UGANDA DEBT NETWORK

PUBLIC PRIVATE PARTNESHIPS:

JULY 2019

Are they a Form of Hidden Debt in Uganda?

Acronyms

ADBG	African Development Bank Group
AFD	Agence Française de Développement
AfDB	African Development Bank
BDS	Business Development Services
DRC	Democratic Republic of Congo
EAC	East African Community
EU	European Union
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GoU	Government of Uganda
HEP	Hydro-Electric Power
IFC	International Financial Cooperation
IMF	International Monetary Fund
ISDS	Investor State Dispute Settlement
ISHU	International Specialised Hospital of Uganda
ITT	Innovation and Technology Transfer
KCCA	Kampala Capital City Authority
KJE	Kampala-Jinja Expressway
MDAs	Ministries Departments and Agencies
MI	Market Investment
MoFPED	Ministry of Finance Planning and Economic Development
MW	Mega Watts
NCS	National Council of Sports
NDP	National Development Plan
PAPI	Project Analysis and Public Infrasture
PDFF	Project Development Facilitation Fund
PFMA	Public Financial Management Act
PPPs	Public Private Partnerships
PPPC	Public Private Partnerships
PPPFP	Public Private Partnerships Framework Policy
PS/ST	Permanent Secretary/Secretary to the Treasury
PST	PPP Screening Tool
RoW	Right of Way
SEATINI	Southern and Eastern Africa Trade, Information and Negotiations Institute
SMAEs	Small and Medium Agro Enterprises
S.I	Statutory Instrument
SPV	Special Purpose Vehicle
UEGCL	Uganda Electricity Generation Company Limited
UGX	Uganda Shillings
UNCC	Uganda National Cultural Centre
UNRA	Uganda National Roads Authority
USD	United States Dollars

Introduction:

Several Governments enter into Public-Private Partnerships (PPPs)[1] agreements to bridge investment gaps with a view of improving the delivery of services and the management of facilities being offered by the public sector. The PPP model is intended to transfer responsibility to the private sector in terms of financing, designing and constructing an asset, as well as operating new/old and maintaining facilities after completion. In several emerging countries such as India, Mexico and Brazil, PPPs are contributing 25 – 30 percent to infrastructure development, on average, at a lower cost and faster delivery time than traditional procurement. In Indonesia, PPPs offer an estimated USD180 billion opportunity if they can meet 30 percent of Indonesia's infrastructure needs, based on these international benchmarks.[2] A World Bank (Report, 2011) notes that Governments are attracted by the benefits of mobilizing private capital. The estimated demand for investment in public services shows that Government and even donor resources cannot fill the investment gap alone, and so harnessing private capital to help speed up the delivery of public infrastructure.[3]

Government of Uganda (GoU) committed to embrace the PPPs approach to achieve Uganda's development goal as mainstreamed in the Second National Development Plan (NDPII). Due to the magnitude of investments required and pressure exerted on the meagre public resources, Government is expected to create strategic partnerships with the private sector through PPPs for investment in the priority areas[4] to support the goal of attaining middle income status by 2020.[5] It is envisaged that Government will reap significant benefits especially from long-term PPPs contracts in the areas of; a) Greater efficiency in the use of resources, project delivery and operation, b) Optimal transfer of project risks across Government and private sector, c) reduced Government budgetary constraints by accessing alternative private capital, d) Quality assurance and scrutiny, e) reinforcing competition, and d) access to advanced technology among Others. While several arguments have been advanced against adopting PPPs as a measure for resource mobilization to finance public projects, some studies and the African Development Bank Group declares that PPPs are popular in the realm of infrastructure, like power, transport, telecommunications, water and sanitation, amidst core impediments in the business environment. An effective PPP arrangement capitalises on the strengths of both the private and the public sector to provide a better and more cost-effective public service, and speed up the rate of its implementation or coverage.[6]

[1] *A PPP is defined as a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and responsibility is linked to performance.*

[2] *World Bank (2011). How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets, 2011.*

[3] *Infrastructure, Human Capital, Minerals, Oil and Gas, Tourism and Agriculture*

[4] *Government of Uganda (2015). Second National Development Plan (NDPII) 2015/16 – 2019/20, June 2015*

[6] *UONGOZI Institute (2017). Public-Private Partnerships in Sub-Saharan Africa Case Studies for Policymakers, 2017, pg 3.*

Background information on PPPs

Uganda enacted the PPP Act in 2015 which defines a PPP as a commercial transaction between a contracting authority and a private party where the private party performs a function of the contracting authority on behalf of the contracting authority, for a specified period. There are several PPP contract types, with various combinations of the following broad parameters[7]:

(i) ***Type of asset involved:*** PPPs can involve new assets or green-field projects[8] e.g Bujagali Hydroelectric Power Project. But they can also be used to transfer responsibility for upgrading and managing existing assets to a private entity (brown field), with this mainly encountered during the privatization processes eg Nile Hotel and Conference Centre. Both cases in Uganda.

(ii) ***Responsibilities accorded to the private partner:*** A PPP often bundles together multiple project phases. Nonetheless, the functions for which the private sector is responsible vary and can depend on the type of assets and service. Typical functions can include a combination of designing, constructing or rehabilitating, financing, maintaining and operating.

(iii) ***Payment mechanism:*** The private party can be paid by collecting user fees from service users, by the Government, or by a combination of the two, with the common defining characteristic being that payment is contingent upon performance. The payment mechanism usually depends upon a combination of factors including functional and risk allocation features of the contract.

