

Building Strong Public-Private Partnerships in Djibouti

and a new unit to manage them

Jenisha Shah
May 2021



Boasting a deep-water port at the entrance of the Red Sea, Djibouti's economy has historically benefitted from its strategic location. However, despite recent economic growth, poverty remains the country's most compelling development challenge. Aiming to reduce it, Djibouti's government launched Vision 2035¹, an ambitious strategy to transform the republic into an international and regional economic power capable of securing Djiboutians' wellbeing in a peaceful, safe and clean country.

As a macro-economic strategy, the Government of Djibouti recognised the leading role of the private sector in diversifying and improving the competitiveness of the Djiboutian economy. The IMF concurred: its recommendations in 2019 called for a reduction in production costs, particularly in the electricity sector, and for greater institutional capacity to stimulate private investment to control debt accumulation. Public-Private Partnerships, or PPPs, were thus regarded as one of the top avenues for developing and managing the country's infrastructure and public services.

In traditional public procurement processes, the financial risks for a project are ultimately borne by the taxpayers. Working through PPPs makes it possible for governments to share these risks with private investors, while also introducing new, innovative technologies and expertise for infrastructure projects. However, in the absence of effective legislation to govern PPPs, the potential long-term risks of entering into these partnerships could easily outweigh the benefits.

In 2017, Djibouti's government passed a law establishing the legal framework governing PPPs, which included a PPP Unit to manage them and other procedural decrees to ensure the success of these projects. Since the start of the Oxford Policy Fellowship in 2015, three OPF Fellows from the United Kingdom, Belgium and India have been contributing towards the set-up of Djibouti's PPP Unit, the process for which began well before the law was passed in 2017. Over this time, the OPF Fellows have been working with Djiboutian officials and development organisations active in the country to create an authoritative and effective office capable of executing successful PPPs for the benefit of all Djiboutians.

The PPP Unit's responsibilities include controlling and managing PPP projects, providing technical assistance and policy guidance, and promoting the PPP scheme in the country.

¹Djibouti Vision 2035

<http://documents1.worldbank.org/curated/fr/870641468246040913/pdf/916950WP0DJIBO0x385342B00300PUBLIC0.pdf>

Managing PPP projects in Djibouti: progress made

PPPs are often construed as complex and lengthy contracts laden with several layers of bureaucracy and the potential threat of corruption. For this reason, effective control and management of PPP projects, from their inception, is essential. To date, the PPP Unit has supported three successful projects in the energy sector, including an onshore windfarm, a solar farm in the Grand Bara desert, and a renewable energy park that transforms solid waste into electricity.

Box 1: The Renewable Energy Park: turning waste into power

Each day, the park will consume approximately 60% of the country's municipal solid waste stream and its entire supply of used tires to produce electricity with a capacity of 40 MW in a pyrolysis waste to energy facility.

Once operational, the park will bring about important socio-economic and environmental benefits, including:

- **Lower prices:** The sale price of electricity produced at the park will be substantially lower than what the Djiboutian government currently pays for purchases from Ethiopia. In addition, the power produced at the park is baseload energy and, for that reason, will be more reliable than hydroelectric power from Ethiopia. The government will be able to pass on these savings to consumers and to potential new businesses which can help grow the economy.
- **More jobs:** The unemployment rate in Djibouti is close to 56%, and the most disadvantaged economic groups face unemployment rates higher than 60%. The park will employ more than 200 Djiboutians in the construction phase and 100 people will be permanently employed, receiving good pay packages and benefits. The park will also provide auxiliary jobs for the local community.
- **Environmental improvements:** The existing landfill suffers from frequent fires due to the methane gas trapped under the soil. As part of the project, waste will be redirected from the landfill to the park, which will stop these fires and dramatically improve air quality in neighbouring areas, while also reducing greenhouse gas emissions.
- **Health benefits:** A clinic is being built in the park to provide medical treatment to staff for illness or minor injuries incurred on site. During the COVID-19 pandemic and other public health crises, the clinic could act as a vaccination centre for employees and the local population.

Providing policy guidance and capacity building for effective PPPs

Considering the complex nature of PPPs, a strong national policy framework governing these partnerships can go a long way in building investor confidence and in making sure that projects are implemented successfully. With support from the World Bank Group, the French Development Agency, Expertise France and the OPF Fellows posted in

Djibouti, Djibouti's government put in place policy guidance and drafted the legal framework for PPPs in the country. OPF Fellows provided legal technical assistance and brought diverse perspectives to the process, helping to develop the sound legal and institutional framework needed to establish a functional PPP Unit.

A legal framework for governing PPPs in Djibouti

The legal framework includes the following components:

1. PPP Law²

This law sets out the legal regime and institutional framework for PPPs in the Republic of Djibouti. All PPPs must be concluded in accordance with the provisions of this law.

2. Decree setting up the PPP Regulatory Commission³

This decree defines the organisation and functioning of the PPP Regulatory Commission.

3. Decree setting up the organisation and operation of the PPP Directorate⁴

This decree defines the organisation and functioning of the PPP Unit in charge of evaluating the legal and financial structuring of PPPs in Djibouti.

4. Decree establishing the procedures for the award of a PPP⁵

This decree sets out the composition of the PPP Project Unit created within any Contracting Authority, the modalities and conditions of PPP procurement methods, and the measures favouring the use of local companies, along with the modalities of the transfer of skills.

