

Making PPPs work for Uganda's Development

Uganda has major ambitions for infrastructure to catalyse economic growth, reduce poverty and ensure environmental sustainability. With a major investment gap, the country is looking for major public-private partnerships. This note tells the story of OPF Fellows helping to establish a strong PPP legal regime to attract quality investors – and of resulting new PPP projects in transport and energy that bring genuine benefits to the country.

Big infrastructure ambitions

Uganda's Vision 2040 statement sets the country's sights on transforming from a low-income, agriculture-based economy to an upper middle-income country by 2040. One of the most catalytic ways to achieve this is to build the country's infrastructure in all areas, but in particular energy and transport.

While Uganda has already made big strides towards increasing expenditure on infrastructure, there is still not enough funding for infrastructure projects. Government and stakeholders alike realise that Uganda's infrastructure deficit will require innovative methods to raise enough capital and to cut inefficiency. Public Private Partnerships (PPPs) are therefore being pursued. These are long-term contracts between government or government agencies and private entities to provide a public asset, where the private entity bears the larger portion of risk attaching to the project, and remuneration is linked to performance. If structured carefully and implemented effectively, PPPs can be used to leverage significant private financing and efficiencies towards filling infrastructure financing gaps.

Public Private Partnerships Unit – catalyst for change

To help with these efforts, the Public Private Partnerships Unit (PPPU) was established by statute in 2015. Under the Ministry of Finance, Planning and Economic Development, it has been serving as the secretariat and technical arm of the Public Private Partnerships Committee (which has oversight of PPP projects and includes government financial and legal authorities among other

members). The Unit's work is of critical importance. It receives project proposals and screens them, assesses their legal and commercial viability, develops projects so that they further the national development agenda, assists with procurement, and then monitors approved projects. The Transaction Advisory Team of the PPPU therefore needs both legal professionals and economists to do this work. The Government sought help from OPF to provide the legal resource – and thus began the relationship between OPF and Uganda's PPPU. It started in 2017, marked by the first posting of two Fellows from Cohort 3 of the Fellowship. At the end of their Fellowships in 2019, the current fellow (Cohort 5) joined the Unit in their stead.

Oxford Policy Fellowship and the PPP Unit

Embedding Fellows within the PPPU has helped to improve legal capacity, allowing the Unit to improve the turnaround time and depth of responses to submission of project concepts. Before the posting of the first two Fellows, there was no in-house legal support. Proposals presented to the PPP Unit have serious legal implications and, without legal expertise, the Unit is barely able to deliver on its mandate. OPF has therefore worked closely with colleagues in the Unit (notably the Directors of the Unit who act as Fellows' line managers) to deliver on the Unit's statutory mandate, offering support and increasing the quality of service to contracting authorities and others. This has boosted confidence in the Unit, creating a great improvement on the stereotypical image of a lethargic civil service. It has directly improved the willingness of investors to work under the guidance of the PPPU to deliver projects that are more closely geared to the government's development agenda, in particular infrastructure projects.

New legislation, improved capacity

At the onset of the partnership, the Unit had only a skeletal legislative framework in place – the Public Private Partnerships Act (2015) – but without any regulations or guidelines that to implement the provisions of the Act and enable the PPP unit to operate effectively.

Fellows therefore worked with PPPU colleagues and other stakeholders (development partners such as the African Development Bank and World Bank and other government institutions), to prepare Regulations and Guidelines under the Public Private Partnerships Act and to have them approved. These two pieces of legislation provide a much-needed comprehensive rubric for delivering PPP projects in the country. They provide a guide to contracting authorities in the country (such as urban and roads development authorities) as well as investors on how to pull together feasible and commercially viable PPP projects. Fellows have been involved in the scheduled review of the PPP Act, so that it provides the strongest possible foundation for the effective PPP projects.

We have also been involved in capacity building, training Contracting Authorities and Local Governments on the PPP process and how to leverage PPPs for development. This has enhance the ability of Ministries, Departments and Agencies (MDAs) of government to come up with project concepts that are legally sound and commercially viable. It reduces the time and costs entailed

by the PPP Unit and the MDAs if they later have to refine poorly drafted projects. And it goes a long way to ensuring that a robust PPP project pipeline is in place.

