POLICY BRIEF
JULY 2025

LEVERAGING PUBLIC PRIVATE PARTNERSHIPS FOR DEVELOPMENT

Image: KETRACO power station

INTRODUCTION

In the last two decades, Kenya has had progressive Public Finance Management Reforms (PFMR) strategies. Now, the fourth cycle of these strategies since the year 2006 is being implemented through the PFMR strategy 2023-2028. Yet challenges continue to emerge despite the reforms and a high public debt tops the list. accountability To further promote and quality service delivery, the current strategy aims to create a sustainable and predictable fiscal space to deliver Government programmes. One of these mechanisms is Public Private Partnership (PPP) in financing government investments.

Recently the government refinanced a Euro bond worth $ 1.5 billion at 9.5 percent almost 3 percentage points higher than the 2014 Euro bond, which was at 6.8 percent. The country continues to pay high debt service costs, leaving infrastructure relatively development. little for Planned borrowing to finance the FY 2025/26 fiscal deficit will also deepen the debt situation in the country. In the FY 24/25, the government set aside over KSh 1 trillion for debt interest.

THE PROBLEM

Kenya is reaching the limits of debt driven capital investment. The country's capital-heavy economic blueprint, Vision 2030, faces shrinking fiscal space due to high debt servicing pressure, borrowing limitations stemming from elevated borrowing costs and debt sustainability concerns.

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LEGAL FRAMEWORKS FOR PPP

Borrowing for infrastructure development is no longer viable, so the government must consider other financing models for infrastructure, such as Public Private Partnerships (PPPs).

PPPs are a feasible avenue for the government to partner with the private sector to more resources for capital investment. Kenya has an established legal framework for PPPs that is meant to ensure contracting, delivery and operations run in an efficient, transparent, and mutually benefit both public and private stakeholders.

The key legislation includes:

Public-Private Partnership Act, 2021 which is the principal legislation governing PPPs in Kenya. It establishes a comprehensive legal framework for the design, implementation, and oversight of PPP projects. It anchors the existence of institutions such as the Public-Private Partnerships Directorate (PPPD), which facilitates the implementation of PPP projects, and the Public-Private Partnership Committee, which oversight.[1]

Public-Private provides Partnership Regulations, 2014: They provide a structured legal framework for the implementation of PPP projects, ensuring transparency, efficiency, and accountability in project development and execution. These regulations outline the procedures for project identification, feasibility assessment, procurement, and contract management, aiming to streamline private sector participation in public infrastructure and service delivery.

The Public Procurement and Asset Disposal Act, 2015: This governs the procurement process for all public entities in Kenya, including those engaging in PPP projects. It ensures competitive and transparent bidding processes.

The County Government Act 17 of 2012 which grants county governments the ability to engage in PPPs, enabling development.

PPP JOURNEY FOR THE GOVERNMENT OF KENYA

As of June 2024, the Government of Kenya had mobilized approximately KSh 140.7 billion in private capital through Public-Private Partnerships (PPPs) since the program's operationalization in 2013. Notably, until June 2021, cumulative mobilization had only reached KSh 10 billion, signalling a decade of slow uptake and implementation challenges. However, a breakthrough occurred in FY 2021/22, where the government successfully mobilized KSh 80 billion, representing more than 570% growth compared to the cumulative figure for the preceding eight years. This sharp rise was likely influenced by renewed political leadership, which targeted investments in infrastructure sectors such as housing, transport, and security, and reforms under the PPP Act of 2021.

Despite this success, subsequent years saw a sharp decline in private capital flows into PPPs. In FY 2022/23, mobilization dropped to KSh 46 billion, and further down to KSh 4.6 billion in FY 2023/24. This could be as a result of multiple possible factors that include high-profile project cancellations like the expansion of Nairobi Nakuru highway at a cost of KSh 150 billion, bureaucratic delays in approvals, unresolved land disputes and the fact that the country was under new political leadership. With the government now projecting KSh 70 billion in mobilization for FY 2024/25, this target will require deliberate interventions to reverse the current decline.

CHALLENGES FACING PPP IN KENYA

Mobilizing private investment through PPPs remains a challenge. Some of the impediments to proper and efficient running of PPPs projects in Kenya include:

Lengthy Multi-Layered Approvals Causing Delays in Feasibility Study Evaluations

A PPP project in Kenya must undergo various stages of preparation (preparation, feasibility, negotiation, commercial close, finance close) through multiple agencies, including the Contracting Authority (CA), Cabinet approval/board approval, the PPP Directorate, the PPP Committee approval, before proceeding to implementation. With each approval stage requiring extensive review and analysis, there are significant delays in Additionally, executing PPPs projects. Public-Private Partnership (PPP) projects require comprehensive feasibility studies to assess their technical, financial, legal, and environmental viability. These studies are crucial in ensuring that projects are well-structured, financially sustainable, and compliant with regulatory standards.

