

Public Private Partnerships in Kenya

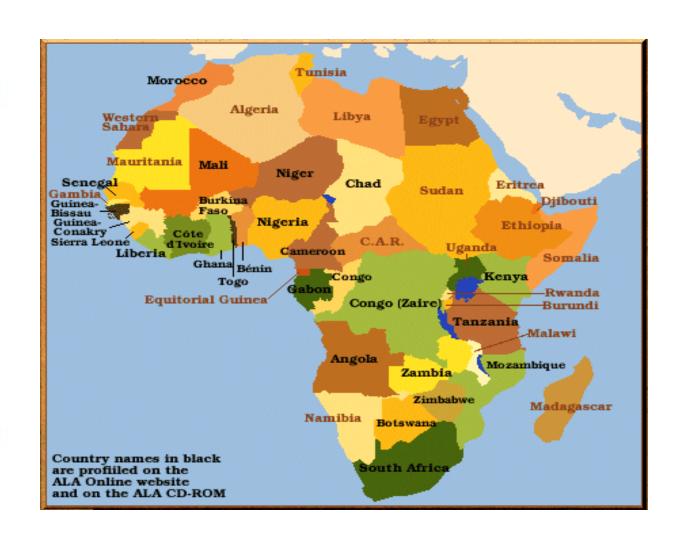
Ministry of Finance, Kenya

Structure of Presentation

- 1. Why Kenya is pursuing PPPs
- 2. Fundamentals of PPP Program in Kenya
- 3. Areas of Focus/Funding Gap
- 4. PPP Legal and Regulatory Framework
- 5. Improvement of PPP Climate
- 6. Kenya's Track Record of PPPs
- 7. PPP Pipeline



Africa



Why Kenya is keen on PPPs?

- There is increased demand for quality and affordable services from citizens - transport, water and sewerage, telecommunications, power, social services
- Reduce the funding gap for infrastructure estimated at USD 40 Billion over the next 8 years
- Provide a new source of investment capital for required infrastructure projects
- Reduce Government sovereign borrowings and associated risks
- Drive the creation of local long term funding market
- Utilize efficiencies of private sector in running public services
- Expand economy and stimulate job creation
- Increase quality of public services to the Kenyan citizen.

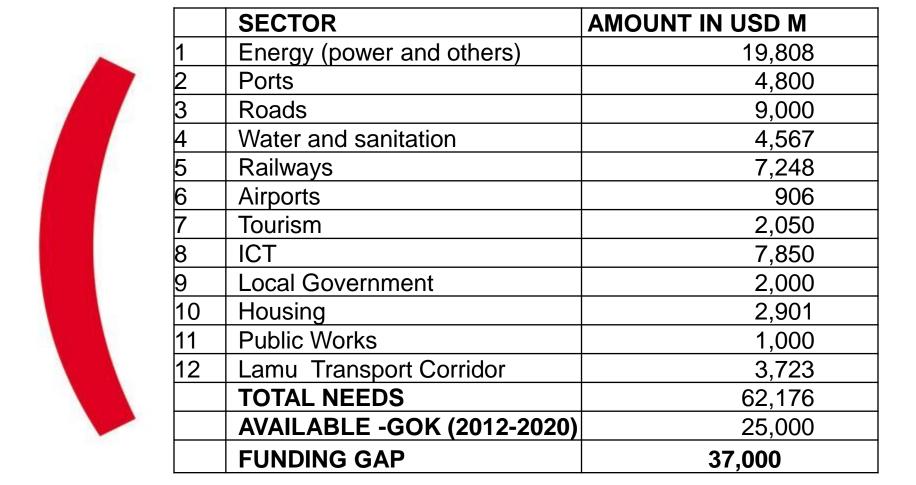
Fundamentals PPP Program in Kenya

- A PPP in Kenya is defined as a Performance-based contract under which the Private Sector supplies public services over time and is paid by the Public Sector, end user or a hybrid of both. Output is specified by Contracting Authority while input is the responsibility of the private sector
- Under the PPP contract:
 - The Government will retain total strategic control on the service
 - The Government will secure new infrastructure which becomes Government assets at the end of contract life
 - Project and performance risks will be allocated to the party best able to manage or mitigate

Ares of Focus for PPPs/Funding Gap for Infrastructure in Kenya

- Kenya Vision 2030 (2008 2030) aims to transform Kenya into an industrialized middle income country by 2030 which requires heavy investments in infrastructure services.
- The Government need to spend USD 60Billion for infrastructure over the next 8 yrs against available USD 25 Billion (Gap USD 40 B).
- Allocations FY 2012/2013 for infrastructure Ksh 267 Billion (USD 3.2B) – Less than 9% of GDP. Should increase to 15%.
- Lack of adequate infrastructure result in huge costs to the society from lower productivity to reduced competitiveness and ultimately loss of business opportunities

Kenya - Infrastructure Investments 2012-2020



PPP Framework/Legal

- Kenya's legal system is based on Common Law which is conducive for PPP development
- Kenya has a New Constitution (2010) that provide democratic and governance institutions (stability)
- There is existence of conducive regulatory framework in the utility sectors to facilitate PPPs (energy, ICT, Transport)
- Judiciary is undergoing structural reforms to improve business climate
- There is a strong Contract law (contracts will be honoured)
- Government, as a first step, issued PPP Regulations, March 2009

PPP Framework

Kenya is providing the right environment for implementation of PPPs by:

- 1. Provision of Supportive Policy and Legal Environment
 - Issuing a PPP Policy by Government in December, 2011
 - A New PPP Law developed and currently under debate in Parliament
- 2. Placing clearly PPP initiative within the reform agenda
- 3. Establishing a PPP Secretariat at Treasury as well as PPP Nodes in Contracting Authorities
- 4. Adoption and localisation of international successful PPP models
- 5. Preparation of Bankable PPP Transactions:
 - A PPP Pipeline finalized by June 2012
 - World Bank financial support sought to prepare the priority projects

Improvement of PPP Climate/ the New PPP Law

The New PPP Law will:

- Provide a legal capacity for public bodies to enter into PPP contracts;
- Create more certainty and investor confidence;
- Address legal gaps, remove conflicts and overlaps in law; (avoid need for piecemeal amendments)
- Specific procedures of selection & contracting more suitable for PPP mechanism.
- Investor selection in a transparent, fair & competitive manner
- Overcoming procedural, legal impediments & difficulties that would have been faced by government to implement PPP Procurement
- Introduction of funding into Kenyan legislative framework for procurement

What The PPP Law Provides To Investors

- Risk mitigation(Letters of Support, Guarantees (Demand/Traffic Guarantee), subsidies
- Inflation and interest rate indexation
- Performance monitoring mechanisms
- Direct Agreement and step-in rights to Lenders
- Compensation for termination/ extra-ordinary events/ direct impact of change of Laws/political event
- Establishment of a Viability Gap Fund to support economically viable projects which may not be financially viable without Govt support

What The PPP Law Provides To Investors

- A clear, transparent, fair and competitive process for PPPs, covering Project identification, selection, prioritization, preparation, appraisal, procurement, approvals and procurement of project Advisors;
- A clear institutional framework for development and approval of PPP projects – Cabinet, PPP Committee, PPP Secretariat, Contracting Authorities and the role of Treasury in fiscal risk management and Contingent Liabilities
- Government will prepare bankable projects before going to the market; and
- Use of Privately Initiated Investment Proposals (unsolicited) method of procurement when there is urgent need for continuity and where there is intellectual /innovation.

The PPP Process

3. Pre-q/ 2. PPP Comm. Competitive Dialogue/Bidding 1. Feasibility/RFP Approval 4. Evaluation/ Negotiations: by CA (PET) *Tech.* 5. Approval by 6. Approval by PPP Committee Cabinet & Commercial 9. Formalise 7. Notify Successful 8. Financial Close. Concession Bidder Agreement

Minimum Contractual Obligations

- Description of services, goods or works
- Ownership of the project's funds and assets
- Authorizations, permits, and approvals;
- Tariffs and method of adjustment
- Payment arrangements and penalties;
- Dispute resolution mechanisms
- Risk allocation in respect of change in law, force majeure;
- Termination and compensation;
- Direct agreements and step-in rights of lenders where appropriate; and
- Asset handover provisions.

Kenya's Track Record of PPPs

- Mtwapa and Nyali Bridges Concessions signed in 1959; Charges in 1984 Pedestrians (10cts), cattle head (20cts), motor cycle(50cts),salon (sh. 2.00), w/wagon (sh. 2.50), lorry (sh 4.00 -7.00), bulldozer (sh.10).
- Westmount 46 MW (not active), Iberafrica 1997 (56MW and 53 thermal power plant), The 74 MW Tsavo/Kipevu IPP, 2000, Orpower -Olkaria III 2000/2008(48MW Geothermal Plant), Mumias (34MW power plant); 90 MW Rabai Independent Power Project in 2009, Mumias 26 MW cogeneration.
- KPLC, 2005, 2yr management contract
- Port of Mombasa Grain Terminal BOO, 1998;
- JKIA Cargo Terminal, 1998
- Kenya Uganda Railways 2006, BOT
- Malindi water utility, 1999 5yr management contract
- Nairobi Urban Toll Road , 2009 Failed

IPPs under finalization

		Capacity	
IPP Name	Type	MW	Remarks
			Financial Close in July,
Thika Power	Thermal	87	2012
Triumph	Thermal	82	Financial Close in August
			Financial Close in
Gulf Power	Thermal	80.3	August, 2102
			Financial Close in June,
Orpower	Geothermal	52	2012
			financial Close in Sept,
Lake Turkana	Wind	300	2012
Aeolus - Kinangop	Wind	60	2015-2016
Agil Longonot	Geothermal	140	2015-2016
Menengai	Geothermal	4x100	2014-2016
Imports - Ethiopia	Hydro	400	2016-2017

Fast Mover Kenya Pipeline of PPP Projects

Project Title	Sector			
Nyali Bridge, Mombasa	Transport/Roads			
Nairobi- Thika Road (O&M)	Transport/Roads			
Two sections of Mombasa – Nairobi – Malaba Road				
(Mombasa – Mariakani, Naivasha-Mau Summit)	Transport/Roads			
Nairobi Commuter Rail	Transport			
Kisumu Sea Port	Transport/ Airport			
Nairobi Jomo Kenyatta Airport Expansion	Transport/ Airport			
2nd Container Terminal Mombasa	Transport/Ports			
Liquefied Natural Gas Plant, Mombasa	Power			
560MW Geothermal IPPs, Olkeria	Power			
400 Geothermal IPPs, Menengai	Power			
800 MW Geothermal, Menegai	Power			
Shared Gov't services platform (Land Automation)	ICT			
Kenyatta University Students Accommodation	Education			
Housing for Security Forces	Accommodation			
Karen Medical Centre	Health			
Mombasa Conventional Centre	Tourism			