(iv) ***Financing mechanism:*** PPP financing may come from the public, private or development finance institutions, or a combination of various sources.

A study by the IMF on Finance and Development (2004), already recommended that an infusion of private capital and management can ease fiscal constraints and boost efficiency[9]. Well-structured PPP projects are expected to extend a whole life approach to service delivery in terms of costing and better value for money because they are expected to;

1. Enable mobilization of additional funding sources for large scale investments that would otherwise not be implemented by Government due to limited resource envelope.
2. Provide better integration of design, construction, operation and maintenance of infrastructure projects in the contractual arrangements as they help Government leverage private sector financing, expertise, innovations and efficiency.
3. Optimal transfer of project risks across Government and private sector.
4. Allow public expenditures to be spread over time, which allows governments to prudently manage their budget constraints especially those which are not in position to finance all desired projects.
5. Where projects are managed by the public sector rather than the private sector, PPPs have potential to raise higher levels of revenue.
6. Improve quality of public projects, timely implementation of projects with minimal cost overruns since private sector partners do not receive payment under a PPP contract until the project has been completed and is available for use, making them highly motivated to ensure that the project is completed within the defined time frame.

Profiling the projects funded under the PPPs arrangement and their costs.

Uganda is reported to be relatively ready to implement PPPs since there is Government/ political commitment; the establishment of PPP Institutional, Legal and Policy Frameworks in progress; availability of a wide range of opportunities (eg Infrastructure development - Roads, HEP Generation, Services delivery – Medical, education services etc); and Political and economic stability among other prerequisites. Although there is potential for PPPs to thrive based on

[7] *World Bank (2017). Reference Guide on Public-Private Partnerships Version 3.0, 2017*

[8] *Greenfield Projects are those with no prior physical constrains and no assets built when the project starts.*

[9] *IMF (2004). Public-Private Partnerships, Prepared by the Fiscal Affairs Department (In consultation with other departments, the World Bank, and the Inter-American Development Bank), March 12, 2004*

the available opportunities, it's worth noting that a few weaknesses like low institutional development, inadequate PPP skills and scantly ready to implement such projects exist.

According to MoFPED (Report, 2019)[10], GoU entered into PPP projects before the enactment of the PPP Act 2015, including the Bujagali Hydropower Generation project, Eskom Generation Concession, Umeme Power Distribution Concession, Kalangala Infrastructure Services project, Kampala Serena Hotel, Kilembe Copper Mine Concession, Nakawa- Naguru Housing Estates Project and Kenya – Uganda Railways project (Rift Valley Railways Concession) among others. Prior to the Act, projects were negotiated and implemented under the Public Enterprises Reform and Divestiture Act 1993, the Public Procurement and Disposal of Public Assets Act 2003, the PPP framework policy 2010 and other similar laws.[11] The PPP Act 2015 which effectively provides the legal safeguards required to do business under the PPP arrangement has since streamlined the law and processes for delivery and implementation of PPP projects. As at end December 2018, none of the PPP projects entered into after the enactment of the PPP Act 2015 had yet reached commercial or financial close. Therefore, GoU is not exposed to any fiscal commitments and contingent liabilities from these projects some of which include;

1. ***The Kampala Jinja Expressway (KJE) project:*** KJE was the first project to be registered under the PPP Unit and one of five expressway projects identified in the Vision 2040 and National Development Plan II as critical for the economic development of Uganda. It is expected to; a) reduce vehicle operating costs and increase time saving; b) enhance regional integration and increase GDP and Foreign Direct Investment (FDI); c) Improvement of traffic conditions through reduction of congestion, air pollution, noise and accidents; d) promotion of efficient and reliable transport systems to spur economic growth and enhance tourism; and e) lower the cost of doing business and enhance growth of services and manufacturing industries; to cater for future growth. A feasibility study carried out by International Financial Corporation (IFC), the Lead Transaction Advisor to UNRA) was approved by the PPP Committee in December 2017. The estimated cost of the project is USD1.2 billion and GoU is expected to contribute a viability gap funding of approximately USD400 million, provided by the EU, AFD and AfDB.[12] The PPP used will cover the design, construction, finance, operation and transfer of the facility and the Uganda National Roads Authority (UNRA) will be seeking bids from the private sector for this project. A Request for Qualification was launched on 18th May 2018 and bids from eight firms were received in September 2018 from which four firms were shortlisted for the next stage of request for proposal following the evaluation of the bids. The proposed concession period/contract duration is 30 years including 5 years construction period for Phase 1 (2020-2025) and 3 years for Phase 2 (2023-2025). The KJE infrastructure development is proposed with a financing arrangement in 3 categories.[13]

   a) **Right Of Way (ROW)** – Government of Uganda pledged to mobilise USD300 million within five budget cycles from 2016 to 2020 for the ROW clearance for the project.

   b) **Phase I** - Mainly an urban expressway including Kampala Southern Bypass (18 km) plus 35 km of the mainline from Kampala to Namagunga with a total cost estimated at USD 800 million.

   c) **Phase II**: A rural motorway covering the remaining 42 km from Namagunga to Jinja with a total cost of USD400 million as private capital (no public financing) to be raised through project financing (capital market).

