

PPP Country Paper

Tanzania

Submitted to SADC-DFRC 3P
NETWORK Public-Private-Partnership
Working Group

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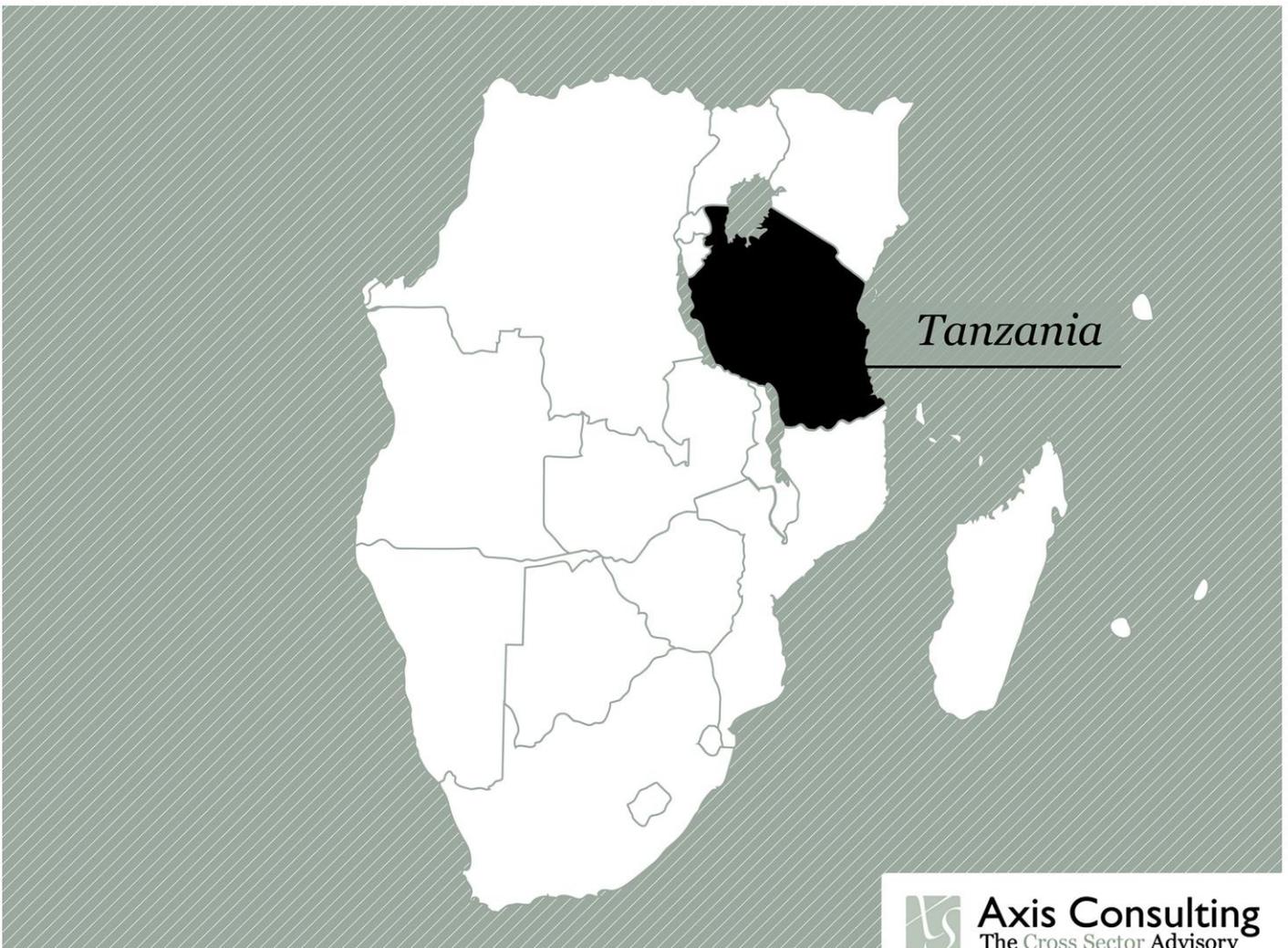


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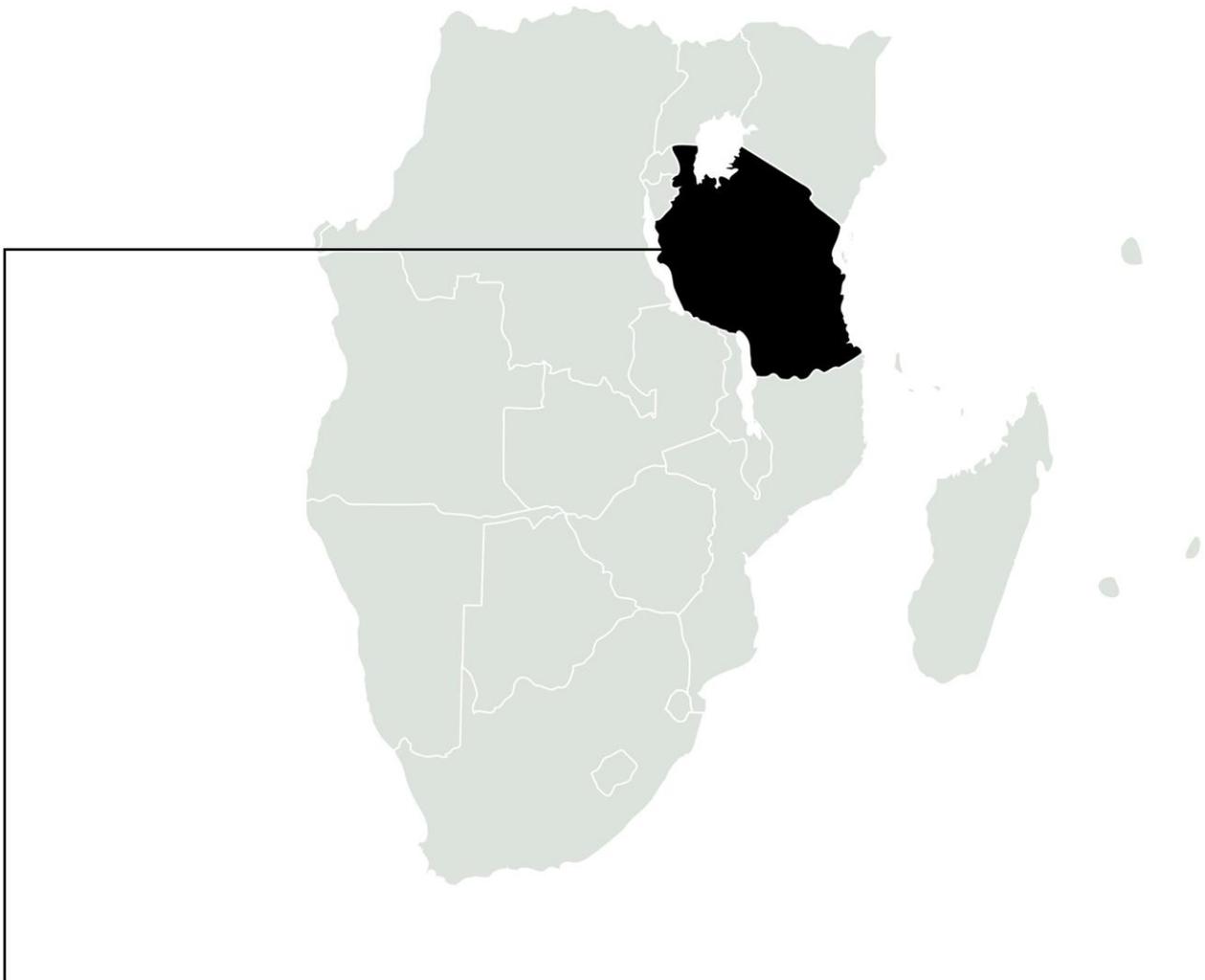
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List of Abbreviations

