questions, in this final chapter I will present a summary of the arguments and the key findings of the study as revealed in the previous chapters. Having highlighted these key findings, I will then enumerate the theoretical and conceptual contributions of the research, which could advance the field of democratic theory, as well as the practical contributions offered by the findings of this study. Lastly, I will give recommendations for further research into the issue of PPP in Kazakhstan.

8.2. Summary of arguments and the key findings

To answer the research questions, in this work I have employed a multi-method approach, in particular interviews, content analysis and case studies, to collect and analyse relevant data. The interviews for this research were conducted in 2016, when I met with the representatives of government bodies and quasi-state institutions involved in the execution of the PPP policy in Kazakhstan. As noted in Chapter 5, the analysis of respondents' answers indicates a deficiency on the part of the government bodies of Kazakhstan in ensuring public participation in the decision-making on PPP projects. This can be seen through the fact that the respondents do not mention public consultation in their answers, which is one of the most widespread forms of public participation. Additionally, as some of the respondents note in their responses, information about the forthcoming PPPs is posted on the official websites of government bodies, PPP Centre and of its regional centres, as well as in the mass media. This practice of informing the public about the forthcoming PPPs, however, excludes any public participation in the decision-making on PPPs before they are approved. Such a process, rather than being a two-way one, where the public participates in a dialogue with the representatives of government, can be considered as one-sided and accordingly the public cannot discuss PPP projects prior to their approval. Furthermore, there have been indications that even informing about the forthcoming PPP projects is not effectuated in a proper manner. For instance, during 2017-18 some Internet users remarked on the official page of PPP Centre that government bodies published only limited information about the forthcoming PPPs (Kazakhstan Public-Private Partnership Centre, 2017; 2018a). In addition to poor communication in informing the public, this is further indication of the fact that the government bodies of Kazakhstan still practice informing about the forthcoming PPPs through official websites and the mass media, thus substantiating the problem of ensuring public participation in the decision-making on PPPs.

One revelation during the fieldwork that has received considerable attention in the thesis, was the launch of the portal 'Open Normative Legal Acts' in Kazakhstan in 2016, by means of which the public can participate in the discussion of drafts of legal normative acts. However, as has been ascertained, at present the public cannot participate in the decision-making on PPPs prior to their approval using the portal. This claim is supported by the following two observations.

Firstly, no information regarding the upcoming PPP projects was to be found during the study of two drafts of normative legal acts regarding the approval of the lists of PPPs planned

for implementation. These were drafts of the order of the Ministry of National Economy, and the ruling of the local representative body of North Kazakhstan region, posted on the portal in 2017 and 2019 respectively. Only the texts of drafts of normative legal acts were posted on the portal, indicating solely the names of PPP projects. It is clear that in such circumstances the public do not have access to the full and necessary information, preventing them from having meaningful discussions on the upcoming PPP projects prior to their approval. Secondly, the Ministry of National Economy and the local representative body of North Kazakhstan region posted the drafts of normative legal acts on the portal, only after relevant central government bodies and the local executive body of North Kazakhstan region had compiled the lists of PPP projects. In other words, decisions on both republican and local PPPs had already been made by relevant central bodies and the local executive body of North Kazakhstan region, prior to publication of documents on the portal. This is due to the fact that according to articles 24 and 25 of the Law ‘On Public-Private Partnership’ (2015), the lists of republican and local PPPs planned for implementation are approved by the authorised body on state planning, that is the Ministry of National Economy, and local representative bodies. Moreover, in accordance with the Order of Acting Minister of National Economy ‘On Introducing Changes and Amendments to Some Orders of the Authorised Body on State Planning’ (2018), these lists are compiled by central and local executive bodies, which are submitted to the authorised body on state planning and local representative bodies for their approval. It can therefore be seen that the lists of PPPs planned for implementation, republican and local ones, are approved by the Ministry of National Economy and local representative bodies respectively after decisions are made on PPPs by central and local executive bodies. Such facts also demonstrate the reason why the Ministry of National Economy and local representative bodies do not post documents such as the drafts of feasibility studies and/or of design and estimate documentation of upcoming PPP projects on the portal. Taken together, these observations indicate the fact that at the present the portal does not enable the public to participate in the decision-making on PPPs prior to their approval.

An additional drawback regarding the portal has also been noted in the arguments, as it hinders meaningful participation of the public in the discussion of drafts of normative legal acts. This is related to the Order of the Minister of Information and Communications ‘On Approval of the Rules on Posting and Public Discussion of Draft Concepts of Draft Laws and Drafts of Normative Legal Acts’ (2016), which provides for public discussion of drafts of normative legal acts prior to their concurrence by government bodies. In other words, this ministerial order allows the public to discuss the drafts of normative legal acts only before government bodies

agree on them, thus creating the possibility that government bodies may not take into account the public's comments. This circumstance indicates the risk of pseudo-participation of the public in the discussion of drafts of normative legal acts.

The second method employed in this research has been content analysis of documents, pertaining to normative legal acts concerned with public participation in decision-making in Kazakhstan. As the research demonstrates, in Kazakhstan there are ministerial orders providing for public participation in projects through the instrument of public hearings. For example, there is the Order of the Minister of Environmental Protection No. 135-p of 27 May 2007 'On Approval of the Rules for Holding Public Hearings'. Legally, this ministerial order can apply to all PPP projects, however, until mid-2016 the Order was limited, insofar as public hearings could only be held on projects related to environmental issues. Only in 2016, after making amendments to the Environmental Code of the Republic of Kazakhstan (2016), the authorities expanded the use of public hearings on projects involving other types of economic activities. As a result, the Order of the Acting Minister of Energy 'On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings' was adopted on the 10th of June 2016.

As I have argued, while the adoption of this ministerial order is a positive step towards expanding the rights of the public, it still circumscribes the public's rights to participate in public hearings on PPP projects involving certain types of economic activities. By way of illustration, the public cannot participate in public hearings on PPP projects involving the construction of kindergartens, schools, hospitals, student dormitories and sports buildings. This is while statistics mentioned in Chapter 3 show that the majority of PPP projects being realised involve the construction of such public facilities (Finprom, 2019). The ministerial order also limits public participation in public hearings on PPP projects involving the construction of economic roads and streets in localities. It is therefore clear that despite changes, the ministerial order continues to circumscribe the political rights of citizens and interest groups to participate in the decision-making on PPPs involving certain types of economic activities.

It is important to remark that there are laws such as 'On Administrative and Territorial Structure of the Republic of Kazakhstan' (1993), 'On Local State Government and Self-Government in the Republic of Kazakhstan' (2001) and 'On Public Councils' (2015) that do provide for public participation in the decision-making on public matters. Notwithstanding, these laws do not allow of public participation in the decision-making on PPP projects. Such a circumstance indicates the fact that public participation in the decision-making on PPPs has

received insufficient attention from the authorities, and the issue has been regulated only at the level of ministerial orders, but not at the level of laws.

Another point of interest in analysing normative legal acts has been the Order of Acting Minister of National Economy No. 80 of 27 February 2018 ‘On Introducing Changes and Amendments to Some Orders of the Authorised Body on State Planning’. This ministerial order defines the ‘Rules of Submitting, Considering and Selecting Concession Projects’ and the ‘Rules of Planning and Implementing Public Private-Partnership Projects’. The analysis of the provisions of this order shows that NGOs are not yet involved in certain procedures for planning PPPs before they are approved. For instance, NGOs cannot render expert opinions or consultancy on PPP projects during their planning, nor can they be involved in the work of project groups and competition commissions for the selection of potential contractors. NGOs cannot be involved in the monitoring of PPPs either, with the exception of NCE RK, which represents exclusively the interests of commercial organisations. Such circumstances indicate the existing limitations on the participation of the public in the person of NGOs in certain procedures for planning PPPs prior to their approval.