2. ***Kampala Southern Bypass***[14]*:* The project is to be tendered as PPP together with the Kampala-Jinja Expressway PPP Project currently with the same status. It will be

[10] *MoFPED (2019). Report on Public Debt, Guarantees, other Financial Liabilities and Grants for FY 2018/19, March 2019*

[11] *https://www.pppunit.go.ug/content/overview-ppp-projects-uganda*

[12] *MoFPED (2019). Report on Public Debt, Guarantees, other Financial Liabilities and Grants for FY 2018/19, March 2019*

[13] *African Development Bank Group - Proposition of financing arrangement for the Kampala Jinja Expressway PPP Project (Subject to Change). Also refer to: https://www.unra.go.ug/kampala-jinja-expressway/*

[14] *Uganda National Roads Authority. (2019). Projects Status Report, January 2019*

funded by GoU (Design) with IFC providing consultation in terms of Transaction Advisory Services.

3. ***Mulago National Referral Car Parking Project:*** The project aims at developing a modern car parking facility for the Hospital. The proposed cost to construct the car park is approximately USD19.2 million, covering a total of 26.331 square meters features such parking blocks, automatic pay stations, automated entry and exit check points, lifts and emergency stairs, elevated pedestrian walkways, a Police Station and shopping center, grocery store, pharmacy and space for restaurants. The process of procuring the services of a Transaction Advisor to support management in carrying out a detailed feasibility study report and procurement of a private party to implement the project is on-going spearheaded by the Hospital.

4. ***International Specialized Hospital of Uganda (ISHU) at Lubowa –Kampala Uganda.*** Government entered into a PPP agreement with FINASI/ROKO Construction SPV Limited to Design, construction and equipping of the Lubowa – Kampala Hospital where Government through the Ministry of Finance sought parliamentary approval and authorization in February 2019 to issue Promissory Notes not exceeding USD379.71 Million to the company. It is envisaged that the project will reduce the costs of required specialized medical treatment abroad that is not available in Uganda eg for cancer, kidney transplant, heart and brain surgery, etc for sections of Ugandan citizens. The facility which was launched in 2016, was approved for construction by GoU in October 2014 to run as a world-class internationally accredited health facility to treat medical conditions that Uganda has been referring abroad for medical care and offering other specialized services. It is intended to make Uganda save about USD73m of which GoU accounts for USD70m through referrals abroad for treatment of such ailments: cancer, kidney transplant, heart and brain surgery, etc. Ugandan citizens have also raised several concerns like; due legal, institutional and policy provisions, were flouted hence eroding standards of public procurement in Uganda; wrangles over land ownership for the construction site not yet resolved; the need to enhance capacity of Mulago hospital complex, Uganda Heart Institute, The Women's highly specialized referral Hospital at Mulago, the Pediatric Hospital in Entebbe and several other referral hospitals or specialized units in the public sector and private sector. While the construction of the facility has not taken off yet, unconfirmed information points to some mistrust between Government, the construction company; and transfer of contested amounts of funds between banks. Media claims indicate that on 16th May, 2019, the East and Southern Development Bank released USD87m (Shs327bn) but only USD50m (Shs188bn) was received by Stanbic Bank meant for the commencement of the construction. The Speaker of Parliament instructed the Parliamentary Health Committee to investigate the alleged disappearance of funds.

5. ***Kampala Waste Management Project:*** Kampala has expanded with rapid population and economic growth posing a great challenge to waste management in and around the City. In addition, the activities of the informal sectors are not coherent and as a result, waste is not appropriately managed. Currently, Kampala Capital City Authority (KCCA) directly runs the collection and disposal of waste around the city. Because of the need for more efficient mechanisms and robust waste management system right from; waste collection, transportation, disposal, treatment, recycling for re-use and energy production out of the waste; hence the justification for a PPP to attain the objective. KCCA has thus acquired 135 acres of land located in Dundu, Mukono district to undertake a PPP project seeking to establish a state of the art integrated waste disposal, treatment, materials and resource recovery facility to optimize the waste management value chain.[15] The estimated cost of the project is USD64.3 million and a feasibility study for the project is ongoing.[16]

6. ***Re-development of Uganda National Cultural Centre (UNCC) Properties:*** The project is envisaged to redevelop UNCC's

[15] https://www.kcca.go.ug/kwm

prime property located at the National Theatre and Nommo Gallery. The property will be developed into an ultra-modern cultural centre with three theatres, resource centre, crafts centre, recreation centre, art gallery, office space and a 5 star hotel with an estimated cost of USD200 Million. The project is currently at the preparation of a feasibility study.

7. ***Re-development of National Council of Sports (NCS) Complex:*** The Project will involve the redevelopment of the existing sports facilities and construction of new state of the art sports facilities, a health club, shopping centres, restaurants among other facilities with an estimated cost of USD19 million. NCS is currently in the process of procuring the services of a transaction advisor to support management in carrying out a detailed feasibility study report and procurement of a private party to implement the project.
8. ***Re-development of Uganda Post Limited Properties:*** The Project involves redevelopment of the existing properties of Uganda Post Limited at a projected cost of USD400 Million. A feasibility study for the Project is currently ongoing.
9. ***Biiso Irrigation Scheme Development Project:*** The project is expected to improve farmers' incomes and integrated watershed management practices within the River Waki Catchment with the primary beneficiaries located in Bujenje County in Bullisa district. It is also envisaged increase needed climate resilience and food security within the beneficiary communities with a focus of enabling the country to attain a middle-income status by 2020, a key objective of the National Development Plan II. The project is at the development stage with feasibility studies completed and attracts an indicative value of USD8.3 million.[17]
10. ***Nyagak III Hydropower Project (6.6MW)***[18]*:* The proposed project is located in the north-western town of Nyapea, near the Ugandan border with the Democratic Republic of Congo (DRC) on Nyagak River in Paidha Sub-county, Zombo District. It will be developed on a PPP model by the Special Purpose Vehicle (SPV) formed between Uganda Electricity Generation Company Limited (UEGCL) and the procured Private Sector Partner. UEGCL procured IFC as Transaction Advisor to assist with the procurement of the Private Sector Partner. The procured Private Partner shall be in charge of the design, construction, and operation of the plant under a 20-year power purchase agreement (while selling the 6.6MW of electricity produced will be sold to UEGCL) after which the plant shall be transferred back to UEGCL. It is 30% state-owned and 70% owned by a consortium composed of Tata Consulting Engineers, Dott Services and Hydomax Limited with an estimated cost of USD19.4 million required to implement this infrastructure. Government projected that work would begin in May 2019 for a period of 33 months and the energy produced will be used to supply one million people, mainly in the Arua, Nebbi and Zombo districts.