AfDB	African Development Bank
BBO	Buy, Build, Operate
BLT	Build, Lease, Transfer
BOT	Build, Own and Transfer
BOOT	Build, Own, Operate and Transfer
BOO	Build, Operate, Own
CA	Contracting Authority
CU	Coordination Unit
DB	Design, Build
DBFM	Design, Build, Finance, maintain
DBFO	Design, Build, Finance, Operate,
FU	Finance Unit
GDP	Gross Domestic Product
GoT	Government of Tanzania
KIA	Kilimanjaro International Airport
MoF	Ministry of Finance
NSGRP	National Strategy for Growth and Reduction of Poverty
ODA	Official Development Assistance
PMO	Prime Minister's Office
PPP/s	Public Private Partnership/s
PPCU	PPP Coordination Unit
PPFU	PPP Finance Unit
SADC	Southern African Development Community
SADC3P	Southern African Development Community- Development Finance Resource Centre PPP Network
SOE	State-Owned Enterprise
TIC	Tanzania Investment Centre
VfM	Value for Money





KEY INDICATORS - 2012

Tanzania

Population (Mio.)	46.2
GDP per capita (US\$)	599
PPP Level of Maturity	Medium

(Regional Strategy Paper, 2012)

1. Engagement Overview

XS-Axis Consulting, Wehrheim (The Cross Sector Advisory) has been engaged by the Client, Southern African Development Community-Development Finance Resource Center PPP Network (SADC3P) to prepare 14 country papers taking a look at current practice of PPPs with a specific focus on PPP Policy, Institutional Arrangements, and Legal Frameworks as a follow-up of the Draft Regional Strategy paper submitted to SADC3P in November, 2012. This paper focuses on Tanzania's PPP Policy, Institutional Arrangements and Legal Framework as a Member State in SADC providing specific recommendations for the implementation or enhancement of private sector participation in the development of public infrastructure in the country. The main objective is to serve as a strategic paper for the Government of Tanzania, and its Ministries in order to refine, develop and ultimately develop further its PPP Policy, Legal Framework, and Institutional Arrangements aimed at closing the 'infrastructure gap', and its negative impact on economic growth, job creation and social cohesion in Tanzania. Moreover, the country paper shall serve the SADC3P Network to identify areas of support to be offered by SADC3P Network towards identified Member States.

We render this report to the best of our knowledge and belief. Our results are based on the most recent verifiable information available at time of the report. Public sources were used where appropriate and fact based observations were made.

2. Introduction

Tanzania, officially the United Republic of Tanzania with a population of 46.2 Million (Mio.) continues to be politically stable and peaceful; free of ethnic cleavages and labour unrest (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.274). Mr. Jakaya Mrisho Kikwete has been President of Tanzania since December 2005 --elections are every five years. Its neighbouring countries include Kenya and Uganda to the North, Rwanda, Burundi and the Democratic Republic of the Congo to the West and Zambia, Malawi and Mozambique to the South. Tanzania has achieved an impressive economic growth since the mid-1990s, with reasonably low inflation reflecting the Government of Tanzania's (GoT) reform agenda, launched in the late 1980s, promoting a change in orientation from state-led market strategy to liberalization (African Development Bank (AfDB): Country Strategy Paper 2011-2015, 2011, p.2). Gross Domestic Product (GDP) growth rate was up to 6.9% in 2012, from 6.4% in the previous year (World Bank 2013, web page) driven by private consumption (growing population), exports (due to favourable gold prices) and gross fixed capital (mainly public investment). AfDB expects private investment to further curb growth in the short and medium term. Dynamic sectors include tourism and mining both of which continue to grow even though agriculture remains the largest sector (African Development Bank (AfDB): Country Strategy Paper 2011-2015, 2011, p.2).

Despite Tanzania's broad fiscal and monetary policies introduced since 2011, the country has a long road ahead to tackle the economic challenges which remain structural in nature. AfDB confirms that most pressing challenges relate to acute infrastructure bottlenecks—particularly in transport and energy, a deficient fiduciary environment impeding private sector development and an under-performing agricultural sector hindering poverty reduction efforts. A weak human resource base and significant skills mismatch resulting from a deteriorating higher education system is also part of the structural constraint (African Development Bank (AfDB): Country Strategy Paper 2011-2015, 2011, p.3).



Tanzania's global competitiveness ranks 120 of an overall 144 countries, thus remaining disappointing (performing just at the average) compared to other SADC Member States. Rankings for Tanzania as far as the infrastructure quality is concerned compared to other SADC countries --this relates to the quality of the overall infrastructure and quality of roads, railroad infrastructure, port infrastructure, air transport infrastructure, and available airline seat kilometres-- is also poor (ranking 124, the second weakest performing country). It reflects GoT's lack of efforts to improve the level of service provision as far as infrastructure is concerned. Overall, the low level of competitiveness of Tanzania is an indication of its Government's and policy makers' poor commitment, and the political will as an essential driver to achieving sustainable growth in the country and prosperity for its people. In terms of the most problematic factors affecting doing business in the country, the Global Competitiveness Report 2012-2013 provides an insight focusing on lack of accessibility to financing and corruption as the main limiting aspects hindering progress in Tanzania (World Economic Forum, The Global Competitiveness Report 2013-2014, 2013, p.362). Also the quality of infrastructure remains a bottleneck to proper economic performance.

Aimed at attracting private capital, the country has instituted step by step a PPP Framework consisting of a PPP Policy which was issued in 2009, a PPP Act enacted in August 2010, with a Supplement issued in 2010. GoT further refined the scheme with the issuance of PPP Regulations in the Gazette of the United Republic of Tanzania No. 22 Vol. 92 dated 3rd June, 2011. As of 2012, GoT has been seeking to revise the procurement legislation and design a national PPP Strategy. Furthermore, Tanzania has expressed its support towards promotion of PPPs currently finalizing the PPP Implementation Strategy, PPP Operational Guidelines, and the draft Financial Manual (John R. Mboya, Assistant Director, Prime Minister Office (PMO), Tanzania PPP Framework: Lessons for enabling Environment for PPP Pipeline, 2012,2012, p.8). The PPP Operational Guidelines for mainland Tanzania dated October 2012 (the Guidelines) provide detailed information regarding the implementation of PPP projects-- they are essentially the implementation tool of the Framework. However, it should be noted that the Guidelines are yet to be approved by the Prime Minister's Office (PMO) which has initial policy oversight of Frameworks, and Regulations to support its PPP programs.

The environment for PPPs may broadly be considered as positive in Tanzania --GoT has reaffirmed its clear commitment to promote private sector investment and its will towards the implementation of PPP projects. The GoT recognizes PPPs as viable means to address constraints in financing, management and maintenance of public goods and services. GoT further acknowledges that PPPs may enable public sector to fulfil its responsibilities in delivery of socio-economic goods and services by ensuring efficiency, effectiveness, accountability, quality and outreach of services. Nevertheless, OECD evaluation highlights GoT's stance on private participation in infrastructure to keep being contradictory at times. Policy support for private investment and infrastructure PPPs (as demonstrated by some recent enabling legislation such as the updated 2011 Public Procurement Act or the 2010 PPP Act) remains contrasting to actions such as re-possession of certain parastatals which had allegedly been charted for divestiture (OECD, OECD Investment Policy Reviews: Tanzania, Executive Summary and Recommendations, 2013, p.21).

In terms of actual project experience, Tanzania has had a long record of 'informal' experience with PPPs since independence particularly by faith-based organizations or religious institutions in education, health, and water sectors. From late 1990s, new forms of PPPs were established which consisted primarily of management contracts, some sort of lease agreements in energy and infrastructure projects (The United Republic of Tanzania, National PPP Policy, PMO's Office, 2009, Chapter 1). Especially in the health sector, GoT developed a draft for PPP Health Policy, Guidelines and a Strategic Plan. Even in 2001, a health care project was successfully established in Tanzania (The



United Republic of Tanzania, National PPP Policy, PMO's Office, 2009, p.iv).

It is worth noting that several PPP projects have been carried out in Tanzania prior to drafting a PPP Policy, the Act or the Guidelines. For example, the Kilimanjaro International Airport (KIA) PPP Project whereby the airport and its estate were concessioned for 25 years to Kilimanjaro Airports Development Company (KADCO) in 1998. Others include the TICTS container terminal concession in the Port of Dar Es Salaam in 2000, and the central railway corridor concession in 2007 where concession for operation of passenger and freight services granted to RITES. This concession was, however, terminated due to under performance (John R. Mboya, Assistant Director, PMO; Tanzania PPP Framework: Lessons for enabling Environment for PPP Pipeline, 2012, p.5). Also there was a Power Purchase Agreement (TANESCO). There is, however, some concern surrounding those PPP projects that were structured without the Guidelines in place and without the fundamental principle of PPP as the driver. In the near future, Tanzania plans on tendering nine PPP transportation projects (Infra PPP World, 2013, web page).