As the analysis presented in this work demonstrates, the existing legislation, particularly, the Order of the Acting Minister of Energy No. 240 of 10 June 2016 ‘On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings’ provides for public participation in the decision-making on PPPs through public hearings. Nonetheless, this order still circumscribes the political rights of the public to participate in the decision-making on PPPs involving certain types of economic activities. Such a legal state of affairs indicates a deficiency in Kazakhstan with regards to ensuring public participation in the decision-making on PPP projects.

In employing the third strand of methodology for this work, namely case studies, I have presented two specific examples of PPP projects in Kazakhstan, examined in Chapter 6. These projects, have allowed for a more in-depth analysis of the ways in which public participation is ensured, or limited, in planning PPP projects in the country and the effects both for the individual projects and the society. The first case examined in this light was that of the Kok-Zhailau project, which according to the initial version of the feasibility study envisaged the construction of a ski resort in the territory of the Ile-Alatau National Park. As discussed in Section 6.2 of Chapter 6, the authorities of Almaty city did not ensure public participation in the decision-making on the project during its planning. This action on the part of the city authorities contravened the Order of the Minister of Environmental Protection No. 135-p of 27 May 2007 ‘On Approval of the Rules for Holding Public Hearings’. The city authorities,

further, breached the provisions of the Aarhus Convention, pursuant to which they had to involve the public in the discussion of the project during its planning. Evidently, these facts illustrate that the city authorities violated the rights of the public to participate in the decision-making on the project, thus making the decision-making process illicit and undemocratic.

As the facts around the project show, the violation of the public's rights and accordingly the ignorance of the interests of people and interest groups by not involving them in the decision-making on the project caused various adverse consequences for the project. First of all, a social risk had emerged, which grew into a serious social problem in the form of public objection to the project, leading to protracted protests. Subsequently, and following from the social risk other risks occurred also growing into serious problems hindering the promotion of the project. For instance, a legal problem emerged in the form of litigations between the local community and local authorities of Almaty, which caused timing, material and moral costs. The project was also subject to an investment problem, which arose due to the lack of public support for the project. The city authorities, fearing that the project would not be promoted due to the lack of public support, stopped allocating funds for the project, thus causing its temporary suspension in 2015. Furthermore, due to the disregard for public opinion and the continuous public objection to the project, a political risk emerged, badly reflecting on the project. The project was also subject to a corruption risk, resulting in corruption offenses committed by local officials and thereby leading to the ineffective use of budgetary funds. As discussed in Chapter 6, all of these problems adversely affected the course of the project, delaying its beginning for several years and in one instance even causing its suspension.

As I have noted, in the case of the Kok-Zhailau project, the city authorities began to hold public hearings long after making decisions regarding the project. Nevertheless, as the facts illustrate, although the city authorities held public hearings, they still did not take into account public opinion, thus simply persuading the people to support the decisions made earlier. That is, even though the city authorities ensured participation, it was not meaningful since they did not listen to people's voices. To put it in another way, there was only pseudo-participation. As mentioned in Chapter 6, such disregard for public opinion continued until the new feasibility study for the project was brought to public discussion in November 2018.

The second PPP case that I have scrutinised in this research is that of the BARAR project on the construction and operation of a toll road encompassing the territories of several regions in Almaty region. As discussed in Section 6.3 of Chapter 6, the regional authorities in this case also failed to ensure public participation in the decision-making on the project during its planning stage. Such an action on the part of the regional authorities therefore, similar to the

previous case, also violated the Order of the Minister of Environmental Protection No. 135-p of 27 May 2007 'On Approval of the Rules for Holding Public Hearings'. Not holding public hearings at the planning stage, the regional authorities made decisions without taking into account the opinions and interests of local people. In particular, the regional authorities decided to redeem plots of land and properties at inadequately low prices, thereby causing public opposition to the authorities' decision. Indeed, such a decision-making process was undemocratic.

Such an undemocratic and unfair decision of the regional authorities precipitated public resentment, bringing about a serious social problem as a result. In turn, this social problem led to other problems such as legal, investment, political and corruption ones. It can be discerned that problems akin to those which occurred within the Kok-Zhailau project, also emerged within the BARAR project. By way of illustration, the BARAR project was subject to a legal problem also involving drawn-out litigations between the local residents and local authorities of Almaty region, causing timing, material and moral costs. Furthermore, due to the problem with land redemption and unpopularity of the project, the potential investors from China declined to invest in the project (Krysha, 2015), bringing about an investment problem. Additionally, the regional authorities themselves postponed the project several times by reason of financial difficulties. The project also underwent a political risk, which arose due to the decision made by the authorities not taking into account the interests of the local people, thus inducing public opposition to the authorities' decision leading to the project being postponed. Although the regional authorities were able to sign a project contract 12 years after they announced the launch of the project, it remains unknown whether or not it will be implemented, and whether or not investments will be paid off given the continued unpopularity of the project. Therefore, a further political risk could occur if the regional authorities again make decisions about the project without taking public opinion into account, such as the decision on the tariff for using the toll road. Moreover, similar to the Kok-Zhailau project, the BARAR project was subject to a corruption risk too, leading to corruption offenses committed by local officials, thereby resulting in the ineffective use of budgetary funds. As has been demonstrated, all of these problems adversely affected the course of the project, delaying it for 12 years, thus considerably increasing the initial costs of the project. In comparison with the Kok-Zhailau project, the regional authorities have achieved a success by signing a PPP contract to implement the BARAR project in accordance with which construction works are now underway. However, it is still unknown whether or not people will willingly use the toll road, and whether or not the project will be successfully implemented. Therefore, there is still a possibility that the project

could undergo certain risks if, for example, the authorities again take decisions regarding the project without taking into account the interests of end users.

Importantly, as I have noted, in the case of the BARAR project, the regional authorities began to hold public hearings long after making decisions regarding the project, including the issue of the redemption of plots of land and properties. Despite public hearings, the regional authorities were disinclined to reach a consensus with local residents concerning the price of plots of land for redemption, thus leading to pseudo-participation.

The analysis of the two cases illustrates that the authorities of Almaty and Almaty region did not ensure public participation in the decision-making on PPPs during their planning. As a result, the local authorities made decisions which did not take into account the opinions and interests of people. Evidently, these facts show that the representatives of people ignored the interests of the electorate, thereby not fulfilling their primary obligations to them. Therefore, here I can concur with the claim put forward by Pateman (1970), that the representatives of people often fail to protect and promote the interests of people, thereby undermining representative democracy. Pateman (1970) associates such a flaw, namely a flaw in the “classical theory of democracy”, with insufficient attention paid to participation of people, which lessens the “democratic character” of the theory (Pateman, 1970, pp. 103-104). As for the two projects, it can be seen that by not involving the public in the decision-making on PPPs, the local officials made decisions in an undemocratic manner, as they failed to take into account the opinions and interests of people. As a result, in both PPP cases the undemocratic decisions of the local authorities led to adverse consequences in the form of social, legal, investment, political risks. All these risks grew into relevant problems negatively impacting the course of the projects, thereby postponing the projects several times. The fate of the BARAR project remains unclear despite the authorities’ success in promoting the project and signing a project contract with investors. Moreover, due to the non-participation of the public and accordingly the lack of proper public control, both projects were subject to corruption risks resulting in corruption offenses committed by local officials, thereby causing the ineffective use of budgetary funds. As such, the facts around the two projects make clear that non-participation of the public in the decision-making on PPPs can lead to risks during their planning that adversely affect the course of PPP projects.

Furthermore, in both cases we are confronted with instances of pseudo-participation. This is since, even though the local authorities began holding public hearings in the two cases, they did not take into account public opinion. Indeed, in both cases people were also of the belief that the authorities did not listen to people’s voices, and as such the public were not willing to

support the local authorities' decisions regarding the projects. This lack of support in turn adversely affected the promotion of the projects. It can therefore be argued that pseudo-participation, as well as non-participation of the public can have adverse consequences for PPP projects, hindering their course by bringing about various risks.