Budget Affordability of PPPs Compared to other Financing Options in Uganda

Increased interest in PPPs globally was spurred by the financial crisis of 2008 in both developed and developing countries. Governments, world-over face budget constraints but because of the importance of investment in infrastructure to boost their economic growth, they are increasingly turning to the private sector as an alternative additional source of funding to meet the funding gaps.[19] PPPs impose budgetary certainty by spreading present and the future costs of infrastructure projects over time. PPPs usually take a form of blended finance, an approach which takes advantage of tight national budget constraints amidst changing international aid architecture, in supporting development. According to a Policy Brief by SEATINI in 2018, PPP projects in the EAC region are currently valued at USD618 million in Rwanda, USD2476 million in Kenya, USD1,488 million in Uganda and

[17] *http://disclosure.pppunit.go.ug/project/26/biiso-irrigation-scheme-development-project*

[18] *https://uegcl.com/business-operations/projects/nyagak-iii-hydro-power-project.html*

[19] *On-line: World Bank. Government Objectives: Benefits and Risks of PPPs, Last Updated: Mon, 31st 10 2016, Also refer to : https://ppp.worldbank.org/public-private-partnership/overview/ppp-objectives#benefits*

USD815 million in Tanzania, totalling a sum of 62 projects in the four partner states of the 6 EAC countries, including Burundi and South Sudan which had registered no PPP project yet.[20]

Uganda's appreciation of the PPP project funding model is noticeable in the National Development Plan II (NDPII) as key for partnering with the private sector to bridge the infrastructure funding gap and related services to attain Economic Growth and Development. According to the World Economic Forum's Global Competitiveness Report of 2018, Uganda ranked 121st out of 140 countries with a score of 43.2 in terms of the report's infrastructure index. This is relatively a low rank compared to other developing countries, placing Uganda behind countries in the Sub-Saharan African region including Kenya which ranks 105th, Tanzania at 119, Ghana at 116 and Ethiopia at 120 among others.[21] To cover infrastructure deficit, Uganda needs diversified effort to raise adequate resources and addressing severally reported inefficiencies to maximize value for money.

World Bank (Report, 2017)[22] estimated that Uganda requires approximately USD1.4 billion annually, which is about 6 percent of Uganda's GDP per year, in the medium-term to close the infrastructure gaps based on the level of desired investment. It is also estimated that a total of about USD300 million is lost annually due to inefficiencies in infrastructure spending. On average, 36 percent of planned expenditure does not materialize, with the bulk recorded under expenditure being in the priority sectors of energy and transport.[23] Challenges to the execution of Uganda's national budgets are further worsened by overall inefficiencies in the investment process which severely erodes the value of investments. Such inefficiencies also strain budget affordability and unless addressed, PPP financing arrangement will continue to be sought by Government, the high risk and related costs, not withstanding.

According to the Auditor General, by December 2017, a total of 26 PPP projects valued at USD 2,964 million had reached financial closure. That,

"The current funding arrangements under the Ministry of Finance cannot adequately support the implementation of the PPP function. The budget allocations for the PPP unit are not only too inadequate to meet its needs but are also uncertain as they are provided through the privatization unit and PAPI, yet the PPP function was designed to enjoy control over its budget. This has created uncertainties in the financing of PPP activities resulting in delays in putting in place the capacities needed for the effective implementation of the PPP function".

***Source**: Auditor General Report on Value for Money Audit on the Government's Preparedness to Implement Public Private Partnerships (PPPs), December 2017*

Because of the limited potential to ably finance own projects, coupled with a fragile and uncertain business environment to fully attract private investors, Government adopted PPPs arrangement as one of the resource mobilization strategies to help fill infrastructure finance gaps and borrowing which has continued to escalate. For instance, Uganda's provisional public debt levels reached UGX 44.3 trillion by end of March 2019, (about 42% of GDP) up from Shs 41.3 trillion in June 2018, representing a 7.3% growth. Part of the high growth rate of debt to finance the national budget deficit is due to low revenue mobilization. The heavy public borrowing cripples the budgetary affordability of PPPs by Government since debt has to be repaid back. It's worth noting also that PPPs remain an attractive way of concealing the long-term public liabilities as they are diplomatically privileged access to government guarantees or public finance instead of government using the cheaper public finance.[24]

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20 *SEATINI (2018). PUBLIC PRIVATE PARTNERSHIPS (PPPs) IN LARGE INVESTMENT PROJECTS: Why the EAC Governments Should Tread Cautiously? Policy Brief 2018.*