John R. Mboya, the Assistant Director from PMO emphasizes that the Tanzanian experience with more complex PPP projects has been mixed, and rather resulted in poor performance mainly due to unfavourable contractual terms for the contracting authorities (John R. Mboya, Tanzania PPP Framework: Lessons for enabling Environment for PPP Pipeline, 2012, p.6). He notes that the success stories concerning private sector participation have rather taken place in sectors such as education, health and telecoms, thus in rather not formal PPP models. Mostly, the problems and failures stem from lack of a proper Legal and Institutional Framework at the time designed for long-term contractual cooperation between public and private sectors. Thus, the GoT has been attempting to mitigate these challenges by introducing a better and proper enabling PPP environment which as laid out has been developed since 2009 step by step.

This paper is to be considered as a follow-up strategic document to the Framework paper which was submitted to SADC3P in November, 2012 recognizing that PPP Frameworks do not develop in isolation, but evolve over time along a PPP maturity curve that often responds to various challenges faced while actually implementing PPPs in specific cultural, legal and procedural and institutional settings. The Regional Strategy paper examined the current status of PPP Frameworks across all Member States to classify SADC countries into four categories as far as their level of maturity of PPP frameworks is concerned. The paper distilled Tanzania to belong to those countries in SADC that have adopted and established a PPP Framework aimed at promotion of PPP schemes in the country. The next chapter will elaborate on Tanzania's specific PPP experience, its PPP Policy, Legal and Institutional Framework as a continuation of the above mentioned cross-country Regional Strategy aimed at providing an in-depth insight into the specific country strategy, and existing PPP policies per country across all SADC.

3. Methodology

Our approach in this country specific paper is to provide an overview of Tanzania's PPP Policy, Institutional Arrangements, and Legal Framework by taking into account the country-specific strategies, and drivers for resorting to PPPs considering the individual level of PPP development in the country. The ultimate idea is to draw lessons for GoT, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document distilled Tanzania in 2012 to belong to the nations in SADC with a general Framework and some experience concerning implementation of PPPs. This paper will touch upon this evaluation and move further to analyze the current progress made in Tanzania aimed at depicting those developments made since 2012 as far as



the PPP Framework conditions are concerned.

Methodologically, we will first take a look at the definition of the term PPP in Tanzania since experience across countries shows that lack of a proper term and definition of what a PPP typically encompasses does indeed result in poor implementation of PPP schemes. Next, we will evaluate GoT's approach towards developing a PPP Framework based on the recommendations provided to the Minister's of Finance and the road map developed for SADC countries aimed at establishing a typical good practice PPP Framework. This includes the evaluation of Tanzania's PPP Framework in terms of its PPP Policy –examining whether its Policy contains Government's formulation of its objective to use PPPs, the scope of the PPP program and the implementing principles. Then, we will consider whether Tanzania's operational Framework related to the implementation of PPP processes and the institutional responsibilities underpins its national PPP scheme. In addition, we will take a look at the legislature and entities participating in the PPP program as an integral part of any good Framework approach. Ultimately, we will evaluate as to whether the country's PPP programs are backed up by prudent laws and regulations enabling public sector to enforce and implement PPPs and set the boundaries within the contractual context. The overall idea is to distil proper recommendations from our work for SADC3P, and the GoT as far as next steps is concerned.

4. Examination of the Term PPP

In Tanzania, the term PPP is defined in the PPP Act No. 18, 2010 whereby a ...“public-private-partnership means a contractual arrangement between a Contracting Authority (CA) and a private party entered into in terms of this Act.” Regulations of PPP Act No.18 of 2010 published in 2011, clarifies the term PPP further to refer to a “partnership” implying “.. an arrangement between a contracting authority and a private party in which the private party (a)..performs an institutional function on behalf of the institution; (b) acquires the use of public property for its commercial purposes; (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function or use of state property; and (d) receives a benefit for performing the institutional function or from utilising the public property, either by way of:

- i. consideration to be paid by the contracting authority which derives from a revenue fund or where the contracting authority is a central government or a local government authority, from the revenues of such authority;
- ii. charges or fees to be collected by the private party from users or customers of a service provided to them; or
- iii. a combination of such consideration and such charges or fees” (The Gazette of the United Republic of Tanzania, Government Notice No. 165 published on 3 /6/2011, The Public Private Partnership Act, (No.18 of 2010), Regulations, p.1-2).

The GoT definition of the PPP term is quite explicit in terms of a contractual arrangement to involve delivery of an institutional function by private sector and to include proper risk allocation to “transfer appropriate technical, operational or financial risks to the private party” (The United Republic of Tanzania, Act Supplement, No. 19, August 2010, Gazette of the United Republic of Tanzania No. 32, Vol. 91, PPP Act, Article 10, paragraph 2, (f), (iii)) that is best to be assumed by private sector in return of “levying of fees and charges” (United Republic of Tanzania , Act Supplement, No. 19, August 2010, Gazette of the United Republic of Tanzania No. 32, Vol. 91, PPP Act, p.1). The PPP term in Tanzania



considers a solid payment structure as an essential element of successful for implementation of PPPs.

Chapter 1.1 of GoT’s PPP Policy clarifies the concept of PPPs a bit more detailed to “..entail an arrangement between public sector and private sector entities whereby the private entities renovate, construct, operate, maintain, and/or manage a facility in whole or in part in accordance with output specifications. The private entity assumes the associated risks for a significant period of time and in return, receives benefits/financial remunerations according to agreed terms; which can be in the form of tariffs or user charges. PPP is therefore a cooperative venture built on the expertise of each partner that best meets clearly defined public needs through the most appropriate allocation of resources, risks and rewards” (The United Republic of Tanzania, National PPP Policy, PMO’s Office, 2009, Chapter 1.1). Thus, although the PPP Act does not have an explicit reference towards output- specification and bundling, the Policy document does envision these issues more explicitly (See next chart for an overview of evaluation of the term PPP in Tanzania).

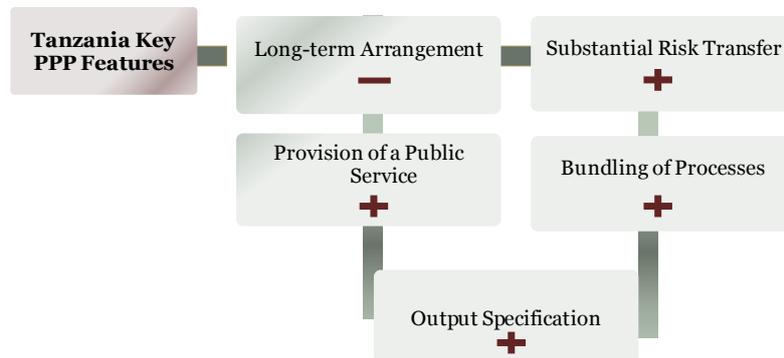


Chart 1: Evaluation of the Term PPP in Tanzania 2012

Overall, the GoT has adopted rather a flexible definition of the length and nature underlying the contractual Agreement --as they have not been explicitly defined. An extension of a PPP Agreement is considered possible in case of delay of completion, higher unforeseen costs or missing capacity (The United Republic of Tanzania, Act Supplement, No. 19, August 2010, Gazette of the United Republic of Tanzania No. 32, Vol. 91, PPP Act, Part III, Article 13, and paragraph 1).

5. Application of SADC PPP Framework Road Map

The experience to date across comparators and SADC countries indicates that there is no unique formula for developing a sound PPP framework. More specifically, the development of a common framework for SADC needs to take into account the economic and political context of countries, their historically grown institutional and legal structures as well as the actual experiences with PPPs so far, with some countries having made considerable strides and others having made very little progress, and some none at all. Nevertheless, if PPPs are to work and render the expected results, we suggested in the Regional Strategy document a number of requirements for a proper PPP Framework with key features related to Policy, Institutional Structures and Legal setting (see next chart).