Additionally, I have also shown that the non-participation and pseudo-participation of the public in the decision-making on PPPs can also adversely affect PPP projects during their implementation. This is illustrated in the discussion of the PPP case in China in Section 4.2. of Chapter 4, where the authorities did not seek to hear people's voices, nor did they make decisions taking into account the interests of the end users of the toll road. Evidently, such a decision-making process was undemocratic. As explained in Chapter 4, the provincial authorities set a costly tariff for using the toll road, which disproportionately affected many impoverished families. As a result, during the implementation of the project, local people started to circumvent the toll road, leading to the forced abandonment of the project by the authorities. The PPP example in Taiwan discussed in Section 4.3. of Chapter 4 also indicates that pseudo-participation was the reason for the negative impact on the project during its implementation. As the facts around the project show, even though the authorities conducted a public survey during the planning stage, in the end the decision-makers in the person of the public and private partners did not take into account public opinion when taking the decision on the price for using on-board units. Therefore, this decision-making process was also undemocratic. As a result, the public expressed its objection to the decision regarding the high price for using on-board units, thereby leading to a temporary suspension of the project. The project would have discontinued if the private partner had not reconsidered its price policy in favour of the people.

The analysis of the Kok-Zhailau and BARAR projects also allows for the inference that although the local authorities in Kazakhstan involve the public in the decision-making on PPPs, they do not yet ensure meaningful participation. That is, even though the local authorities ensure the actual participation of the public in the decision-making on PPPs in the form of public hearings, they still do not take into account public opinion.

As I discussed in Chapter 7, some positive developments took place in the framework of the Kok-Zhailau project that are noteworthy. In particular, considering the comments and suggestions made by the public, the authorities of Almaty developed a new feasibility study for the project and brought it forward to a discussion at the public hearing held on the 4th November 2018. This development indicates that following long disagreements between the local communities and authorities of Almaty, the city officials began to take public opinion into

account when making decisions. In other words, it can be seen that the city authorities started to ensure meaningful participation, since the public can now see changes in the decisions made by the authorities, which are more in line with public interests and wishes. For instance, as discussed in Chapter 7, the city authorities changed their decisions by declining to construct private cottages, golf courses and gas mains (Forbes Kazakhstan, 2018). Instead, they decided to build hiking trails and bike lanes. The concept of the project was changed, providing for the construction of a mountain park, rather than a ski resort (Informburo, 2018a). Moreover, the costs of the project were reduced by 7.5 times, thereby significantly saving the budgetary funds, that is, taxpayers' money. All these changes in the authorities' decisions illustrate that people influenced the previous decisions of the city authorities, thus making the decision-making process on the project more democratic than it was before.

As the facts around the Kok-Zhailau project demonstrate, the number of people supporting the project increased since the public hearing held on the 4th November of 2018, which is a welcome development, given the various risks that emerged due to the lack of public support for the project. At that time, there were still opponents to the project such as ecologist groups, however, other public hearings were to take place (Total, 2018), giving different groups the chance to voice their opinions. As KTK (2019) reports, in April 2019 the mayor of Almaty city, Baibek, announced that the project would be postponed, in order for a detailed study of public opinion, especially that of environmentalists, to be carried out. This decision was made upon the recommendation of the newly elected president of Kazakhstan, Tokayev, signifying the welcomed fact that the new political leadership of the country is interested in scrutinising public opinion before making an ultimate decision on the project. Crucially, the principally important outcome in this case was not whether or not the project would be implemented, but rather, whether the final decision was to be made based upon public interests and needs, taking into consideration their opinions. It should be noted that in the end the authorities aborted the project. Indeed, such a circumstance demonstrates that the authorities heard and listened to public opinion, thus ensuring the democratic decision-making process on the project. Moreover, such an outcome has enabled the government not to allocate and expend additional public money on the project, thereby minimising the economic detriment to state budget.

It is important to emphasise that by involving the public in the discussions of the project, not only were the city authorities able to make decisions taking into account public opinion, but they were also able to reconsider their previous decisions, attaining several positive effects. For instance, the city authorities optimised the costs of the project, thus significantly reducing the budget funding, leading to effective budget allocation and project management on the whole.

More importantly, the city authorities began to ensure meaningful participation, that is, they started to listen to people's voices, thereby making the decision-making process on the project democratic. As the facts around the project indicate, the course of the project changed for the better, increasing the chance of public support for the project and of its possible approval due to participation rather than from non-participation and pseudo-participation. Hence, the case of participation, namely meaningful participation within the framework of the Kok-Zhailau project indicates that public participation is a critical factor in the democratic and effective implementation of PPPs.

Other empirical evidence from the international cases discussed in Chapter 4 also demonstrates the importance of public participation as a means of democratic and effective realisation of PPPs. This is seen in particular in the PPP case in Tanzania. As previously stated, the authorities of Dar es Salaam involved the local community in the discussion of the project during its planning. For example, the city authorities set fees for garbage collection after discussing the issue with the local community, taking into consideration the financial capabilities of households and entities. As a result, such a sensible and fair decision of the authorities found support amongst the local community, promoting the project and leading to its effective implementation, thereby achieving the desired results in addressing the environmental and social problems in the city of Dar es Salaam. Indeed, by involving the local community in the discussion of the project and listening to the people's voice, not only were the city authorities able to effectively implement the project, but they were also able to realise it democratically.

Evidently, the case of meaningful participation in the framework of the Kok-Zhailau project is a positive development which comes on the back of people's activism and is therefore a vital democratic achievement. It is hoped that the city authorities will understand what the benefits of ensuring public participation in PPPs can be, and henceforth will continue to ensure meaningful participation of the public in the decision-making on PPP projects. These positive outcomes and developments regarding meaningful public participation within the Kok-Zhailau project could and should serve as an invaluable lesson for other local authorities of Kazakhstan, as well as for central ones. In other words, it is important that meaningful participation of the public is ensured by central and local government bodies alike, in planning each and every PPP project. Indeed, the public hearing on the project that took place on the 4th of November 2018 demonstrates that the authorities of Almaty city started ensuring meaningful participation. Despite this, however, as the analyses of the respondents' answers and of the existing legislation of Kazakhstan indicate, the authorities still do not ensure public participation, including

meaningful participation in all instances of PPP projects in the country. In other words, the authorities of Kazakhstan do not yet ensure public participation in the decision-making on PPPs on a mass basis, implying that there is still a deficiency in public participation in the decision-making on PPP projects in the country.

It is important to note that public participation, in addition to contributing to the democratic and effective implementation of PPP projects, can also conduce to the development and advancement of civil society, political pluralism, to strengthening social capital and representative democracy. For example, the fact that the city authorities began involving the public in the discussion of the feasibility study for the Kok-Zhailau project and taking into account public opinion shows that the city authorities have become more responsive and accountable to people. Accountability and responsiveness to the public also strengthen public control over decisions and activities of officials. Accordingly, representative democracy is strengthened by ensuring responsiveness, accountability and public control.

With regards the Kok-Zhailau project, the participants in the public hearing held on the 4th of November 2018 were of different background with different interests, and included scientists, public figures, activists, environmentalists, sportsmen, students, as well as the representatives of various interest groups. A wide range of people and representatives of interest groups who participated and expressed their views on the project is indicative of diversity of ideas, which is regarded as a key attribute of pluralism. Therefore, the opportunity to participate in the decision-making on socially significant issue as the Kok-Zhailau project and the ability of citizens and interest groups to express their opinions only develops political pluralism. This development can in turn help reduce the authoritarian style of governance that still exists in Kazakhstan, thereby contributing to the democratisation of the society as a whole.

Moreover, amongst the participants in the public hearing there were also the representatives of various NGOs, who expressed their views on the project. The existence and functioning of various independent NGOs contributes to the development of civil society. Indeed, the development of civil society in Kazakhstan can affect the formation of democratic processes, thus making the society more democratic.