21 *World Economic Forum (2018). The Global Competitiveness Report, 2018, pg. 573*

22 *World Bank (2017). Uganda - Economic Update, Ninth Edition: Infrastructure finance deficit: Can Public-private-partnerships fill the gap? June 2017.*

23 *World Bank (2016). 7th Uganda Economic Update; Uganda- From Smart Budgets to Smart Returns: Unleashing the power of public investment management, May 2016*

24 *Public Services International (2018). Why Public-Private Partnerships Don't Work: The Many Advantages of the Public Alternative, March 2018*

In addition, the PPP Act, 2015 provides for the establishment of a Project Development Facilitation Fund (PDFF) for supporting the PPP unit to implement its activities/work plan, assist the contracting authorities in the preparation phase of PPP projects, and provide a source of liquidity to meet any contingent liabilities arising from PPP projects. However, the Fund has not been established yet due to constraints affecting resource mobilization, implying inability to adequately finance PPP project arrangements. This challenges the achievement of higher levels of efficiency as envisaged in the PPP implementation framework.

Conclusively, PPPs may not be as successful in enabling the provision of infrastructure as expected, unless underlying inefficiencies are exhaustively addressed. Although PPPs can bring in alternative financing for Uganda, infrastructure deficits are partly caused by deficiencies in the governance and management of the sectors, through underpricing, inefficient operations and poor implementation. Introducing PPPs into an environment with financial and regulatory issues is likely to jeopardize attainment of desire results unless governance and management in the different sectors is improved.

Would the PPPs be a good alternative for poverty reduction and fighting inequality?

PPPs are an important tool for Governments seeking to expand and improve social services for their citizens, help to boost economic growth and development, and to fight poverty.[25] According to the World Economic Forum (2005), in many poor countries, the commitment of private sector resources to poverty alleviation already equals a substantial share of current official development assistance and may exceed FDI.[26] Partnerships between the public and private sector can make a significant contribution and address critical investment gaps to improving the living standards of citizens and enhancing the competitiveness of the economy, if effectively delivered. However, for PPPs to contribute to poverty reduction and eventually sustainable development, transparency and accountability remain key principles. In addition, a comprehensive PPPs framework should be functional within a favourable regulatory environment and tax incentives.[27] In 2016, FAO conducted a study to review international experiences on PPPs for agribusiness development[28] across selected countries with the objective to enhance food security and providing alternative market outlets to absorb surplus produce.[29] The report revealed that;

1. Poverty reduction gains are linked to the benefits associated with innovation and market access in terms of increases in smallholders' income and improved livelihood. This was attributed to yield increases and reduced costs associated with the adoption of new technology and improved market access. In the Indonesian oil palm and Ugandan sunflower oil Value Chain Development (VCD) cases, qualitative measurements were used to assess the achievement of objectives related to poverty reduction and improved livelihoods (e.g. numbers of permanent houses constructed by contracted farmers, increases in school enrolment, and establishment of new farmer-owned businesses).It was however difficult to assess the extent to which the partnerships benefited the poorest farmers rather than simply targeting those more capable of benefiting from partnership activities for instance, a certain level of skills and assets

25 *World Bank (2011). How to Engage with the Private Sector in Public-Private Partnerships in Emerging Markets*

26 *World Economic Forum (2005). Building on the Monterrey Consensus: The Growing Role of Public-Private Partnerships in Mobilizing Resources for Development, United Nations High-level Plenary Meeting on Financing for Development, September 2005, pg 9*

27 *This involves establishing the PPP Policy, legal, institutional, regulatory, and financing frameworks and capacity building of all PPP key players; developing and disseminating to the prospective contracting authorities/sector agencies PPP regulations, procedures and manuals; training PPP unit staff, PPP committee members and potential contracting agencies; identifying and securing resources to facilitate the operationalisation of the PPP programs; Establishing a framework for the management of fiscal commitments and contingent liabilities of the PPP associated projects; define and disseminate procedures for project identification, screening, appraisal, approval, and project development and definition of proper governance practices of PPPs namely disclosure, stakeholder relations, contract management, monitoring, review, reporting, audit, and evaluation.*

28 *Food and Agriculture Organisation of the United Nations (2016). Public–Private Partnerships for Agribusiness Development: A Review of International Experiences, 2016*

29 *In addition to providing facilities for production, storage and marketing, increasing farmers' income, generating employment and improving fishers' l livelihoods, and; ensuring food safety*

30 *OXFAM (2014). EVEN IT UP: TIME TO END EXTREME INEQUALITY, Pg*

are required to be a suitable candidate for participation in Agri-PPPs. This was highly discriminative against the poorest unless heavy investment was to be made in a long-term capacity development. (PBL, 2015).

2. Creation of decent rural employment on- and off-farm was one of the main social benefits as an outcome of many Agri-PPP projects but this lacked evidence on the quality of the employment created. For example, under the,

   a) ***Innovation and Technology Transfer (ITT) PPPs*** - New jobs were created through the establishment of distribution outlets for new technologies (e.g. 120 jobs created in Uganda in the private company responsible for commercializing and distributing nine new seed varieties) and in newly established processing facilities (e.g. 14 000 new jobs created in olive oil processing in Peru).

   b) ***VCD PPPs*** - Consistent on-farm employment was created through engagement in contract farming agreements (e.g. 3 880 contracted rubber growers in Ghana) and new off-farm jobs were created in downstream value addition (e.g. 150 new jobs in Indonesia in packing sweet peppers for domestic and export markets).

   c) ***Market Infrastructure (MI) PPPs*** - New jobs were created to support the functioning and management of the MI and related services (e.g. inventory management of grain stored in warehouses in Kenya, and jobs created in restaurants and parking facilities at the agricultural terminal in the Philippines).

   d) ***Business Development Services (BDS) PPPs*** - Jobs were created within Small and Medium Agro Enterprises (SMAEs) as a result of improved competitiveness (e.g. more than 26 000 people were employed by newly established agribusiness enterprises in Pakistan, and 218 jobs were created in the manufacture of bamboo bicycles in Ecuador).