Thus, successful PPP schemes are characterized by clear policy statements, competent and enabled institutions that can appropriately identify, procure and manage PPPs, and efficient oversight procedures as well as proper legal frameworks. Nevertheless, it must be borne in mind that firm political commitment, stakeholder dialogue and a number of other factors such as a sound and strong PPP pipeline are important contributing factors for the promotion of PPPs in a larger context. It is also important to be aware of the contribution of sector reforms and their role in developing and



supporting PPP schemes. In a number of countries, sector institutions, for instance, power sector regulators have had an important role as far as the promotion of IPPs and investment in the power sector are concerned. It is in this context that Member States with a low level of PPP maturity should acknowledge the relevance of sector institutions in terms of their contribution towards developing PPPs over time and across various sectors --which are however best supported by setting up efficient and proper Frameworks at the national level. In this section, we examine these various elements of a PPP Framework to see how far GoT has proceeded in terms of its PPP Policy implementation and practice as well as looking into its Institutional structures and Legal Framework more in-depth as well as the political commitment of the Government and its approach towards stakeholder integration into the PPP process.

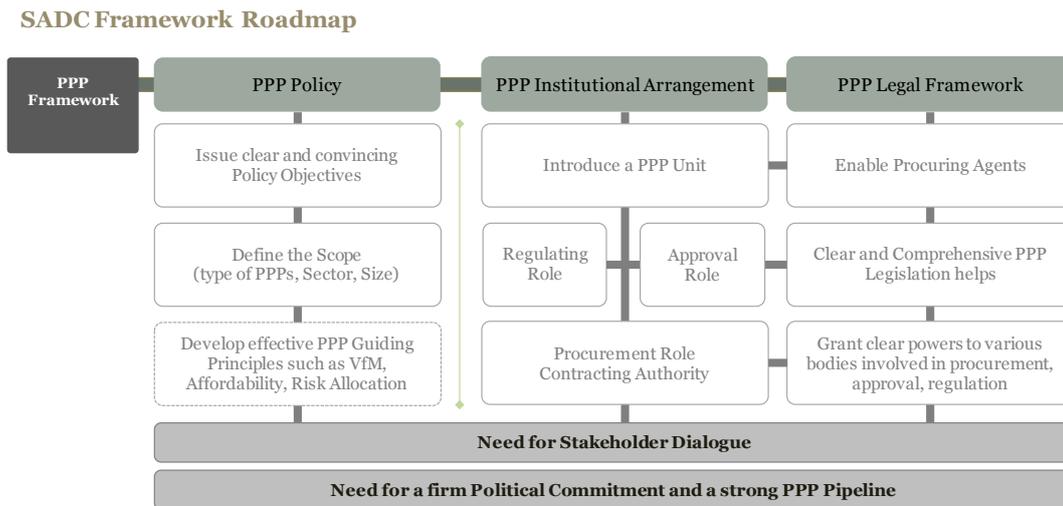


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

5.1 PPP Policy in Tanzania

Tanzania formulates the rationale behind its PPP scheme, the associated objectives and its intended institutional arrangements in the PPP Policy document --prior to having enacted the PPP Bill. The adoption of a proper PPP Policy was considered as an essential step to tackle the weaknesses in various stages of PPPs starting from design to the final implementation --each of which were conducted in an uncoordinated manner in the wake of the absence of an appropriate Policy and corresponding Legal and Institutional Framework.

The GoT deems -- like most other developing countries-- PPPs as an innovative financing tool to tackle the huge budgetary needs of the country. It acknowledges the need to address the constraints of a narrow domestic tax base so as to bridge the resource gap for realizing critical development needs in the PPP Policy document published in 2009. Accordingly, "... investment requirements to attain high growth and reduce poverty are enormous and cannot be met from the public sector budget and Official Development Assistance (ODA) alone in a timely manner. Hence, participation of private capital is key to resolving the prevailing budgetary resource constraints. To sustain progressive socio-economic development, therefore, Tanzania requires innovative tools for financing development programmes in order to expand its production frontier as well as to improve economic competitiveness" (The United Republic of Tanzania, National PPP Policy, PMO's Office, 2009, p.2).

It is clear that not only the Tanzania National Development Vision 2025, the Millennium Development



Goals, but also the National Strategy for Growth and Reduction of Poverty (NSGRP) goals require the GoT to support and stimulate private sector to get involved in contributing towards economic growth, by investments in socio-economic goods and services. Indeed, the GoT recognizes that PPPs provide effective alternative sources of financing, managing and maintaining public sector projects. They improve efficiency, accountability, quality of service and wide outreach. It is to be understood in this context that the GoT introduced in 2009 the PPP Policy with the idea of tackling the challenges with already existing PPPs in the country, foremost concessions. Past PPPs had been implemented either by virtue of existing laws such as the Public Corporation Act of 1992 as amended by Act No. 16 of 1993, or through sector legislation. Thus, there was no proper enabling environment for PPPs as highlighted by GoT in the PPP Policy document (The United Republic of Tanzania, National PPP Policy, PMO's Office, 2009, Chapter I, Article 1.1).

The PPP Policy distinguishes between main objectives and specific objectives. The latter encompasses promotion of private sector participation in the provision of public services through PPPs in terms of investment capital, managerial skills and technology (The United Republic of Tanzania, National PPP Policy, PMO's Office, 2009, Chapter I, Article 2.4). Specific Objectives include development of an enabling Legal and Institutional Framework to guide investments in PPPs; implementation of an effective strategy showing specific obligations and rights for various stakeholders; introduction of fair, equitable, transparent, competitive and cost-effective procurement processes for PPPs; and adoption of operational guidelines and criteria for PPPs; as well as attraction of resources for development of PPPs; and development of institutional capacities for technical analysis and negotiation of PPPs and associated contracts; enhancement of efficiency and quality in implementation of PPPs. The Tanzanian understanding of benefits of PPPs are laid out in the next chart (The United Republic of Tanzania, National PPP Policy, PMO's Office, 2009, Chapter I, Article 1.4.2).



Chart 3: Illustration of Benefits of PPPs as laid out in PPP Policy 2009

Policy documents are well designed when they address the scope of PPPs to go along with the objectives of the Government. Thus, a proper PPP Policy contains the types of PPPs or desired contracts, the sector application and sometimes also the size of PPP projects in terms of volume desired. GoT has clarified the scope as far as types of potential PPP projects are concerned to include (See next chart for an verview):

- Design, and Build (DB), but also Design, Build and Operate (DBO), etc. or Design, Building, Operate and Maintain, or Build, Operate and Transfer (BOT);
- Build, Lease and Transfer (BLT);
- Design, Build, Finance and Operate (DBFO), Design, Build, Finance and Maintain (DBFM), or Build, Own and Operate (BOO), Build, Own, Operate and Transfer (BOOT) and also Buy, Build and Operate (BBO);
- Service Management, Leasing Contracts and Concessions of existing public assets (The United



Republic of Tanzania, National PPP Policy, PMO’s Office, 2009, Chapters 1.3 and 1.2).

On top, PPP Supplement dated 2010 defines the sectors across which PPPs may be applied. These include productive and non-productive sectors as laid out in the PPP Supplement as follows... “(a) agriculture: (i) crop farming; (ii) livestock; (iii) poultry; (iv) fisheries; (v) irrigation; (b) infrastructure: (i) roads; (ii) bridges; (iii) railways; (iv) airports; (v) aviation; (vi) shipping and navigation; (vii) energy; (viii) buildings (c) industry and manufacturing; (d) exploration and mining; (e) education; (f) health; (g) environment and waste management; (h) information and communication technology (ICT); (i) trade and (j) sports, entertainment and recreation” (The United Republic of Tanzania, Act Supplement, No. 19, August 2010, Gazette of the United Republic of Tanzania No. 32, Vol. 91, PPP Act, Part II, Article 4, Paragraph 3).