Additionally, public participation in the decision-making on PPPs also conduces to building social capital which involves the interaction of people to achieve shared interests. For example, even public participation in the framework of the Kok-Zhailau project demonstrates that people are not indifferent to such issues that are of social importance. Therefore, people and various interest groups joined forces and worked together, and as a result began to move towards achieving their common goal, that is, to be heard by the authorities through influencing

their decisions. As a result, through communication and cooperation, people were able to attain that collective goal, that is, they succeeded in drawing the authorities' attention to serious environmental consequences of the construction of the resort. Moreover, thanks to their joint efforts and actions, the local residents, activists and NGOs of Almaty were able to influence the initial decisions of the local authorities, thus attaining a democratic success, which can be seen as a step towards strengthening local democracy. It is not for nothing that Putnam and others (1994) argue that social capital can contribute to local democracy by enhancing the role of civic community, whose members are more interested in cooperating to achieve common goals.

As the arguments presented here and throughout the thesis indicate, public participation in the decision-making on PPPs can have vital implications for the society in Kazakhstan such as the development and advancement of political pluralism, civil society, social capital, as well as the enhancement of representative democracy. These implications in turn can contribute to advancing democratic processes in the country, which is highly crucial and beneficial to the society.

As discussed in Chapter 6, normative legal acts currently in place in Kazakhstan, such as the laws 'On Administrative and Territorial Structure of the Republic of Kazakhstan' (1993), 'On Local State Government and Self-Government in the Republic of Kazakhstan' (2001), 'On Public Councils' (2015), provide for public participation in decision-making. However, they do not yet provide for public participation in the decision-making on PPPs specifically. It is important to note that there are ministerial orders allowing of public participation in the decision-making on PPPs in the form of public hearings. Notwithstanding, the existing Order of the Acting Minister of Energy 'On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings' (2016) still limits public participation in public hearings on PPP projects involving certain types of economic activities. To eliminate such legal restrictions, I proposed certain legal measures in Chapter 7, which could be added to relevant legal acts, in order to expand and ensure the rights of the public to participate in the decision-making on PPPs. For instance, additions are suggested for laws 'On Concessions' (2006) and 'On Public Councils' (2015) regarding the mandatory involvement of the public in the decision-making on PPPs and concession projects. Such measures would oblige government bodies to ensure public participation at the legislative level, thereby intensifying responsiveness, accountability, along with public control. As can be discerned, the suggested legal measures, through strengthening the provisions for public participation in the decision-making on PPPs, would contribute to enhancing representative democracy and to

promoting local, participatory, together with e-democracy, thus benefitting the society in Kazakhstan.

Further additions are suggested in order to furnish the public with the right to participate in the decision-making on PPPs through existing institutions such as public councils and self-government. In particular, additions are proffered to the laws ‘On Local State Government and Self-Government in the Republic of Kazakhstan’ (2001) and ‘On Public Councils’ (2015). Such measures would not only expand the rights of public councils and local communities to participate in the decision-making on PPPs, but would also promote local and participatory democracy at large. Also, amongst other additions, it is suggested that a provision be added to the law ‘On Access to Information’ (2015), obligating government bodies to post all the full and necessary information on upcoming PPP projects before they are approved on the ‘Open Normative Legal Acts’ portal. This measure would allow the public to have open access to the information on upcoming PPPs, thus enabling them to discuss PPP projects prior to their approval through employing the portal. Accordingly, this measure can also contribute to the promotion of e-democracy on the whole.

Apart from laws, I have proposed additions that could be made to ministerial orders. For example, it is proffered to make additions to the Order of the Acting Minister of Energy ‘On Approval of the List of Types of Economic Activities within Which Projects Are to Be Brought to Public Hearings’ (2016), in order to expand the list of economic activities within which PPP projects are required to be brought to public hearings. Such a measure would expand the right of the public to participate in public hearings on PPP projects involving certain types of economic activities, thereby providing the public with more political freedoms. Another example is the Order of the Acting Minister of National Economy No. 80 of 27 February 27 2018, where a provision is proposed to be added for granting NGOs the right to participate in the work of project groups as well, thus not confining participation to government bodies, quasi-state and commercial institutions, including NCE RK. This measure would expand the right of the public in the person of NGOs to participate in project groups, thereby enhancing transparency, openness and public control while planning PPP projects.

Summing up, one of the key findings of the research is the indication of the fact that there remains a deficiency in public participation in the decision-making on PPPs in Kazakhstan, signifying that participation, including meaningful participation is not yet ensured by the authorities in all PPP cases. The next key finding of the research is that public participation in the decision-making on PPPs, during both planning and implementation stages, leads to favourable results, such that it can be seen as a critical success factor in the democratic and

effective realisation of PPP projects. Conversely, the non-participation and pseudo-participation of the public in the decision-making on PPPs adversely affect PPP projects, both during their planning and implementation stages, leading to various risk factors. In other words, in cases where the public does not have a say in PPPs that are usually negotiated solely between government and business, PPP projects result in outcomes that do not match the demands of people as the end-users of public services delivered under the PPP mechanism. The cases and argumentations presented therefore, show that a PPP process without meaningful public participation risks the economic ineffectiveness of PPP projects. As the other key finding of this work suggests, the positive influence of meaningful participation of the public in the decision-making on PPPs goes beyond the democratic and effective realisation of PPP projects. Crucially, it has been shown that public participation in the decision-making on PPPs can have vital implications for the society in Kazakhstan such as the development and advancement of political pluralism, civil society, social capital, the enhancement of representative democracy, as well as the promotion of local, participatory and e-democracy. In turn, these implications can advance democratic processes in the country, thus conducing to the democratisation of the society in Kazakhstan.

8.3. Contributions of the research

The present research argues for the importance of public participation as a democratic tool through which the public have the ability to influence the decisions of government on matters that affect their lives and interests, namely PPP projects. As the arguments presented throughout this work indicate, public participation can be seen as a requisite and effective tool which effectuates and makes salient the power of people, that is, democracy. Given the focus of the research on public participation as a democratic aspect and the clear link made between democratic decision-making and the rights and powers granted to the public, some of the theoretical implications of the research relate to democratic theory. Additionally, given the central importance of the notion of participation, there are also implications for the way participation as a concept is defined and understood, namely as implying public participation in decision-making so as to influence government decisions.

One of the key demonstrations of this research is the significance of the principle of ‘public participation in decision-making’ for democratic theory. The arguments and analyses presented indicate that public participation in voting as one of the attributes of democracy, particularly representative democracy is not sufficient for the democratic realisation of PPPs.

According to the empirical evidence analysed here the representatives of people do not always take into account the opinions and accordingly the interests of people when taking decisions on PPP projects. In this sense, the decision-making processes on PPPs can be undemocratic and by extension may undermine representative democracy more generally. As such, the importance of public participation in decision-making is made salient as a vital principle of democracy, over and above the participation of people in voting. Furthermore, this principle plays a pivotal role in the conceptualisation of ‘participatory democracy’, a separate model of democracy, which has public participation in political processes at its core. Indeed, Pateman (1970) has advocated for a modern democratic theory, namely, ‘the theory of participatory democracy’, which is itself based on the fundamental principle of public participation in decision-making (Pateman, 1970, p. 111). It can therefore be seen that the contributions of this research extend to cover the concept and theory of participatory democracy.

In addition to theoretical and conceptual contributions, this research also has clear practical contributions, specifically for the effective realisation of PPP projects. As the analysis presented illustrates, by involving the public in the decision-making processes on PPP projects, the authorities can hear the opinions of people, including the views of experts. Through listening to different points of views, including those of professionals, the authorities can make decisions that are likely to lead to more favourable outcomes, thereby reducing risks or preventing them while planning and implementing PPP projects. In other words, public participation in PPPs can be seen to be instrumental in the effective management of PPP projects which are implemented for the demands of the general public. Accordingly, the effective management of PPP projects can result in their effective implementation, thereby conducing to the effective execution of PPP policy at large, which is adopted for the interests of the public.

Further practical contribution of this research is also noteworthy, especially in terms of the development and advancement of political pluralism, civil society, social capital, of the enhancement of representative democracy, and of the promotion of local, participatory, as well as e-democracy. Being developed and effectuated in practice, these aspects significantly help to advance democratic processes in countries, particularly in those where the authoritarian style of governance continues to exist.