Despite the evidence that some PPP projects reduce poverty and improve livelihoods, some studies allude that it increases inequality and have registered contrary results while involved in service delivery. Sometimes significant amounts of resource for investment in service provision that tackles inequality are diverted by Governments to support PPP arrangements. From the above revelation, PPPs are more effective while implementing projects directly with individual business owns compared to provision of a public good. This is probably because the oversight role is performed instantly as the project is being implemented.

According to OXFAM (Report, 2014),[30] the Queen Mamohato Memorial Hospital, in Lesotho's capital Maseru, was designed, built, financed and now operates under an 18 year PPP contract that includes delivery of all clinical services. The PPP was expected to provide much improved, high-quality healthcare services for the same annual cost as the old public hospital. However after 3 years, the cost escalation has necessitated a projected 64 percent increase in Government health spending over the next three years (since then). Eighty-three percent of this increase can be accounted for by the budget line that covers the PPP.[31] OXFAM analysed this as a dangerous diversion of scarce public funds from providing healthcare to the poorest towards reducing inequality.

Government of Uganda is progressively adopting PPP project arrangements but in the process, profits are privatized while risks are socialized, according to SEATINI (Research Report, 2016).[32] In addition, many of them are characterised by, a) limited transparency, public scrutiny, accountability and involvement of domestic private sector; b) Increasing the host country's risk towards more fiscal distress as PPPs are associated with direct and indirect-contingent liabilities;[33]

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[31] a) Cost $67m per year – at least three times what the old public hospital would have cost today – and consume 51 percent of the total government health budget; b) are diverting urgently needed resources from health services in rural areas where three-quarters of the population live and mortality rates are rising; c) are expecting to generate a 25 percent rate of return on equity for the shareholders and a total projected cash income 7.6 times higher than their original investment.

[32] SEATINI (2016). Investment Policies of EAC Partner States: Linkages with National Development Plans, Human Rights, Gender and Environment sustainability, 2016, Pg.22.

[33] Such as a fall in the exchange rate of the host state's currency, or if the demand for the requested service or facility falls below a specified level, or during economic crises which could result into a reduction in the demand for a certain service or product being supplied by the PPP project

and c) problematic Investor State Dispute Settlement (ISDS) procedures. Most of these shortcomings may lead to poor decision-making and increased opportunities for corrupt behaviour hence grossly undermining the country's development. And so, the viability of PPP projects to deliver social services in the most efficient manner while maximizing welfare has been highly contested. It is therefore imperative that in designing PPP legal frameworks and the related projects, welfare needs of the most marginalized groups in the country are taken into account.

Systems in place to manage PPPs for the benefit the tax payers especially the poor: Drivers for success

According to World Bank (2017), sufficient gains from PPPs are feasible mainly if the Government is committed to building the right set of frameworks to provide the appropriate environment for private investments and adopting robust project identification, screening, procurement and contract management processes. Uganda has made great steps in creating an environment within which to manage PPPs to maximize its benefits as observed below.

1. **The PPP Framework.**[34] The MoFPED is the line ministry responsible for PPP activities. The Ministry, through the Permanent Secretary/Secretary to the Treasury (PS/ST), is mandated to make rules for the administrative and financial framework of the unit and its relationship with other departments within the Ministry, and decide on the staff necessary for the efficient operation of the unit. The Ministry is responsible for approving the terms and conditions of the PPP unit staff in consultation with the Public Service Commission. It is also charged with the responsibility of securing and confirming the availability of Government contribution for PPP projects. The PPP framework is still under-going establishment with development of some operational guides underway.

2. **PPPs Legislation and Regulations**

The Act and Policy provide the institutional structure to implement PPPs and the critical PPP processes.

a) ***The PPP Act, 2015*** - The Act which is the prime law in PPP operations was enacted on 5th August 2015 to regulate the development and implementation of PPPs in Uganda. It provides for the processes and contains information on the procurement rules and methods that apply to PPPs. It also establishes a Committee which oversees and approves all projects under the PPP model and the PPP Unit which serves as the Secretariat.

b) ***The PPP Framework Policy, 2010 (PPPFP)*** - Although Uganda adopted a formal PPP Framework Policy in 2010, it already had a number of ongoing PPP projects. The main goals for establishing the PPP Policy were; i) better utilization and allocation of public funds, ii) more efficient delivery of public infrastructure, iii) provision of good quality public services, and iv) increased economic growth and foreign direct investment. The core principles set forth in the PPP Policy that govern PPP policy and project development include value for money, public interest considerations including social inclusion, appropriate risk allocation, output orientation, and transparency and accountability. The Policy informed the formulation of the PPP Act, 2015.

c) ***PPPs Regulations, S.I No. 18 &19, 2019 -*** The Regulations give effect to the Act and provides for; the management of PPPs, procedures for project inception and feasibility study, bidding methods, negotiation procedures, restricted bidding, direct procurement and levies and tariffs that the Contracting Authority may levy.