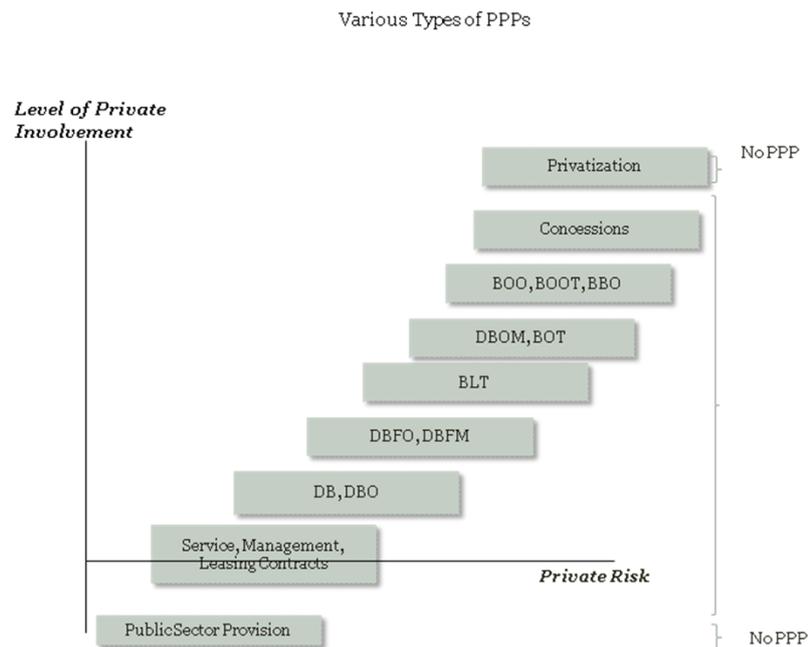


Chart 4: Overview of Types of PPPs in Tanzania

In practice, the focus of GoT has been first to focus on the application of PPPs in the transport sector (including sea ports, ferry terminals, airports, railways, roads, and bridges; see for a list of projects, Annex). The next phase of its work will focus on the power sector. However, it should be noted that this does not infer any prioritization of these sectors by the Government, PPP will be relevant for all of the sectors indicated in the PPP Act.

In order to put potential PPPs into place, Governments formulate important principles aimed at ensuring effectiveness and efficiency of PPP project implementation. According to the OECD clear implementing guidelines are a positive signal to the market conveying the underpinning standards against which those responsible for putting PPPs in place may be held accountable (OECD Handout, 2007, p. 15). In this context, the 2009 PPP Policy document stipulates that projects qualifying for PPPs should be bankable and meet Value for Money (VfM) investment criteria. Government considers this guiding principle as an imperative considering since otherwise financiers will be reluctant to commit finances when a project entails high participation costs, unreasonable risk transfers or lengthy and complex contract negotiations (The United Republic of Tanzania, National PPP Policy, PMO’s



Office, 2009, p.9). It is, therefore, critical to ensure that project developers/investors are assured of steady and predictable income streams over the lifetime of the project in order to guarantee service delivery.

The GoT PPP Policy recognizes further the need to address the existing lack of guidelines for investors to exploit various PPP opportunities across different sectors of the economy. It has formulated the necessity to establish guidelines to provide guidance on private sector participation in PPPs and broaden investment opportunities, innovation and technology transfer (The United Republic of Tanzania, National PPP Policy, PMO’s Office, 2009, p.11). In addition, PPPs must be promoted for the benefit of all parties concerned. The GoT set as its objective in collaboration with stakeholders to formulate these guidelines aimed at creating an enabling environment and widening investment opportunities.

5.2 PPP Institutional Responsibilities in Tanzania

The GoT has established various levers to deal with issues concerning identification, implementation, regulation and approval of PPP projects. Thus, there are some clear dividing lines between the roles of various agencies throughout the PPP process. Based on the PPP Act 2010, a Coordinating Unit (CU) was established within the Tanzania Investment Centre to be an integral part of dealing with promotion and co-ordination of all matters relating to PPPs undertaken within the Mainland Tanzania (The United Republic of Tanzania, Bill Supplement, No. 0 18th June, 2010 to the Gazette of the United Republic of Tanzania No. 13 Vol. 91 dated 18th June, PPP Act, 2010, Part III, Article 6). Next to the CU, the GoT introduced a Finance Unit (FU) to deal with recommendations of the Coordinating Unit from the financial risk perspective and to determine affordability issues and VfM. The Unit related structure is currently under review and will result in a merger of these two entities to one in the Ministry of Finance (MoF) aimed at consolidating the functions and roles and avoiding any delays and misunderstandings throughout the process (Information from MoF, October, 2013). The next chart provides an overview of the institutional structure as depicted from the PPP Act, and currently being practiced.

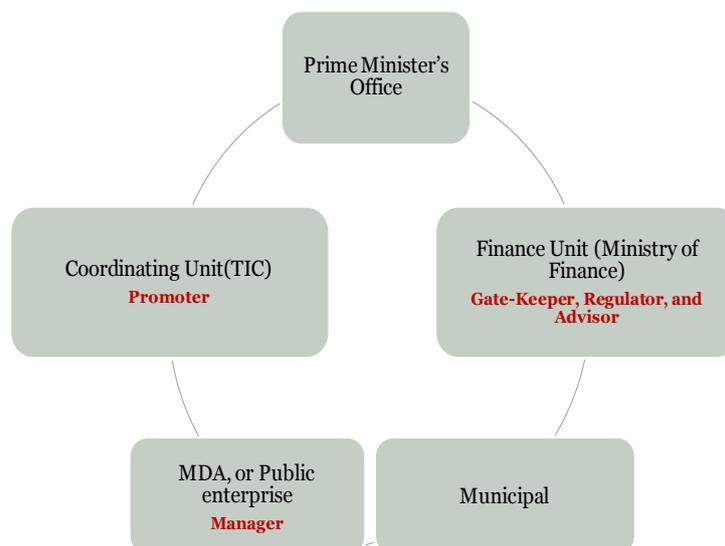


Chart 5: PPP Institutional Structure in Tanzania,
Dr. Frank Moses Hilo, Ag. Commissioner of PPP Tanzania, 2012



The implementing agency in Tanzania is the Contracting Authority (CA) who is responsible for identification, appraisal, development and monitoring and management of PPPs. It is also in charge of implementing or to letting to be undertaken PPP feasibility studies (The United Republic of Tanzania, Bill Supplement, No. 0 18th June, 2010 to the Gazette of the United Republic of Tanzania No. 13 Vol. 91 dated 18th June, PPP Act, 2010, Part IV, Article 10). The CA is the overall owner of the project, thus entering into an Agreement with a private party for performance of one or more of the functions of that CA. The PPP Act defines the signatory of the PPP agreements to be the Accounting Officer of the relevant CA (The United Republic of Tanzania, Bill Supplement, No. 0 18th June, 2010 to the Gazette of the United Republic of Tanzania No. 13 Vol. 91 dated 18th June, PPP Act, 2010, Part IV, Article 19).

5.2.1 Role of PPP Unit/s in Tanzania

The Policy, Act and Regulations have been driven by the PMO, which has assembled a team focused on implementing the Policy and coordinating Government stakeholders on PPPs. The PMO is playing a central role in PPP Policy implementation in Tanzania, leading the Committee for implementing the 5 Year Plan, and overseeing the identification and implementation of viable PPP projects.

The PPP Act 2010 jointly with the Supplements 2010 and 2011 lay out in detail the functions of the CU to include not only making assessments of PPP projects submitted to it and to provide recommendations to the PPP FU concerning affordability, VfM, and on risk allocation the private party, but also to approve of proposed projects and feasibility studies which are within the prescribed sums or costs. It also is in charge of examining the request for proposal to ensure conformity with the approved feasibility study; and advising the GoT on administrative procedures and all matters relating to PPPs, developing PPP guidelines, and advising on PPP policy; and developing and promoting PPP awareness in Mainland Tanzania (The United Republic of Tanzania, Bill Supplement, No. 0 18th June, 2010 to the Gazette of the United Republic of Tanzania No. 13 Vol. 91 dated 18th June, PPP Act, 2010, Part III, Art. 7). The Unit was supposed to be headed by a Co-ordinator to be appointed in accordance with the Public Service Act. The subsidiary legislation to PPP Act 2010 enacted in 2011 stipulates that the CU shall, within thirty days from the date of receipt of the project idea by CA, process the application, and in form a committee of experts for studying and verifying the contents of application and for making recommendations or advice to the CU (The Gazette of the United Republic of Tanzania, Government Notice No. 165 published on 3 /6/2011, The Public Private Partnership Act, (No.18 of 2010), Regulations, Part III).