However, inefficiencies in decision-making, lack of clear timelines, and requirements for multiple stages of revision often extend the review process for years, leading to increased costs and investor uncertainty. For example, Power transmission Lines and Substations sponsored by Africa 50, Ndarugu 2 Dam Water Supply Project and Galana Kulalu Food Security Project, all received initial approvals in February 2023, but are yet to finish the others two years down the line.

To date, no tangible progress has been reported, largely due to delays from unresolved issues like agreement on compensation for persons affected by the project. This has resulted in cost overruns and declining investor confidence. Kenya’s current PPP framework does not prescribe statutory timelines for key review and approval stages, such as PPP Committee review, or commercial close leading to prolonged, open-ended processes.

Without legal deadlines, agencies have been reluctant in fast tracking the approvals as in cases above, delaying decisions indefinitely due to inadequate capacity either technical or administrative and sometimes delays can be used strategically to extract bribes or other favours from private partners eager to move a project forward, undermining project timely delivery.

Poor Coordination Among Regulatory Agencies

Some PPP projects face delays not because of unclear mandates, but due to poor coordination and misaligned timelines among regulatory agencies. For example, energy and transport PPPs often require sequential approvals from agencies such as the Energy and Petroleum Regulatory Authority (EPRA), the Kenya Roads Board, and the National Environmental Management Authority (NEMA). Even though each agency's mandate is clear, delays or lack of coordination between them has sometimes led to cost overruns and significantly slowed down project implementation.[2] For example, during the construction of the Nairobi Southern Bypass, EPRA's late clearance for lighting and toll plaza electrification conflicted with KeNHA's construction schedule, leading to cost overruns.[3]

Lengthy Land Acquisition Processes and Legal Tussles

Infrastructure projects in Kenya face lengthy land acquisition process that can delay their execution.[4] PPPs for infrastructure involve land acquisition, which requires approval from the Ministry of Lands, the National Land Commission (NLC), and county governments. Disputes over land ownership, environmental concerns, and bureaucratic red tape can delay projects for years. While all infrastructure projects face land challenges, PPPs are less tolerant of delays due to their financial structure (strict timelines on return on investment), how they assign and manage risk, and investor expectations. A 2-year land delay in a public project may be absorbed; in a PPP, it could trigger default, renegotiation, or collapse. What makes PPPs uniquely vulnerable to land delays is not the land challenge itself (which is common across all infrastructure), but the structural inflexibility of their financial and contractual arrangements, which turns a delay into a potentially project ending event.

Thus, while not unique to PPPs, land acquisition is a disproportionately critical issue for their success. The LAPSSET Corridor Project experienced delays due to prolonged land acquisition negotiations. These challenges continue to hinder timely project completion and often lead to escalation in project cost due to interest charges and contractual claims. Other PPPs have been delayed due to legal battles between the government and citizens overcompensation and acquisition of land. For example, a court case by the Teireni association of Mijikenda delayed the tendering process of the equipment and operation of port assets in Mombasa and Lamu causing a setback in the project.

Unclear procurement guidelines on land acquisition for the purpose of PPP projects fail to specify which regulations should be adopted to guide the compensation process.

The current PPP procurement process in Kenya is fragmented, with no dedicated operational manual to guide Contracting Authorities (CAs) through project preparation, tendering, and approval. There is confusion over the application of the PPP Act versus the Public Procurement and Asset Disposal Act, especially during early stage procurement.[5] This confusion has led to delays in execution of PPPs projects in the country.

For example, The Mombasa Port Expansion Project experienced delays due to confusion over which legal framework to use for land acquisition. Residents insisted on applying the Public Procurement and Asset Disposal Act, while the government relied on the PPP Act. Both laws provide guidelines on acquiring public land, but the disagreement led to disputes, re-evaluations, and re tendering, ultimately increasing project costs and creating uncertainty.

Kenya’s experience with PPPs demonstrates both the opportunities and challenges of leveraging private sector financing for sustainable development. While successful projects highlight the potential for infrastructure growth, the cancellation of key initiatives underscores the need for a more enabling environment and the need to adhere to the PPPs frameworks, while finding ways to close any loophole. A well-executed PPP framework can attract private investment, stimulate economic growth, and enhance service delivery, ultimately contributing Kenya's development goals.

OPPORTUNITIES FOR PPP IN KENYA

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Other critical sectors/areas where PPPs can be leverage include:

Energy and Transport

Strengthening infrastructure in these sectors is key for economic growth and social development. Expanding renewable energy projects, such as wind and solar farms, can help Kenya meet its clean energy goals while reducing dependence on fossil fuels. Improved transport networks, including highways, railways, and urban transit systems, will facilitate trade, ease congestion, and enhance connectivity translating to economic growth.