3. **Other Applicable Sectoral Laws**

   a) ***The Public Procurement and Disposal of Public Assets Act, 2013*** - The Act recognises other contract arrangements that involve the mobilisation of private sector resources eg PPPs for the purpose of financing a public project which benefits citizens.

   b) ***The Public Finance Management Act (PFMA), 2015 (As Amended), Public***

[34] *https://pppunit.go.ug/*

Finance Management Regulations No. 42 of 2016 – Provides for mechanisms of Public Financial Management in Uganda. According to Article 2(1) of the PPP Act, which defines its scope of application, the Act shall apply to the design, construction, maintenance, and operation of infrastructure or services in projects including "(a) road, rail, subway, water, and air transport facilities..." This shall provide the framework under which PPPs in Uganda will be analysed.

4. **PPP Unit (PPPU)** was established within the MoFPED in 2015 as the Secretariat which provides overall technical expertise and guidance to contracting authorities in development and implementation of PPP projects. Section 11 of the PPP Act outlines the functions of the PPP Unit. The Unit reports to the PPP Committee for technical matters and to the PS/ST of the MoFPED on Finance and Administrative matters. It supports contracting authorities with provision of funds to undertake some of the stages in the PPP project cycle within the stage of project inception to project implementation, where applicable. The Committee is established under Part II, Section 5 of the PPP Act, 2015 (Management of PPPs and Contracting Authority) and outlines its composition and functions. The Committee is responsible for approving PPP project proposals, feasibility studies, and draft contract agreements. It is also required to approve the organisational structure of the PPP Unit and authorise funds allocations from the PDFF.

5. **Draft PPP Guidelines -** The draft PPP Guidelines provide contracting authorities and the PPP Unit with a rigorous procedural framework and with a comprehensive set of assessment tools enabling them (i) to identify the projects where the use of PPP can deliver benefits, and (ii) to effectively achieve these benefits through a sound preparation and implementation process. The Guidelines are also expected to guide private companies that are considering participating in a PPP project as investor, developer, operator or lender, or as advisors to one of these parties. It allows private sector parties to fulfil their role in PPP projects with maximum efficiency and in accordance with the Government's PPP policy.

6. **Disclosure Diagnostic Report** -The report suggests a systematic structure for disclosing information proactively at different phases of the PPP process. The Framework for Disclosure in PPPs was created by the World Bank Infrastructure, PPPs and Guarantees Group which suggests the initiation of work with a PPP Disclosure Diagnostic (the "Diagnostic"). It has undergone a public consultation process and has been implemented in Ghana, Honduras, Kenya, and Nigeria. The objective of the Diagnostic is to help PPP policy makers and practitioners assess the status of PPP disclosure in the jurisdiction and identify customized PPP disclosure solutions to enable better disclosure.

7. **PPP Screening Tool (PST)** – Uganda like other countries adopted the PST expected to be domesticated based as it provides technical guidance for early screening of PPP projects. It can also be used as a decision making tool or checklist at any stage of the project development process prior to initiation of procurement, to ensure the soundness of the project with key features for identifying its potential suitability for PPP procurement and evaluates six parameters; i) strategic suitability, ii) preliminary feasibility, iii) risk assessment, iv) PPP suitability, v) fiscal affordability, and vi) institutional capacity. This helps to determine whether a particular project meets the requisite standards for procurement through a PPP route as part of the required resources are saved for allocation elsewhere.

8. **Dispute Resolving Mechanism:** Occasionally, the contract arrangement and complexity of PPP projects in addition to their long term nature suffer disputes through the implementation period which potentially affects the relationship between the Project Company and the Procuring Authority. This also places the quality of service on the project implementation process at risk as any decisions going forward have to be sustainable with a focus on achieving value for money to the benefit of citizens. Of note, is that Uganda has a legal system to support resolution of disputes[35]. However several concerns remain on eg, the capacity of Uganda's

judicial system in resolving disputes arising from PPPs (absence of confidentiality and delays could be a disincentive to investors), availability of expert personnel in the Judiciary specifically in the technical area of PPPs among others.[36] These short comings could jeopardise benefits from such PPPs projects. It's important therefore to manage and resolve appropriately and quickly in a cost-effective manner as a good and strong relationship between the contractual parties is maintained.

Gaps hindering the Effective Operations of PPPs in Uganda *(With some extractions from the AG Report, 2017)*

PPPs can be successful only if Government is committed to building the right set of frameworks to provide the appropriate environment for private investments and conditions for adopting robust project identification, screening, procurement and contract management processes.[37] It was anticipated that since Uganda now has a fully-fledged law to govern PPP transactions in place, it would create a more enabling environment and a firm PPP market. Although they are viewed as major potential arrangements for mobilising private capital to bridge the gap in national financing, their effective operations face several hindrances.