The CU within the Tanzania Investment Centre (TIC) reports to the PMO, with a manager and two staff in position. The CU is focusing its work on promotion and coordination of all matters relating to PPPs. Line Ministries and other CAs are required under the PPP Act to identify, appraise, develop and monitor a project. In order to perform this function effectively, the GoT has conducted PPP capacity building at operational level involving 60 PPP desk officers from the Government MDAs and private sector under the PMO.

Part III of the PPP Act 2010 determines further the establishment of a PPP FU and part IV concerning approval of projects by FU in subsidiary PPP legislation 2011 finds the FU to be in charge of evaluating the fiscal risk allocations and financial matters once PPP projects have been submitted to it by PPP Coordinating Unit. The subsidiary legislation to the PPP Act 2010 dated 2011 requires also for the FU to form a committee of experts to study and consider the feasibility studies for PPP projects; and to make recommendations to the FU on the financial implication risks involved and other financial matters surrounding the implementation of the project including affordability of the project; VfM; risk sharing; GoT development priorities; and commercial viability (The Gazette of the United Republic of



Tanzania, Government Notice No. 165 published on 3 /6/2011, The Public Private Partnership Act, (No.18 of 2010), Regulations, Part IV, Article 24). The size, composition, procedures, and terms of reference of the committee are determined by the FU.

Further to the PPP Act, the FU created within the Ministry of Finance (MoF) assesses, manages and monitors fiscal risk, to assess affordability of projects, and to appraise VfM from PPPs with a view to recommend PPP projects for approval by MoF. The Commissioner of PPP, head of the FU, formally took office in June 2011, and currently has five core Officers and eight supporting staff (Information from MoF). The background of the staff is diverse ranging from accountancy, economists to business professionals.

The MoF had issued a business plan for the FU as of 2012, including staffing plans, training programs, consultant support needed and a capacity building program. The FU has commenced preparation of PPP Finance Regulations. Funding sources for the Unit include Government budget and from development partners (Dr. Mhilu, The PPP Program of Tanzania Presentation to SADC3P Committee Meeting, 2012, p.7). The challenges ahead include getting the right staff that is knowledgeable of this new area of public sector intervention. Further, the position is generally not attractive enough to get the right personnel; --there are low salaries, and lack of incentives (Dr. Mhilu, The PPP Program of Tanzania Presentation to SADC 3P Committee Meeting, 2012, p.7).

The next chart provides an illustration of the institutional set up as of 2013. Currently, the MoF is reviewing the institutional set up of PPPs to come up with a consolidation of these two Units into one central Unit to be located at the MoF. Thus, the structure defined and established in the PPP Act 2010 including the Supplementary Regulations of 2011 is currently being reconsidered to improve efficiency in terms of decision-making and also management of PPP processes.

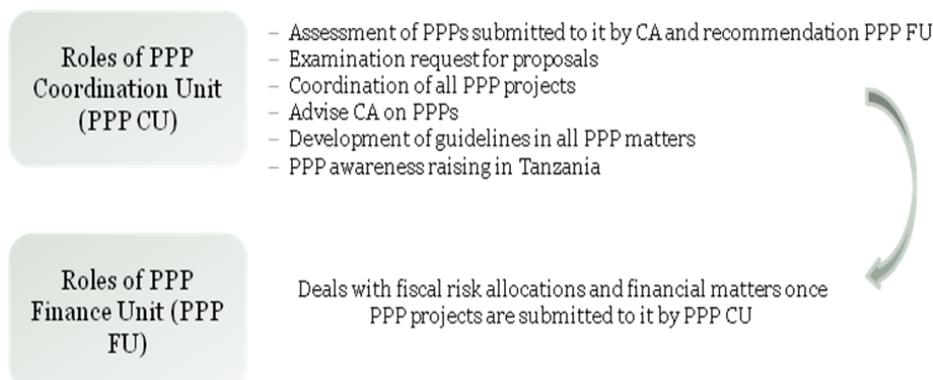


Chart 6: PPP CU/FU Support areas

The above review process may be better understood in the context of actual responsibilities of FU as presented by Dr. Mhilu in 2012 to SADC3P network. It seems that the FU considers itself in practice next to being a Regulator and Gatekeeper as an Advisor although these roles have been assigned to the CU (Dr. Mhilu, The PPP Program of Tanzania Presentation to SADC 3P Committee Meeting, 2012, p.8). Thus, the FU also provides technical support to MDAs and Municipals as requested, carries out research and disseminates lessons and experiences from other jurisdictions and/or similar projects. It also considers itself as Manager to be a focal point for sound management of PPP resources, and to carry out research and training on fiscal risks in PPP Projects, and to work with all parties in the governance of the PPP program. In the end, it manages the PPP Facilitation Fund including issuance of Financial Regulations to control and manage PPP resources. Next, the FU is considered as a



promoter to be a focal point for the coordination of PPPs and to create an enabling environment for investors and the financing community. Thus, there is not much care taken of conflicting roles to date. In this context, the Fu also participates in public awareness and sensitization of PPPs on financial issues in PPPs.

Dr. Mhilu from the PPP Unit provides some insight into the challenges faced in Tanzania concerning implementation and further advancement of PPPs. These are illustrated in the next chart. In light of the challenges laid out, and in order to further promote PPPs in Tanzania, Dr. Mhilu elaborates on some of the roles expected from SADC3P to support and supplement the GoT efforts towards the advancement of its PPP scheme. These include, but are not limited to enhancing capacity building efforts, serving as a regional hub of best practices in PPPs – mobilization of resources (specialist centre of excellence; resource centre for experts, training and capacity building; skills transfer; standard practices), - register with UNECE. SADC3P may also initiate research and development initiatives aimed at setting a sound database, sharing of information among members, and coordinate regional PPP Projects. Overall, it may best serve as a regional spokesperson and representative in international forums e.g. South-South PPP Initiative; and coordinate peer reviews as well as promote exchange visits among members; and advocacy and promotion of PPPs in the SADC region (Dr. Mhilu, The PPP Program of Tanzania Presentation to SADC 3P Committee Meeting, 2012, p.21).

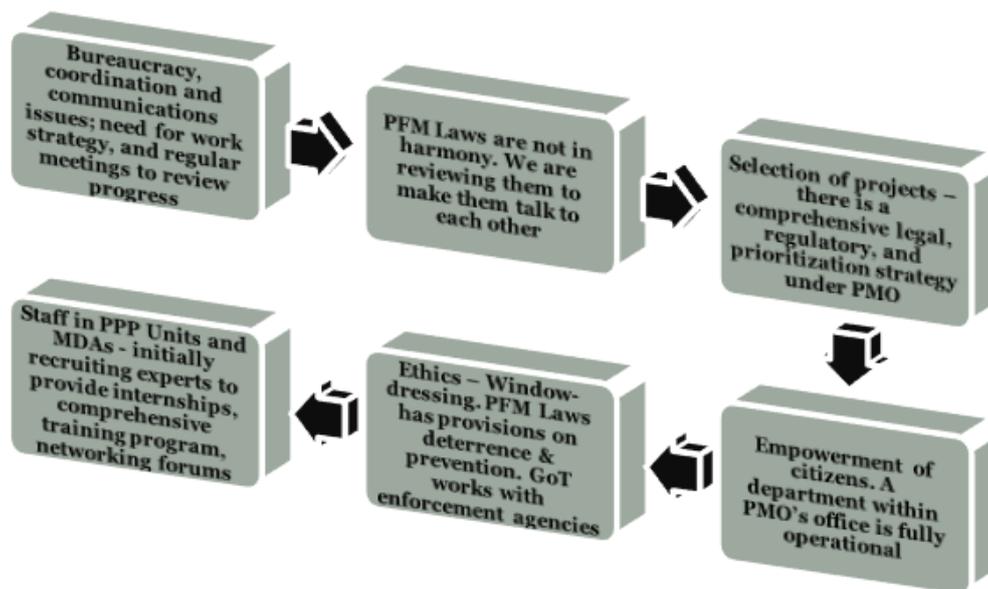


Chart 7: Overview of Challenges to PPPs in GoT,

Source: Dr. Mhilu, The PPP Program of Tanzania Presentation to SADC 3P Committee Meeting, 2012, p.19

Another clear gap in the GoT's PPP scheme seems to relate to identification of bankable PPP projects as well as addressing the use of public expenditure. Effective public expenditure is critical to the success of PPP schemes, including early funding for preparation of transactions, but also capital investment into transactions to ensure the financial, social and environmental viability of such transactions. Public funding for PPP transactions includes pre-feasibility studies, feasibility studies, transaction advisory services, other marketing and expenditure on transaction preparation and



procurement, capital grants during construction, operating grants and other such public funding contributions. Entities responsible for monitoring and driving public expenditure issues associated with PPP include President's Office Planning Commission (POPC), PMO, CU and in particular FU. In order to support this task in the Government, MoF is creating a PPP Facilitation Fund (PPPF) to act as a conduit for providing public funding for PPP transaction preparation and implementation.