Managing debt

OPF Fellows have also been a resource to other government undertakings beyond the PPP Unit. This has included preparing the Fiscal Commitments and Contingent Liabilities Framework (FCCL) with the Ministry of Finance. Uganda's Public Debt Management Framework undertakes to keep the country's debt at manageable levels and ensure debt sustainability. The FCCL framework provides a tool for the PPPU and Ministry of Finance to assess and keep track of fiscal commitments arising from PPP projects and contingent liabilities. At a time when many countries are carrying unsustainable debt, Uganda aims to keep public debt below 50% of GDP, and so managing costs and government liabilities is increasingly important.

PPP projects for swifter trade, and improved access to clean energy

With the new legal frameworks in place, OPF Fellows were then able to help lead the legal analysis for major contracts that will prove to be of huge economic benefit to Uganda. For example, Fellows worked on the concession agreement for building the USD 1.5 billion Kampala-Jinja Expressway. This road is a critical part of the northern trade corridor that will link Uganda, Rwanda and DRC to Mombasa port. It will benefit Uganda by opening up more areas to trade to the Indian Ocean; linking important Ugandan growth hubs; reducing travel times and improving reliability (notably easing traffic congestion in Kampala); and creating employment (1500 jobs during road construction and 250 jobs in operations – a 10% and 2% increase in these sectors respectively). All of this will reduce the cost of doing business. And it will generate an estimated USD 300 million in tax revenue for the government of Uganda over 30 years. The project has now been approved by the cabinet and all stakeholders are gearing towards beginning the procurement process.

A second example: Uganda intends to greatly increase access to electricity for her citizens, from 26% in 2016 to 80% by 2040. Focusing investments to grow the energy sector is therefore a clear priority. The government undertook to explore the renegotiation of the country's electricity distribution concession as a PPP, so as to reach the best deal possible for the country's citizens, achieving the goal of bringing more citizens and households onto the national grid while keeping retail costs as low as possible. It set up a technical working committee in which all three Fellows have been an integral part. It is yet to be decided whether or not this electricity distribution will be carried out through the PPP framework. Nonetheless, any PPP that results from this would expect to connect more Ugandans to the national grid, while reducing electricity tariffs so they are not prohibitive to the average Ugandan household. This will improve living standards and reduce poverty. It will also help to clean up the environment by reducing Uganda's current 90% reliance on biomass fuels, the production of which degrades Uganda's forests, and the use of which creates unhealthy indoor air pollution. And the lower costs in particular will contribute directly to the growth of Small and Medium Enterprises, which are the largest contributor to employment

and job creation in the country. In all, the resulting cheaper modes of electricity distribution are expected to go a long way to help Uganda industrialize the economy and achieve Middle Income Status.

Looking ahead

The partnership between OPF and the PPPU has been mutually beneficial. Fellows have received a wealth of experience in legislative and policy work, as well as in transaction advice. The PPPU has been able to create a strong legislative foundation for delivering PPP projects. OPF and Ugandan colleagues are continuing to boost the capacity of the Unit. It is now hoped that a regular budget will be allocated to build a cadre of well-trained lawyers to work in-house as part of the Transaction Advisory Team. This would really help Contracting Authorities and development partners to help deliver feasible, economically viable projects - building confidence in public private partnerships as a powerful tool for sustainable development.

Fellow reflection

The partnership between OPF and the PPPU has given Fellows a wealth of experience in legislative and policy work, as well as transaction advisory. We have worked with several government departments in tackling new and challenging responsibilities. We have been able to play a role some major investments, bringing together a wider community that can be leveraged to advance development. Although we had little concept of what our postings would look like (beyond knowing that we would be embedded in government ministries), the Fellowship has turned out to be a huge contribution in our personal and professional development. We hope that our colleagues will continue leveraging the application of law to sustainable development in Uganda, with a continuing partnership between the Fellowship, our colleagues in the PPPU, and the government that is ever more fruitful.

Doreen Areri, June 2020

The OPF is a demand-led Fellowship Programme that works with governments to deliver legal capacity support and development. We do this through Fellows, networks, and learning. We source high performing early-career advisors to work within current government systems and processes for two years so that their work contributes to ongoing policymaking, rather than creating parallel structures for getting things done. By providing governments with key support that they themselves have defined and requested, we deliver sustainable and locally-owned development impact. We also host a network of government practitioners working at the interface of law and public policy, promoting a culture of knowledge sharing and learning across governments and the wider community.