Water, Sanitation, and Irrigation

Access to clean water and adequate sanitation remains a challenge in many parts of Kenya with 32 percent struggling to access clean water. PPPs can help expand water infrastructure, modernize sewage treatment plants, and improve irrigation systems for agricultural sustainability. The government can offer targeted subsidies for basic consumption and progressive pricing for higher usage which will attract investors in these sectors while promoting social equity and efficiency. Investments in these areas will enhance public health, boost agricultural productivity, and promote climate resilience.

Affordable Housing

Rapid urbanization has led to a significant housing deficit in Kenya with an annual demand of 250,000 units and a supply of just 50,000 units.[6] Housing sector is typically run by private sector. However, in Kenya, private sector in partnership with the government in an effort to bridge the housing gap in the country constructs houses in government land through PPPs. For example, the redevelopment of old estates within Nairobi, and building of university students hostels in Kenyatta university and Nairobi university.

Also, one of the big four agenda by the previous administration was housing and was enabled through PPPs. These affordable housing projects aim to deliver high-quality, low-cost housing units to accommodate the growing urban population. These initiatives not only provide shelter but also stimulate job creation and economic growth by involving local contractors and developers in large-scale housing projects.

PPP LESSONS FROM OTHER NATIONS

Other countries in the world have had success stories with adoption of PPPs as an alternative way of funding infrastructure development.

For example, South Africa among African countries has notably been successful in utilizing PPPs to foster development in different sectors which includes transport, energy, water and health. The country has mobilized over USD 4.88 billion through PPPs and has 34 successfully completed PPPs projects, whereas in Kenya there are only 5 completed projects. PPPs total investment as a percent of GDP is 1.2 percent in South Africa and 0.8 percent in Kenya, suggesting scope for increased PPPs mobilization in Kenya. Other countries like India, Canada and Australia have experienced tremendous infrastructure development funded through PPPs due to their clarity and strictness in adherence to PPP regulations.[7] Failure to follow set guidelines and regulations especially in the tendering process has affected Kenya's uptake of PPPs with the failure of the Jomo Kenyatta International Airport (JKIA) PPP deal being the most recent failed case. Lack of clarity in some of the regulations especially during land acquisition has affected PPPs implementation. Kenya can learn from these countries and benefit from efficient utilization of PPPs to foster infrastructure and economic development.[8]

POLICY RECOMMENDATIONS TO UNLOCK PPP IN KENYA

To address the challenges and achieve the full potential of PPPs in Kenya, the government should:

Adopt a Single Window Clearance System for PPPs, which will consist of experts from all key experts for example environmental assessment experts, where all project related approvals are processed through a centralized authority which may include an online portal to minimize bureaucratic delays. In India, the Public Private Partnership Approval Committee (PPPAC) streamlines approval for PPP projects by providing a single platform for appraisal and clearance.[9] Timelines are strictly set within 3 to 6 months, promoting predictability and efficiency.

Set clear timelines for each stage of the feasibility review and decision-making, with legal backing. Introduce automatic escalation channels if deadlines are not met. Chile's Concessions System uses strict timelines for technical evaluations, and delays are automatically escalated to higher authorities for resolution. Their model mandates review periods (typically 60–90 days) for feasibility studies.

Establish a Pre-Project Land Bank where the Government proactively acquire and reserve land parcels for infrastructure projects that ensures all land issues are sorted before the PPP project is started. This is the case for all transport projects in Indonesia and Canada.[10] The government should also Simplify and Digitize Land Acquisition Processes using Geographic Information Systems (GIS) based mapping to ensure transparent compensation. Indonesia Law 2/2012 on land for infrastructure development allows fast-tracking land acquisition for critical infrastructure projects, ensuring that there are no delays due to land issues after the start of PPPs projects.[11] In Kenya, this could be achieved by introducing clear timelines and fair compensation procedures within a rights-based framework that safeguards consultation, equity, and access to justice for affected communities.

Establish a Specialized Infrastructure Dispute Resolution Tribunal for PPP projects to resolve disputes expeditiously outside the ordinary courts to avoid delays that usually occur in these courts. Also, early Engagement in Public Consultation and development of resettlement and compensation structure prior to project commencement could help minimize occurrence of legal tussles that delay PPP projects. South Korea has a Land Tribunal that specifically handles disputes overcompensation for public projects, ensuring resolutions within 6 months.

Publish Predictable Standardized and Procurement Guidelines specifically for PPPs and Mandate Pre-Approved Framework Agreements recurrent for PPP sectors like transport, housing, and energy to avoid approval proposed delays. The proposed guidelines and pre-approved framework agreements for key sectors, enable Contracting Authorities to follow clear, time bound steps using uniform templates. This reduces duplication, shortens approval timelines, and enhances investor confidence by making the process more predictable and efficient. Australia's PPP Guidelines provide a very detailed, standardized framework for tendering, contracting, and managing PPP projects, making processes transparent and consistent across projects.

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