5.2.2 PPP Regulation, Approval and Implementation Roles in Tanzania

The GoT defines specifically the roles of various agencies to distinguish between implementation and procurement roles, approval and regulations roles. The procurement authority in Tanzania is the CA whose role is set out to encompass not only identification, and appraisal, but also development and monitoring of PPP projects. On top, it is in charge of undertaking or causing to be undertaken feasibility studies, and submitting the proposed project together with the feasibility study to the CU. They also prepare the tender process including the request for proposal after the feasibility study has been approved, negotiate, and draft the PPP agreement and also sign the final approved agreement. The Accounting Officer of the CA ensures that the Agreement is properly implemented, managed, enforced, monitored and reported on from its inception up to the expiry or its termination. It is important to mention that the GoT considers the Accounting Officer to be ultimately responsible for service delivery through the project facilities as if the facilities were being managed and operated directly by the Government. Thus, it is held accountable to ensure maintenance of the facilities developed by the project on regular basis; service delivery is at an acceptable level in terms of quality and reliability; regular and annual performance reports are submitted to the GoT and Parliament; the facilities are subjected to regular accounting and auditing; technology transfer and training of counterpart management to take over the management of the facility; and smooth transfer of assets (The Gazette of the United Republic of Tanzania, Government Notice No. 165 published on 3 /6/2011, The Public Private Partnership Act, (No.18 of 2010), Regulations, Part VI, Article 46).

The PPP FU works independently in different capacities mainly as Gate-keeper, Regulator, and Advisor. Other 'implied' roles relevant to the mandate include manager, and promoter. As Gatekeeper, it appraises and approves proposals that pass the tests of value for money, affordability, risk allocation, and other tests; they also monitor and evaluate PPP operations CAs and municipals and advise on financial and fiscal risk issues. But the FU also bears a regulator role to develop PPP Financial Regulations and ensure their compliance. Thus, it issues standard documents on procurement and ensures their use as well as a consistent approach to manage PPP operations across various sectors (Dr. Mhilu, The PPP Program of Tanzania Presentation to SADC 3P Committee Meeting, 2012, p.8).

The Minister responsible for finance is the approval body concerning the approval of the project. Part VI of PPP Subsidiary Legislation 2011 determines further that the Minister of Finance is responsible for approval of the draft agreement. The CA thus forwards the draft agreement to the FU for onward submission to the Minister responsible for finance for approval of the proposed terms of the agreement (The Gazette of the United Republic of Tanzania, Government Notice No. 165 published on 3 /6/2011, The Public Private Partnership Act, (No.18 of 2010), Regulations, Part VI, Article 40).

The Attorney General as the authority in charge of vetting the draft agreement receives the draft agreement from the CA and approved by the Minister responsible for finance and agreed by both parties to provide a legal opinion. Overall, the ultimate signatory of a PPP Agreement in Tanzania remains the accounting officer of the relevant contracting authority after the PPP project has been



considered and cleared by the FU, approved by the Minister responsible for Finance and vetted by the Office of the Attorney General (The United Republic of Tanzania , Act Supplement, No. 19, August 2010, Gazette of the United Republic of Tanzania No. 32, Vol. 91, PPP Act, Part III; Article 18).

The PPP Act determines the Minister to make regulations for better carrying out of the provisions of the Act. These regulations may prescribe to levying of fees and charges, investment opportunities and promotion; coverage and marginal areas under the Act; functions of local government authorities under this Act and clear linkages of roles between the implementation; ministries and appropriate bodies at the local government; evaluation, operation and management of projects under this Act; and any other matter in the promotion and furtherance of objectives of this Act (The United Republic of Tanzania, Bill Supplement, No. 0 18th June, 2010 to the Gazette of the United Republic of Tanzania No. 13 Vol. 91 dated 18th June, PPP Act, 2010, Article 27).

The distinction of roles between public and private sectors are defined specifically in the supplement 2010 as follows for public sector “(a) identifying projects; (b) carrying out feasibility studies; (c) monitoring and evaluation; (d) risk sharing; and putting in place an appropriate enabling environment, including (i) favourable policies; (ii) implementation strategies; and (iii) the legal and institutional framework” and for the private sector as “(a) carrying out feasibility studies; (b) mobilizing resources; (c) risk sharing; (d) monitoring and evaluation; and (e) providing technical expertise and managerial skills” (PPP Supplement, Part III, Article 8, paragraph 1 and 2, 2010). On the other hand, private sector is responsible and “liable for the risks arising from the performance of its functions (The United Republic of Tanzania , Act Supplement, No. 19, August 2010, Gazette of the United Republic of Tanzania No. 32, Vol. 91, PPP Act, Part III, Article 11, Paragraph 4).

5.3 Tanzania Legal Framework

The Tanzania PPP Act launched in 2010 followed by Supplementary Regulations aims at enhancing the Regulatory Framework via PPP Regulations 2011, and the Public Procurement Act 2011. The amended GoT Legal Framework shall better provide for adequacy of legislation, enforcement mechanisms; clear guidance on solicited and unsolicited proposals; and transparency issues. The new Public Procurement Act 2011 makes specific provision for PPP procurement for both solicited and unsolicited proposals. While the GoT recognizes that the Legal Framework still entails gaps, and areas that need to be improved, it serves as a solid basis on which the PPP program can be launched, and demonstration projects developed. OECD notes that GoT plans to review and improve the Legal Framework further in 2013/2014, as announced in the June 2013 annual Budget (OECD, OECD Investment Policy Reviews: Tanzania, Executive Summary and Recommendations, 2013, p.14). The Operational Guidelines also deal with the procedures concerning unsolicited proposals which are laid out as follows and are open to the CA as set below.

The Operational Guidelines elaborate on the various phases of PPP implementation stating with an initial project selection where the Minister responsible for investment establishes a list of potential PPP projects. Then, a pre-feasibility study must be rendered by the CA to include financial analysis and local issues. It also commissions the feasibility study which is intended to provide an extensive appraisal of the needs of the locality, financial benefits and likelihood of resistance from local population. The final approval is sought by the PPP CU, PPP FU, and MoF. The actual procurement and award of contract are responsibilities of CA to commence and conduct procurement (using international best practice and standards) and the contract is then signed. The implementation of the PPP is also undertaken by the CA who provides a contract management function throughout the life of



the contract.

Negotiation and contracting without negotiation	Development Fee	Automatic acceptance to BAFO stage	Swiss Challenge	Bonus
<ul style="list-style-type: none"> •Negotiations are started with the submitter of the unsolicited proposal in order to conclude the PPP Agreement. 	<ul style="list-style-type: none"> •This option applies to multi-stage procurement. The submitter of the unsolicited proposal does not have to pass the preliminary stages of the procedure and is automatically invited to the last stage in which the remaining bidders submit their best and final offer (BAFO). 	<ul style="list-style-type: none"> •This option can be combined with an evaluation bonus for the submitter of the unsolicited proposal. 	<ul style="list-style-type: none"> •An open tender process is conducted in which the submitter of the unsolicited proposal has the right to match the winning bid in order to win the contract 	<ul style="list-style-type: none"> •An open tender process is conducted. In the evaluation of bids the submitter of the unsolicited proposal received a bonus (generally 7-10% of points) giving an advantage over other bids.