8.4. Suggestions for further research

It is clear that due to the limitations of space and in accordance with the defined scope and framework, certain issues have been examined in this work, while others remain that require further study. These include the issues regarding the participation of other stakeholders in the realisation of PPP projects in Kazakhstan. For example, there is a need for scrutinising the issue of decentralisation of powers in the field of PPP to lower government bodies at local level. In other words, the participation of low-level representative and executive bodies in the implementation of PPP policy, as well as PPP projects ought to be examined more fully.

As discussed in Chapter 6, the local administration of Almaty city, with the status of a city of republican significance, is responsible for the implementation of the Kok-Zhailau project, while the authorities of Almaty region are in charge of the BARAR project. In Chapter 5 it was also discussed the fact that local representative bodies at the level of regions approve the lists of local PPPs planned for implementation, implying that they participate in the realisation of PPP policy. Nevertheless, it should be noted that according to the law ‘On Administrative and Territorial Structure of the Republic of Kazakhstan’ (1993), in addition to regions, cities of republican significance and a capital, there are other political divisions or administrative units of local government such as districts, cities of district significance, rural boroughs, townships and villages. These administrative units of local government are inferior to regions. Therefore, it is necessary to ascertain how, if at all, the representative and executive bodies of these lower-level administrative units participate in the PPP policy-making and implementation of local PPP projects.

In order to be able to exercise the functions and powers in the sphere of PPP, local government bodies ought to be vested with the rights to form and execute their own budgets. It is worth pointing out that the legislative body of Kazakhstan has granted the financial self-sufficiency to certain administrative units of local government. For instance, in 2017 the Law ‘On Local State Government and Self-Government in the Republic of Kazakhstan’ (2001) was supplemented by article 38-1, which allows the apparatus of leader of a city of district significance, rural borough, township or village, to independently form and execute a relevant budget (Law ‘On Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Local Self-Government Development Issues Law of the Republic of Kazakhstan’, 2017).

Investigating such issue is essential in examining the extent to which the central authorities of Kazakhstan devolve the power in the field of PPP to local authorities. In other words, exploring this issue can reveal the ways in which representative democracy at local level and local democracy are promoted in Kazakhstan at large. As Blomqvist and Bergman (2010)

note in their discussion of decentralisation, local authorities can provide local people with more opportunities to participate in the decision-making processes on public affairs, since the distance between the local populace and local authorities is much shorter (Blomqvist & Bergman, 2010, p. 44). Similarly, portraying J. S. Mill's ideas of promoting local democracy, Leigh (2000) has also stressed that central government bodies should develop strategic functions, whereas local government bodies ought to deal with implementation of those strategic functions on the ground (Leigh, 2000, p. 9).

Another issue that needs to be examined further, is the participation of other state institutions apart from government bodies in the implementation of PPP policy, including PPP projects. This is explained by the fact that according to article 1, subsection 5 of the Law 'On Public-Private Partnership' (2015), a public partner is defined as "the Republic of Kazakhstan, on behalf of which government bodies, state institutions, state enterprises and limited liability partnerships, joint-stock companies, fifty and more percent of shares in the authorised capital or of voting shares of which are directly or indirectly owned by state, conclude a public-private partnership agreement". As this definition makes clear, in addition to government bodies, other state institutions can act as public partners within PPP networks. At present, there are PPP projects in Kazakhstan, within which central government bodies (ministries) and local executive bodies act as public partners. However, it is necessary to explore how, if at all, PPP projects are being implemented, within which state institutions, state enterprises, limited liability partnerships and joint-stock companies act as public partners. In other words, it is important to examine how state institutions, state enterprises, limited liability partnerships and joint-stock companies implement PPP projects in practice.

8.5. Concluding remarks

The issue of participation in the decision-making on PPPs in Kazakhstan plays a vital democratic role for the public, inasmuch as it allows people and interests groups to influence the government decisions on PPPs that affect their lives and interests, thus promoting democracy in practice. Moreover, public participation is also essential in terms of the effective realisation of PPP projects which are implemented by governments for the benefits of people in the first place. As I have argued throughout this work, public participation in the decision-making on PPPs can be a critical factor in the democratic and effective implementation of PPP projects not only in Kazakhstan, but also in other countries.

As the findings of the research show, the implications of public participation in the decision-making on PPPs for the society in Kazakhstan can be the development and advancement of political pluralism, civil society, social capital, the enhancement of representative democracy, as well as the promotion of local, participatory and e-democracy, which have the democratic benefits for the society in the country. In this sense, it is argued that public participation in the decision-making on PPPs can contribute to the development and advancement of the aforementioned aspects not only in Kazakhstan, but also in other less democratic countries, especially in those where the authoritarian system of governance continues to prevail.

Appendices

Appendix A – Transcript of the interview with a former employee of ‘Kazakhstan Public-Private Partnership Centre’ JSC (Interview date September 7, 2017)

1. What are the main objectives and functions of ‘Kazakhstan Centre for Public-Private Partnership Centre’ JSC (hereinafter - Centre)?

Answer: The main objectives and functions of the Centre are the development of PPP in the Republic of Kazakhstan, including through conducting research in the field of PPP, evaluating and examining PPP projects, as well as training and raising the level of skills of specialists in the field of PPP.

2. As the Centre monitors PPP projects in the country, what kind of organisational, technical and legal issues occur in the process of their realisation? Does the Centre participate in solving such types of problems?

Answer: Yes, it participates. The Centre actively interacts with central and local government bodies, quasi-state organisations, private companies, foreign investors, associations, etc.

3. Does the Centre scrutinise the international experience of PPP on a periodic basis, and does it report the results of the analysis to the Government of the Republic Kazakhstan for policy-making?

Answer: One of the objectives of the Centre is to conduct research in the field of PPP, including the study of international experiences and making recommendations.

4. Are there any difficulties in the Centre’s cooperation with other public institutions (central and local authorities), associations of private businesses, national (quasi) and non-commercial organisations?

Answer: There are not.

5. In October 2015 the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ was adopted. How is the Law working now?

Answer: In my opinion, the Law allows of PPP to be actively developed both at the local and central levels, since the draft of the Law was actively discussed with representatives

of the private sector, together with international consultants and representatives of international organisations.

6. The Centre had also been participating actively in the development of the Law. Which countries' experience had been used in the preparation of the Law?

Answer: During the development of the Law the best international practices were applied, including the practice in Canada, Australia, France and others.

7. Why had the Government decided to employ the experience of that (those) specific country (countries) in public-private partnership (PPP)?

Answer: I do not think that the Government uses the experience of only one country. Rather, on the contrary, the best experience from around the world is used, adapted to the context of Kazakhstan.

8. What kind of political, economic, legal or other issues hinder the further development of PPP in Kazakhstan?

Answer: In my view, in general, the major problems of the above are not observed as such. For the development of PPP there is a need for a high activity of representatives of government bodies at local level.

9. What measures should the Government of Kazakhstan undertake in the first place?

Answer: The Government carries out activities for the development of PPP on a regular basis. Thus, for example, a package of amendments to the legislation on PPP has been developed and submitted to the Parliament, which simplifies the procedures for developing PPP projects.

10. Do you consider that the proposed international experience of PPP will be effectively adapted for Kazakhstani practice of PPP within the framework of the existing issues such as the lack of public consultation and to a certain extent the inaccessibility of information about PPP projects prior to their approval?

Answer: The international experience of PPP can certainly be effectively adapted for PPP projects in Kazakhstan. However, it cannot be said that work on PPP issues is conducted covertly from the public, since, for example, one of the principles of PPP defined in the

Law is the principle of competitiveness, which also involves the coverage of forthcoming projects in the mass media.

11. Could you briefly tell what basic measures or novelties have been implemented by the Law?

Answer: The law itself is new. Its main novelties include the expansion of the possibility of implementing PPPs in various industries; the simplified procedures for small PPP projects at a local level; the decentralisation of the decision-making process for implementing PPP projects; the introduction of private financial initiative and others.

12. Is the activity of the private sector (domestic and foreign companies) being observed in the realisation of PPP projects since the Law was enacted?

Answer: Yes, it is being observed.