1. It has been reported that feasibility studies of Government projects have been conducted in haste or inadequately. Lack of readiness in terms of producing feasibility studies, appraisal of project designs, alignment with NDP objectives and inadequate capacity of execution and coordination among MDAs has been repeated reported in several Government analyses. Project assessments are conducted in unsystematic ways by inexperienced staff who most likely make key assumptions inconsistently in the analysis, frequently attracting criticism later on for unduly favouring some PPPs projects. In addition, the proficiency of Uganda's judicial system to resolve any disputes arising from a PPP Contract is questionable as highlighted above.[38]

2. While the establishment of the PDFF has not yet taken place, there is also a Conflict of Interest scenario according to the Auditor General (Report, 2017). The PPPC adopted and approved the guidelines for the establishment of the PDFF in April 2016 and the PS/ ST requested the Accountant General to open the relevant bank account for the PDFF. However the PDFF Account has not been opened by the Accountant General because in his opinion, this was in contravention of Section 33(5) of the PFMA 2015 which requires him to open accounts for only voted entities. Therefore, in absence of the PDFF, contracting authorities cannot undertake comprehensive project preparation, procurement and appraisal activities since these are very costly. This presents a risk of unsuitable projects being registered, entities taking on projects that are not feasible and projects with skewed risk allocation in favour of investors resulting in increased contingent liabilities. To this extent, the financial framework is unclear in enhancing and promoting accountability of the allocated and utilised funds towards PPP projects.

3. The Monitoring and Evaluation Unit has not yet established a comprehensive monitoring and evaluation framework to support the implementation of PPP functions. This hinders the effective assessment of projects to ascertain whether they are achieving set targets or whether strategic changes need to be made to inform action accordingly. In addition, some Analysts argue fact that the nature of PPPs endorsed in Uganda guarantee the private individuals and entities the largest chunk of profits from the venture while Government is expected to absorb all the losses should the deal go bad. This is also against the backdrop that; *"PPPs tend to socialise losses and privatise profits,"* according to Ambassador Nathan Irumba.[39] Without an M&E framework, the level of vulnerability and compromise in the achievement of the PPP objectives is extremely high.

4. Conflict of Interest Scenario. The PS/ST who chairs the PPP Committee as stipulated

[35] *Dispute resolution is provided for under Section 49 of the PPP Act, 2015. It provides in essence that any dispute between a contracting and private party should be settled as provided for in the PPP contract or as provided for in the Arbitration and Conciliation Act, Cap 4.*

[36] *https://www.ktaadvocates.com/dispute-resolution-under-ugandas-ppp-legal-framework/*

[37] *11th Economic Update, Uganda*

[36] *https://www.ktaadvocates.com/dispute-resolution-under-ugandas-ppp-legal-framework/*

[36] *https://mobile.monitor.co.ug/Business/Business/PPPs-answer-Uganda-financing-problems/2471012-4998924-format-xhtml-d2tpaj/index.html*

[39] *https://mobile.monitor.co.ug/Business/Business/PPPs-answer-Uganda-financing-problems/2471012-4998924-format-xhtml-d2tpaj/index.html*

under section 5(1) of the PPP Act 2015 is the same person to whom the PPPC and PPP Unit report. This creates conflict of interest which compromises the oversight responsibility placed on the PS/ ST over the PPP Committee by the Act.

5. The overlap in the roles and responsibilities of the PPP Unit and other departments of the MoFPED also impedes progress in implementation of the PPP program. PPP related documentation further reveal overlaps in the roles and responsibilities of the PPP Unit and the Project Analysis and Public Infrastructure (PAPI) department of MoFPED. For instance, the PAPI department and the PPP Unit developed contradicting guidelines concerning the administration and financial framework of the PPP Unit. Under Section D of the Ministry's Administrative and Financial Guidelines 2016 developed by PAPI, the PPP Unit reports to the Director Budget on matters of finance, policy and Administration yet the PPP Unit's Financial and Administration framework (paragraph 4.1) provides for direct reporting relationship of the PPP Unit to the PPP Committee on all administrative, financial and technical matters. In addition, the MoFPED's macrostructure as laid down in the Strategic Plan (2016-2021) shows a direct reporting relationship of the PPP Unit to the PS/ST. The failure to harmonize the framework defining the relationship between the PPP Unit and other departments of MoFPED as required under Section 11(5) of the PPP Act has led to misunderstanding over the financing of the PPP activities which impacts on the timely attainment of the PPP intended objectives.

Recommendations

Government should;

1. Invest in training or recruitment of the required experts to conduct appropriate project assessments and develop the appropriate systems to facilitate staff in in conducting the assessments as a cost saving mechanism. PPP units can be streamlined within Government MDAs (for those that don't have) which consolidate their work with the PPP Secretariat. Investment in tapping outside experts to lead the effort while training in-house staff along the way is of essence.
2. Develop benchmark databases for PPP potential sectoral projects that gather cost information on both public and PPP infrastructure projects. The information should not only capture the capital expenditures for developing a project but also the cost of operating the project beyond its life cycle. This will serve as part of foundational baseline information to help project the cost analysis of similar projects.
3. Develop standardized methodologies for conducting assessments and identify a source of common key assumptions, such as what the financing costs would look like under a public-sector approach versus a private sector arrangement.
4. While section 49 (1) of the PPP Act, 2015 provides for a dispute resolution, there is need for a provision to set up a PPP Petitions Committee or Tribunal designated to handle any disputes arising between the private party and contracting Authority with reference to dispute settlement mechanisms agreed upon by the parties in the PPP agreement to backstop further processes that would require consulting the provisions on the Arbitration and Conciliation Act. This will be in the view of saving time to resume work as some court processes take a long time to resolve which comes along with financial and lost-time costs that can stall progress of project implementation.
5. Separate the roles and responsibilities of officers responsible for ensuring effective oversight of PPPs activities. This will streamline and address role conflict and conflict of interest in decision making processes as the reporting mechanism will be clarified for the effective operations of PPP arrangement.

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