Chart 8: Various Paths to submission and Treatment of Unsolicited Proposals in Tanzania, PPP Guidelines

The PPP Supplement defines clearly matters to be regulated in a PPP Agreement. These include ... “(b) specify the responsibilities of the contracting authority and the private party; (c) specify the relevant financial terms; (d) ensure the management of performance of the private party; (e) provide for assistance by the contracting authority to the private party in obtaining licence and permit which is necessary for the implementation of the project; (f) provide for the return of assets, if any, to the contracting authority, at the termination or expiry of the duration of agreement; (g) provide for the sharing of risks between the contracting authority and the private party, where relevant; (h) provide for the payment to the private party, by way of compensation from a revenue fund of charges or fees collected by the private party from users or customers of the service provided by it; (i) provide for remedies in the event of default by either party; (j) impose financial management duties on part of the private party, including process relating to internal financial control, budgeting, transparency, accountability and reporting; (k) provide for the termination of agreement in case of breach of terms and conditions by either party; (l) provide for the conditions for provision of service, where necessary; (m) provide for the period of execution; and (n) contain such other information as may be necessary” (The Gazette of the United Republic of Tanzania, Government Notice No. 165 published on 3 /6/2011, The Public Private Partnership Act, (No.18 of 2010), Regulations, Part VI, Article 12).

Looking at the Legal Framework in Tanzania and considering major factors highlighted in the Regional Strategy document concerning good practice Regulation, there is a positive assessment of the GoT Legal Framework as illustrated in the next chart. Nevertheless, OECD recommends a number of measures to be adopted in its recently published investment review including the need to proceed with a simplification of the Legal Framework for public procurement and PPPs. This measure shall best go along with finalising the merger of Tanzania’s PPP Units, strengthening capacity, and undertaking small-scale ‘pilot’ PPPs to familiarise the civil service with technicalities of PPP



infrastructure projects (OECD, OECD Investment Policy Reviews: Tanzania, Executive Summary and Recommendations, 2013, p.6).

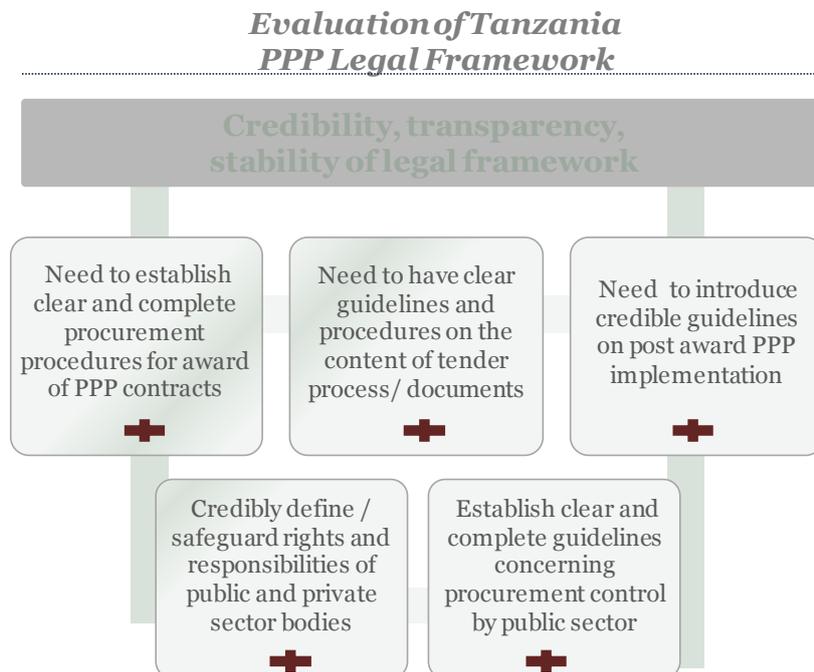


Chart 9: Evaluation of Tanzania Legal Framework

6. Recommendations

Tanzania has the potential to function as an economic hub in Eastern and Southern Africa, in part due to its strategic location and open access to waterways. OECD emphasizes that cross-border infrastructure projects may best be advanced relying on a harmonised Framework of investment laws, such as a common PPP Framework, the forthcoming SADC Regional Investment Policy Framework, and the EAC Common Market Protocol (OECD, OECD Investment Policy Reviews: Tanzania, Executive Summary and Recommendations, 2013, p.28). In order to achieve these goals, Tanzania may rely on existing structures and strengths, for instance its Institutional Framework which is currently being revamped and overhauled. But the idea of harmonization is to have a Framework that will better take account of the operational means of how PPPs are decided upon and consider the roles of various agencies granting more independence to some, and finally to better consider GoT's commitment to PPPs and the conducive political situation. Nevertheless, some challenges remain, for instance the Legal and Regulatory Framework needs to be enhanced to allow for more adequate enforcement mechanisms although it has somewhat been improved to better take account of matters and procedures related to solicited and unsolicited proposals, and transparency issues. On top, there is need for support by the executive for enforcements.

Other challenges encompass capacity building in terms of proper application of major guiding principles including VfM --VfM procurement; affordability; risk sharing. There is need for more and comprehensive development of best practice guides to address issues related to risk identification, and allocation; appraisal and approval; monitoring and evaluation; transparency, accountability and reporting; and PPP financial regulations. Finally, the PPP implementation strategy must be streamlined to be able to make proper choices for projects, render clear output standards, budget for



PPP activities and manage the Facilitation Funds. Next to the above, the contribution of the overall investment and financing framework must not be underestimated – Tanzania still has a long road ahead to strengthen its macro-economic climate, public services market, capital markets, and banking sector.

Dr. Mhilu emphasizes the need for further harmonization of the Procurement Laws. The GoT is currently in the process of reviewing these to make them “talk to each other”. Also he states that politicians quite often interfere with proceedings, thus the PPP Unit is trying to get the support of higher authorities to avoid bureaucracy, coordination and communications problems. The GoT seems to have agreed on a common working strategy holding regular meetings to review progress. As far as the selection of projects is concerned, there is a comprehensive legal, regulatory, and prioritization strategy under PMO. Nevertheless, Dr. Mhilu highlights the need for recruiting proper staff in PPP Units and MDAs. Last but not least, although PFM Laws include provisions on deterrence and prevention, there is more room for enhancement of ethics including moonlighting and window-dressing which remain major challenges in the country. To address this issue, the GoT works with enforcement agencies.

In sum, the examination of GoT Framework clearly shows that PPPs in Tanzania have further developed since their adoption Policy wise in 2009. While draft Guidelines will further contribute and demonstrate an important step towards empowering and capacitating staff, there remain still several challenges to successful establishment of a prospering PPP environment in Tanzania. These include, but are not limited to the relative infancy of rather complex PPPs in the country, and lack of experience throughout the stakeholder chain. On top, there seems to be an inadequate understanding of the PPP concept from the public sector at present (Clyde, 2013, webpage). Next, the capital market is not mature enough to be conducive to promotion of complex PPPs is due to a lack of adequate long term financing instruments – the Tanzanian banking sector is not yet geared up for the scale of the projects envisaged under PPP, therefore most funding will be delivered by international banks.

Concrete SADC3P Recommendations:

- Assist in identification of PPP projects;
 - Provide support to conduct feasibility studies to CAs including the health sector, water sector and all those where projects are lined up;
 - Provide assistance towards capacity building on matters related to PPPs to staff at the FU and at sector level;
- Support to enhance practical knowledge concerning PPP procurement via study tours and SADC networking
- Assist in raising awareness for benefits of PPPs.

Furthermore, there is inappropriate perception of risk allocation due to a lack of experience, and a weakness in procurement, implementation, contractual and management capacities (Clyde, webpage).

OECD notes the need for GoT to clearly affirm its position on private participation in infrastructure to be able to better implement and take full advantage of recent enabling legislation such as the 2011 Public Procurement Act or the 2010 PPP Act and 2011 Regulations. It recommends to come up with a national policy statement explicitly identifying long-term privatisations, procurement and PPP commitments for different infrastructure markets to help appease investor uncertainty over the risk of re-appropriation of national infrastructure utilities by the GoT, and to attract more private bidders to infrastructure PPP contracts (OECD, OECD Investment Policy Reviews: Tanzania, Executive Summary and Recommendations, 2013, p.25).



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Annex 1:

Local sources report that the Government of Tanzania will use the PPP model to implement nine major infrastructure projects in the country. The following projects are included in the PPP program:

- Dar es Salaam – Chalinze super highway (Road Toll),
- Arusha-Moshi (Road Toll).
- Mbegani Port project in Bagamoyo,
- Mwambani Port project in T
- anga,
- Kisarawe Cargo Freight Station,
- Expansion of Mtwara Port,
- Improvement of Kilwa Port, and
- Expansion of Kasanga and Kigoma ports.