13. What personal ideas (suggestions) do you have for the further improvement of PPP in Kazakhstan?

Answer: A high activity of representatives of government bodies is needed at local level when working with potential PPP investors.

14. Can you say that at present Kazakhstan is experiencing an effective system of PPP that benefits all concerned parties and the general public in the first place?

Answer: Yes, I think so. However, it is necessary to understand that the PPP mechanism requires continuous improvement and update to meet the growing needs of the public.

15. When will the society in Kazakhstan experience an effective model of the development of PPP in the future?

Answer: The society is already experiencing some positive results of PPP – in various regions. For example, education and health care facilities are being opened on the basis of PPP.

Appendix B – Transcript of the answers of a representative of the Ministry of National Economy of the Republic of Kazakhstan (Answers received in writing on September 8, 2016)

1. What are the main objectives and functions of the central authorised body – Ministry of the National Economy of the Republic of Kazakhstan?

Answer: The Ministry of National Economy of the Republic of Kazakhstan, being the central authorised body for state planning, implements the state policy in the field of PPP within its competence, and also implements the inter-sector coordination and methodological guidance in the field of PPP.

2. As the Ministry has responsibility for the overall state policy in PPP, what kind of organisational, technical and legal issues happen in the process of PPP realisation? How does the Ministry solve such types of problems?

Answer: In the process of performing a policy in the field of PPP, all issues are coordinated with concerned public agencies, the Government and business entities. Organisational and technical problems do not happen.

3. Does the Ministry scrutinise the international experience of PPP on a periodic basis, and does it report the results of the analysis to the Government of the Republic Kazakhstan for making policy?

Answer: The Ministry jointly with ‘Kazakhstan Public-Private Partnership Centre’ JSC study the international experience on the implementation of PPP projects on a regular basis. All innovations on the legislation, and the overall policy of PPP are consented by the Government.

4. Are there any difficulties in cooperation of the Ministry with other public institutions (central and local authorities), associations of private businesses, national (quasi) and non-commercial organisations?

Answer: Sometimes there are several problems, mostly minor ones, which we try to solve in the working order by coordinating the answers with the administration.

5. In October 2015, the Law of the Republic of Kazakhstan ‘On public-private partnership’ was adopted. How is the Law working now?

Answer: At the central and regional levels, the development of PPP has become more attractive. All new mechanisms envisaged in the Law are used in planning and implementing PPP projects. The mechanism of the ‘private financial initiative’ is actively employed at the regional level.

6. The Ministry is the main developer of the Law. Which countries’ experiences have been used in the preparation of the Law?

Answer: It is difficult to point out the countries whose experience has been applied in the development of the Law. The international experience, pros and cons of PPP development have been studied. It is possible to mention such countries as the UK, South Korea and Russia, as the Kazakhstani model of PPP is similar to the models of these countries.

7. Why had the Government decided to employ the experience of that (those) specific country (countries) in public-private partnership (PPP)?

Answer: As I stated earlier, the whole international experience has been examined.

8. Do you discuss the drafts of laws with any associations of legal units or other non-government organisations that protect interests of the private sector? Are there any disagreements with the private sector on provisions of the draft laws? How do you usually solve this kind of problem as a representative of the public sector?

Answer: All normative legal acts relating to business entities must be coordinated with accredited organisations under the Ministry. All comments and suggestions are indicated in the letter on the approval of the draft normative legal act, on which the Ministry should express its position specifying in the explanatory note.

9. What kind of political, economic, legal or other issues hinder the further enhancement of PPP in Kazakhstan?

Answer: At the moment, there are no obstacles on the development of PPP, all innovations that contribute to the further improvement of the PPP legislation are supported by the administration of public agencies, including the Ministry.

10. What measures should the Government of Kazakhstan undertake foremost?

Answer: The Ministry along with central and local executive bodies, as well as with the participation of authorised organisations continuously monitors the legislation in the field

of PPP. To date, a new package of amendments to the secondary regulatory legal acts is being prepared to improve the legislation in the sphere of PPP.

11. Do you consider that the proposed international experience of PPP will be effectively adapted for Kazakhstani practice of PPP within the existing issues, such as the lack of public consultation and to a certain extent the inaccessibility of information about PPP projects prior to their approval?

Answer: There is no confidentiality of the information on PPP projects, insofar as central and local executive bodies post the information on upcoming PPP projects on their official websites, as well as on the websites of the Ministry, JSC ‘Kazakhstan Public-Private Partnership Centre’ JSC, regional PPP centres and in periodicals. At present, all normative legal acts are placed on the E-government portal for the nation-wide discussion.

12. Could you tell what basic measures or novelties have been implemented by the Law?

Answer: The law provides:

- removal of sectoral restrictions;
- expansion of the powers of local executive bodies;
- introduction of small forms of PPP for the implementation of projects at the regional level;
- introduction of new types of contracts;
- introduction of private financial initiative;
- application of government support measures;
- expansion of the circle of participants;
- simplification of procedures for passing ‘small projects’;
- introduction of the institutional PPP.

13. Is the activity of the private sector (domestic and foreign companies) being observed in the realisation of PPP projects since the Law was enacted?

Answer: At the present time, the mechanism of ‘private financial initiative’ is actively being used in the project planning. Domestic and foreign companies express their willingness to cooperate with the state to implement PPP projects in case of providing the appropriate level of state support to private partners.

14. Do you have your personal ideas (proposals) for the further improvement of PPP in Kazakhstan?

[The answer has not been provided].

15. Can you say that Kazakhstan is experiencing an effective system of PPP right now that benefits all concerned parties, and the general public in the first place?

Answer: Since PPP in Kazakhstan is developing there are not so many projects at the implementation stage, the additional time is needed to achieve the effective level of the PPP development in the country.

16. When will the society in Kazakhstan be ready to experience an effective model of the development of PPP in the future?

[The answer has not been provided].

Appendix C – Transcript of the interview with a representative of ‘PPP Expert’
LLP (Interview date August 19, 2016)

1. What are the main objectives and functions of local executive bodies in the sphere of PPP policy?

Answer: The local executive bodies of the South-Kazakhstan region carry out all functions defined in article 25 of the Law ‘On Public-Private Partnership’.

2. How many PPP projects are underway in your region? Do you intend to implement them on time and within budget?

Answer: In the South-Kazakhstan region, there are 6 projects at the implementation stage, and the work is underway to implement them.

3. Do you analyse the weaknesses and strengths of PPP at the local level, and do you report the results of the analysis to the higher authorised government bodies for policymaking?

Answer: Yes, we carry out an analysis at the local level, and provide information and ways to solve them to higher authorized government bodies.

4. Are there any difficulties in cooperation of local authorities with other public institutions (local authorities of other regions), associations of private businesses, national (quasi) and non-commercial organisations?

Answer: No, there are not.

5. Do you discuss or propose any suggestions on PPP policy to the Government of the Republic Kazakhstan or to the central authorised body?

Answer: Yes, we submitted our proposals to the PPP Centre when drafting the Law ‘On Public-Private Partnership’.

6. In October 2015 the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ was adopted. How is the Law working now?

Answer: The law is not working well due to the complicated project implementation mechanism.

7. Why had the Government decided to employ the experience of that (those) specific country (countries) in public-private partnership (PPP)?

Answer: We use international experience in implementing PPP projects, including for attracting foreign investment.

8. Do you discuss the draft laws with any associations of legal entities or other non-government organisations that protect interests of the private sector at the local level? Are there any disagreements with the private sector on provisions of the draft laws? How do you usually solve this kind of problems?

Answer: No, we do not discuss, we work within the framework of the Law.

9. What kind of political, economic, legal or other issues hinder the further enhancement of PPP in Kazakhstan?

Answer: The further development of PPP in the South Kazakhstan region is hampered by the Government Decree No.1095 of December 28, 2015. It is necessary to provide the type of activity such as 'Consultancy for concession projects and public-private partnership projects' to legal entities under municipal ownership.