Further, a Manual of Procedures will soon be passed by the Djiboutian Parliament. The manual describes in detail the procedures and interventions of the different actors and contracting authorities during the different stages of a PPP, namely, identification, evaluation, procurement and implementation.

² Loi N° 186/AN/17/7ème L relatif aux Partenariats Public-Privé, <https://www.presidence.dj/texte.php?ID=186&ID2=2017-05-29&ID3=Loi&ID4=10&ID5=2017-05-31&ID6=n>

³ Décret N° 2018-175/PR/MEFI pris pour l'application de la Loi n°186/AN/17/7ème L relative aux Partenariats Public Privé et portant mise en place de la Commission de Régulation des PPP, <https://www.presidence.dj/texte.php?ID=2018-175&ID2=2018-05-14&ID3=D%E9cret&ID4=3&ID5=2018-05-15&ID6=sp>

⁴ Décret N° 2018-178/PR/MEFI pris en application de la Loi n°186/AN/17/7ème L relative aux Partenariats Public-Privé et portant organisation et fonctionnement de la Direction des Partenariats Public-Privé, <https://www.presidence.dj/texte.php?ID=2018-178&ID2=2018-05-14&ID3=D%E9cret&ID4=3&ID5=2018-05-15&ID6=sp>

⁵ Décret N° 2018-176/PR/MEFI portant mise en place des procédures de passation d'un PPP, <https://www.presidence.dj/texte.php?ID=2018-176&ID2=2018-05-14&ID3=D%E9cret&ID4=3&ID5=2018-05-15&ID6=sp>

Documentation supporting these laws and decrees mentioned include a good practices guide and model documents facilitating the projects, such as a concept note for submitting proposals, the pre-evaluation report and model concession agreements. These essential documents provide a comprehensive set of guidelines for governing PPPs and are the product of the collaboration between Djiboutian officials, the development institutions active in the country and the three OPF Fellows.

As the PPP Unit in Djibouti is new, the Djiboutian officials serving there are often new to some of the technical concepts involved in PPPs and the framework for its implementation. The OPF Fellows posted in Djibouti have aimed to support these officials to become more familiar with the key technical legal aspects of PPPs, including the different terminologies used and the best ways to support their effective implementation.

The Unit is now responsible for extending the same policy guidance support and capacity building to the contracting authorities in Djibouti, who are representatives from the various ministries in the country, and to private investors. For example, the Unit will offer workshops to these stakeholders to introduce them to the different phases of a PPP and the support that the PPP Unit intends to extend to the stakeholders through the life cycle of a project.

Promoting the PPP scheme in Djibouti

PPPs are projects of a complex nature, involving a variety of actors, and having an impact on basic services and important economic infrastructure for the country's development and for citizens' daily life. For this reason, the government needs to communicate the role and function of PPPs, and how to enter into and manage them, to all stakeholders directly involved in the development and management of PPPs, whether public or private. This communication needs to extend to investors and operators potentially interested in these partnerships. Awareness among the general public is also helpful to increase accountability. To address this challenge, the PPP Unit developed a communication strategy.

The government's intention is to promote the PPP Unit as an enabler and facilitator of PPPs to potential private sector investors and to its various ministries. The Unit will also have a dedicated website and a toolkit to make it easier to access information about the PPP scheme in the country. The Fellow and the Unit's Djiboutian officials have been working together to promote the Unit and to build greater awareness on PPPs in Djibouti.

Fellow reflection – looking back and looking forward

In the process of establishing the PPP Unit, I was introduced to the different political and legal aspects related to the set-up of a new directorate within a ministry. This inspired in me a deeper appreciation of the effort behind strong legal and institutional frameworks for governing PPPs, and how crucial these are to ensuring PPPs succeed.

I was given the responsibility of managing the different elements behind the PPP Unit's successful launch. These included supporting Djiboutian officials in becoming better acquainted with the concept of PPPs, clarifying the questions and doubts that arise as the projects unfold, and providing different resources they can refer to in the future. I was also involved in reviewing the Procedural Manual (the guidebook to be followed in all PPP projects), drafting model documents, and preparing a toolkit for the Unit's website, all of which make it easier to understand the different phases of PPPs.

Djibouti borders Somalia, Eritrea, Ethiopia and Yemen, countries that have been affected by persistent poverty and instability, forcing many to look for safety and livelihood opportunities elsewhere. In Djibouti, I witnessed the challenges that large influxes of migrants pose to a country's socio-economic policies, and to the migrants themselves. For example, as the only port of entry into Yemen, I was privy to the relief of humanitarian organizations, a testimonial to the region's continued fragility.

Against this backdrop, I look back at this experience positively, gratified by the knowledge that a helpful contribution was made towards drafting laws and policies that can have a lasting positive impact on the Djiboutian economy, and thus deliver improvements to livelihoods and other prospects in the country. The COVID-19 pandemic posed an additional challenge, adding uncertainties and calling for personal and professional resources to complete this mission. Life in Djibouti served as a constant reminder as to why I chose to pursue law in the first place, and reinforced my will to put my legal knowledge in service of development objectives, every day. In years to come, I will keep abreast of PPP developments in Djibouti, content in the knowledge that all the projects being implemented will have been supported by the PPP Unit that I helped set up.

Jenisha Shah

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 legal 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.

For more information, visit our website: www.policyfellowship.org
Or, email us: info@policyfellowship.org