10. What measures should the Government of Kazakhstan undertake in the first place?

Answer: It is necessary to provide the type of activity such as 'Consultancy for concession projects and public-private partnership projects' to legal entities under municipal ownership.

11. Do you consider that the proposed international experience of PPP will be effectively adapted for Kazakhstani practice of PPP within the existing issues, such as the lack of public consultation and to a certain extent the inaccessibility of information about PPP projects prior to their approval?

Answer: I think that the law will gradually be adapted to the economy of Kazakhstan.

12. Could you tell what basic measures or novelties have been implemented by the Law?

Answer: The private financial initiative, the participation of quasi-state sector and additional types of contracts.

13. Is the activity of the private sector (domestic and foreign companies) being observed in the realisation of PPP projects since the Law was enacted?

Answer: No, today we practically apply all the principles of the Law ‘On Concessions’ modified in the law ‘On Public-Private Partnership’.

14. Do you have your personal ideas (proposals) for the further improvement of PPP in Kazakhstan?

Answer: I think it is necessary to provide the type of activity such as ‘Consultancy for concession projects and public-private partnership projects’ to legal entities under municipal ownership. I suggest holding round tables/seminars/meetings by inviting all regional representatives and specialists in the field of PPP on a regular basis. Since we already faced difficulties in PPP projects, and we have practical experience, I believe that the new law with all its advantages requires a lot of additions: in terms of financial modelling, strategic forecasting and pricing, taking into account the specifics of industry and of a technological map of industry.

15. Can you say that Kazakhstan is experiencing an effective system of PPP right now that benefits all concerned parties, and the general public in the first place?

Answer: Yes, in the future it will bring great benefits to the economy of Kazakhstan. It is necessary to continue the work in this direction.

16. When will the society in Kazakhstan be ready to experience an effective model of the development of PPP in the future?

Answer: Within 5-10 years.

**Appendix D – Transcript of the answers of an employee of ‘Astana Innovations’
JSC (Answers received in writing on July 15, 2016)**

1. What are the main objectives and functions of local executive bodies in the sphere of PPP policy?

Answer: The main goal is to create a favourable investment climate for further successful implementation of the expected PPP projects. Currently, the administration of Astana city is focused on intensifying work on the introduction of the PPP mechanism. Road maps, plans to attract investments and to develop territories with the inclusion of indicators of PPP projects are being developed. The functions of the ‘akimat’ of Astana are to plan and implement investment projects under the PPP scheme.

2. How many PPP projects are underway in your region? Do you intend to implement them on time and within budget?

Answer: At the moment in the city of Astana about 5 projects are at the planning (development) stage and about 6 projects are at the stage of preparation for competition for the selection of private partners. Yes, when planning PPP projects, the limit of state obligations on PPP projects set by the Ministry of National Economy is taken into account.

3. Do you analyse the weaknesses and strengths of PPP at the local level, and do you report the results of the analysis to the higher authorised government bodies for policymaking?

Answer: Yes, we hold and submit information to the Ministry of National Economy.

4. Are there any difficulties in cooperation of local authorities with other public institutions (local authorities of other regions), associations of private businesses, national (quasi) and non-commercial organisations?

Answer: No, there are no difficulties. On the contrary, the akimat cooperates, for example, with the National Chamber of Entrepreneurs, PPP Centre and ‘Damu’ Foundation in order to improve the efficiency of planning PPP projects.

5. Do you discuss or propose any suggestions on PPP policy to the Government of the Republic Kazakhstan or to the central authorised body?

Answer: Yes, we submit suggestions on how to improve the legislation in the field of PPP, in particular, on simplification of planning procedures for projects, including participation in the development of suggestions by PPP Centre on amending legislation to increase the attractiveness of projects.

6. In October 2015 the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ was adopted. How is the Law working now?

Answer: Yes, we submit proposals for improving the legislation in the field of PPPs, in particular for simplifying project planning procedures, including in participating in the development of proposals for amending the legislation by the Kazakhstani PPP Centre in order to increase the attractiveness of projects.

7. Why did the Government decide to employ the experience of that (those) specific country (countries) in public-private partnership (PPP)?

Answer: I cannot comment on anything on behalf of the Government of the Republic of Kazakhstan, but presumably, experience is taken into account in order to apply it in its territory, generally, successful experience.

8. Do you discuss the draft laws with any associations of legal entities or other non-government organisations that protect interests of the private sector at the local level? Are there any disagreements with the private sector on provisions of the draft laws? How do you usually solve this kind of problem?

Answer: There is a special procedure for the approval of bills, which includes organisations representing business interests.

9. What kind of political, economic, legal or other issues hinder the further enhancement of PPP in Kazakhstan?

[No answer was provided].

10. What measures should the Government of Kazakhstan undertake in the first place?

Answer: In my opinion, at the moment, the Government is taking enough measures to develop PPP in the country, including the development of the Law ‘On Public-Private Partnership’ by the Ministry of National Economy.

11. Do you consider that the proposed international experience of PPP will be effectively adapted for Kazakhstani practice of PPP within the existing issues such as the lack of public consultation and to a certain extent the inaccessibility of information about PPP projects prior to their approval?

Answer: Given the new Law, I think PPP in Kazakhstan has a future. So, for example, a legislator allows us to conduct a so-called competitive dialogue with business representatives in the framework of which, technical, financial, legal parameters of a future project are discussed when developing a PPP project. The issue of closed information is no longer discussed. And I hope that, using the opportunities that the new Law gives us, we can successfully implement PPP projects.

12. Could you tell what basic measures or novelties have been implemented by the Law?

Answer: This is exactly what I have just talking about. The possibility to apply dialogue with the private sector during the development stage of project. Implementation of a private financial initiative in the framework of which there is no need to conduct a tender (if there are no alternative proposals), and much more.

13. Is the activity of the private sector (domestic and foreign companies) being observed in the realisation of PPP projects since the Law was enacted?

Answer: Yes, of course.

14. Do you have your personal ideas (proposals) for the further improvement of PPP in Kazakhstan?

[No answer was provided].

15. Can you say that Kazakhstan is experiencing an effective system of PPP right now that benefits all concerned parties, and the general public in the first place?

Answer: I think it is too early to talk about this since all projects are now at the planning stage.

16. When will the society in Kazakhstan be ready to experience an effective model of the development of PPP in the future?

[No answer was provided].

Appendix E – Transcript of the interview with an expert of ‘Kazakhstan Public-Private Partnership Centre’ JSC (Interview date - July 19, 2016)

1. What are the main objectives and functions of JSC ‘Kazakhstan Public-Private Partnership Centre’?

Answer: The Centre was established in accordance with the Resolution of the Government of the Republic of Kazakhstan dated from July 17, 2008, No. 693 ‘On the Establishment of a Specialized Organisation on Concessions’. The only shareholder of the Centre is the Government of the Republic of Kazakhstan in the person of the Ministry of National Economy of the Republic of Kazakhstan. The Centre is the leading Kazakhstani analytical and expert centre for the development of public-private partnership. The activities of the Centre are focused on carrying out studies, examinations and evaluations of the implementation of investment projects in the sphere of PPP.

2. As the Centre performs the overall monitoring over PPP projects in the country, what kind of organisational, technical and legal issues happen in the process of their realisation? Does the Centre participate in solving such types of problem?

Answer: As the leading Kazakhstani analytical and expert centre for PPP development, the Centre participates in PPP project management processes starting from the initiation of projects up to their completion and monitoring of implementation. Since the concept of PPP in Kazakhstan is relatively new, various issues arise as projects are implemented. For example, in order to resolve organisational problems of projects, the Centre organises and participates in various meetings with representatives of public agencies and business structures on a regular basis and conducts various training events to promote the practice of applying the PPP mechanism. If technical or legal issues arise, the Centre takes the important participation in solving them, and for this purpose the project and methodological offices of the Centre are involved. The technical and legal issues are mostly the following: defining an institutional scheme for the implementation of projects; selection of the optimal financing structure; the type of PPP contract; the budget efficiency of projects and others.

3. Does the Centre scrutinise the international experience of PPP on a periodic basis, and does it report the results of the analysis to the Government of the Republic Kazakhstan for policymaking?

Answer: So as to solve the emerging issues on the implementation of projects, the analysts of the Centre conduct an in-depth analysis of the international experience of implementing similar projects based on the experience of leading countries in the field of PPPs (South Korea, Canada, France, Great Britain, etc.). Being an analytical and expert organisation of the Government, the Centre on a regular basis provides information to the authorised bodies.

4. Are there any difficulties in cooperation of the Centre with other public institutions (central and local authorities), associations of private businesses, national (quasi) and non-commercial organisations?

Answer: No, difficulties do not arise. The above organisations appeal to the Centre's consultations in oral and written forms.

5. In October 2015 the Law of the Republic of Kazakhstan 'On public-private partnership' was adopted. How is the Law working now?

Answer: After the adoption of the Law, PPP development in Kazakhstan received a significant impulse, the number of announced PPP projects at the republican and local levels has increased significantly.

6. The Centre had also been participating actively in the development of the Law. Which countries' experience have been used in the preparation of the Law?

Answer: During elaborating the Law on PPP, the best practices in the field of PPP of the following countries were used: the UK, France, South Korea and Japan.

7. Why had the Government decided to employ the experience of that (those) specific country (countries) in public-private partnership (PPP)?

Answer: The practice of PPP is relatively new for Kazakhstan. So as to use the positive practices, and to avoid mistakes, the experience of certain countries which have effectively implemented the PPP mechanism is actively employed.

8. What kind of political, economic, legal or other issues hinder the further enhancement of PPP in Kazakhstan?

Answer: At the regional level, the decision-making process is facilitated by the decision of regional authorities. Therefore, as long as the alternative schemes for implementing investment projects are chosen, PPP will have a negative development dynamic. Likewise, the budget deficit is the impetus for the development of PPP, since this mechanism allows to reduce the current burden on the budget. And in case of positive economic situation in the country and in the world, PPP may lose its relevance.

9. What measures should the Government of Kazakhstan undertake foremost?

Answer: I think it is expedient to develop human resources potential in public agencies, in particular, to train specialists in the field of PPP.

10. Do you consider that the proposed international experience of PPP will be effectively adapted for Kazakhstani practice of PPP within the existing issues, such as the lack of public consultation and to a certain extent the inaccessibility of information about PPP projects prior to their approval?

Answer: Currently, having adopted the PPP Law, the project implementation process has become more transparent. In the process of realisation of projects, potential private partners have the right to participate in a ‘competitive’ dialogue and offer their own visions for the implementation of projects. Moreover, investors can independently initiate the implementation of PPP projects.

11. Could you tell what basic measures or novelties have been implemented by the Law?

Answer: New types of contracts such as – the service contract, trust management, life cycle contract and others. The possibility of direct negotiations (private financial initiative), the application of the competitive dialogue and others.

12. Is an activity of the private sector (domestic and foreign companies) being observed in the realisation of PPP projects since the Law was enacted?

Answer: Since January 2016, over 200 foreign and domestic investors have appealed for consultations to the Centre.

13. Do you have your personal ideas (proposals) for the further improvement of PPP in Kazakhstan?

Answer: I think it is necessary to train in maximum the public servants responsible for the implementation of PPP projects with all the aspects and nuances of this mechanism. It is also problematic to finance the preparation of project documentation, therefore the creation of the fund for financing the consultative support will give impetus for the development of PPP in Kazakhstan.

14. Can you say that Kazakhstan is experiencing an effective system of PPP right now that benefits all concerned parties, and the general public in the first place?

Answer: Kazakhstan has a strong methodological base, currently it is planned to implement about 200 PPP projects. The main beneficiaries of PPP projects will be the public, as PPP projects often taken place in the social sphere.

15. When will the society in Kazakhstan be ready to experience an effective model of the development of PPP in the future?

Answer: In 2017 current PPP projects are going to be put into operation, accordingly the public will be able to use the quality services.

**Appendix F – Transcript of the answers of a member of local government,
Department of Education of the city of Astana (Answers received in writing on
September 19, 2016)**

1. What are the main objectives and functions of local authorities in the sphere of PPP policy?

Answer: It is stipulated in article 3 of the Law ‘On Public-Private Partnership’.

2. How many PPP projects are underway in your region? Do you intend to implement them on time and within budget?

Answer: Ten projects for the construction of kindergartens, and the implementation period is 2016-2022.

3. Do you analyse the weaknesses and strengths of PPP at the local level, and do you report the results of the analysis to the higher authorised government bodies for policymaking?

Answer: On October 31, 2015 the Law ‘On Public-Private Partnership’ was entered into force, and all previously problematic issues were settled in that bill.

4. Are there any difficulties in cooperation of local authorities with other public institutions (local authorities of other regions), associations of private businesses, national (quasi) and non-commercial organisations?

Answer: No.

5. Do you discuss or propose any suggestions on PPP policy to the Government of the Republic Kazakhstan or to the central authorised body?

Answer: Given that this is a new direction, questions arise during the course of implementation on the results of which, relevant proposals will be certainly submitted to the government body responsible for developing the law on PPP.

6. In October 2015 the Law of the Republic of Kazakhstan ‘On Public-Private Partnership’ was adopted. How is the Law working now?

Answer: All PPP projects are currently being implemented in accordance with the Law ‘On Public-Private Partnership’.

7. Why did the Government decide to employ the experience of that (those) specific country (countries) in public-private partnership (PPP)?

The question is not to local executive bodies.

8. Do you discuss the draft laws with any associations of legal entities or other non-government organisations that protect interests of the private sector at the local level? Are there any disagreements with the private sector on provisions of the draft laws? How do you usually solve this kind of problems?

Answer: With the Regional Chamber of Entrepreneurship.

9. What kind of political, economic, legal or other issues hinder the further enhancement of PPP in Kazakhstan?

Answer: There are none yet, at least we do not have such problems.

10. What measures should the Government of Kazakhstan undertake in the first place?
[No answer was provided].

11. Do you consider that the proposed international experience of PPP will be effectively adapted for Kazakhstani practice of PPP within the existing issues, such as the lack of public consultation and to a certain extent the inaccessibility of information about PPP projects prior to their approval?

Answer: All PPP projects are open, there is a procedure for coordinating projects, all information is available on the official websites of government agencies.

12. Could you tell what basic measures or novelties have been implemented by the Law?

Answer: Previously, there was only the law on concessions, now the concept of concession is included as a type of PPP. There are the following ways of implementing public-private partnerships:

- 1) Public-private partnerships in terms of implementation are divided into institutional and contractual.
- 2) Institutional public-private partnerships are implemented by a public-private partnership company in accordance with a public-private partnership agreement.

- 3) In other cases, public-private partnerships are carried out according to the method of public-private partnership.

The contractual public-private partnerships are implemented through the conclusion of a public-private partnership contract, including the following types:

- 1) concessions;
- 2) trust management of state property;
- 3) property hiring (leasing) of state property;
- 4) leasing;
- 5) contracts concluded for the development of technology, the manufacture of a prototype, pilot testing and small-scale production;
- 6) life cycle contract;
- 7) service contract;
- 8) other agreements corresponding to the features of public-private partnership.

When implementing certain types of contractual public-private partnerships which are not regulated by this Law, the provisions of the relevant laws of the Republic of Kazakhstan are applied, including the features provided for by the Law of the Republic of Kazakhstan 'On Concession'.

13. Is the activity of the private sector (domestic and foreign companies) being observed in the realisation of PPP projects since the Law was enacted?

Answer: The activity occurs when projects are developed and when potential investors are searched for.

14. Do you have your personal ideas (proposals) for the further improvement of PPP in Kazakhstan?

Answer: There are none yet.

15. Can you say that Kazakhstan is experiencing an effective system of PPP right now that benefits all concerned parties, and the general public in the first place?

Answer: Yes.

16. When will the society in Kazakhstan be ready to experience an effective model of the development of PPP in the future?

Answer: After the implementation of PPP projects, each project has its own implementation period.

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