



**REPORT ON**  
**CIVIL SOCIETY ORGANISATIONS SENSITIZATION MEETING ON PUBLIC PRIVATE**  
**PARTNERSHIPS**

**HELD ON 26<sup>TH</sup> JUNE 2018**

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**INTRODUCTION**

This report covers the civil society organizations (CSOs) sensitization meeting on Public Private Partnerships (PPPs) held on 26<sup>th</sup> June 2018 at the Hilton Hotel. The Institute for Social Accountability (TISA) convened the forum in partnership with the Social Accountability Learning Group (SALG), which is a network of CSOs promoting social accountability by entrenching a culture of citizen vigilance in local development in Kenya. In attendance were SALG members and civil society organizations operating in Nairobi, Nakuru, Kitui and Mombasa counties.

**CONTEXT**

According to the Budget Policy Statement (2018), the National Treasury plans to leverage on Public Private Partnerships due to the limited fiscal space, and shall create a High Speed Public Private Partnership Unit to attract and engage the private sector on implementation of projects. Therefore, Public Private Partnerships play an important role in enhancing service delivery to the public. Hence, the public must demand value for their money because public finances enable the government to fund PPPs. Public participation and stakeholder engagement are best practices in PPPs and enhance transparency and accountability.

**OBJECTIVE OF THE MEETING**

The objective of the meeting was to enhance awareness and build capacity of CSOs on PPPs legal and institutional framework and assist them generate an agenda for strengthening public participation and stakeholder engagement in PPPs.

**PPP FRAMEWORK IN KENYA: PROFESSOR TOM OGADA**

Professor Ogada made a detailed presentation on the PPPs policy, legal and institutional framework in Kenya. The key highlights of the presentation were as follows:

- 1. Definition and benefits of PPPs:** PPPs is an agreement between a public entity and a private party where the private party undertakes to perform a public function or provide services on behalf of the public entity. The private party benefits from performing the function by way of compensation from the public fund or charges/ fees collected by the private party from users or consumers of the services provided or a combination of both. Payment for PPPs is made after completion of the project, and against performance outputs. The key strength of PPPs is that the Public sector transfers most of the risks to the private partner. One of the key benefits of PPPs is the commitment by private partner to provide resources.
- 2. PPPs legal framework:** Kenya's Vision 2030 (development blue print) launched in 2008 identified infrastructure projects that required huge capital investments. Due to limited finances, the government enacted the Public Procurement and Disposal (PPP) Regulations (2009) to promote PPPs in public infrastructure development. To provide an enabling legal environment for

PPPs the government issued the PPP Policy 2011, enacted the PPP Act 2013, and published the PPP (County Governments) regulations 2014 and the PPP (Facilitation Fund) Regulations (2015). However, the PPP Act 2013 did not include adequate provisions for the participation of counties in PPPs. In 2016, there was an amendment of the PPP Act 2013 to recognise county governments as distinct contracting authorities for PPP projects.<sup>1</sup>

**3. PPPs process** entails two (2) key stages and 12 steps.

Stage 1 entails approval by PPP unit and PPP committee. The main steps are Project concept; National priority list; Project proposal; Feasibility studies; Approval of feasibility studies.

Stage 2 entails procurement by contracting authority. The main steps are Request for qualification; Qualification of bidders; Bidders conference; Invitation to bid; Evaluation of bids; Negotiation; Award; Financial closure.

**4. Common challenges facing PPPs in Kenya** include, among others, lack of community engagement and limited participation of local project developers and youth and women. Inadequate public participation has resulted in stalling and abandoning of PPP projects, for example,

- a. Traders in Homabay County demonstrated against a PPP project to construct 220 markets by the county government because they were not consulted. The county government later abandoned the project.
- b. The Lake Turkana Wind Power Project 2006 stalled because of a court case by local residents claiming there was no public participation in the acquisition of their ancestral land.

## RECOMMENDATIONS

Professor Ogada gave the following recommendations:

1. Government should develop a policy on community engagement in PPP and participation of local project developers. For example, the Energy (Local Content) Regulations, 2015 gives Kenyan citizens first consideration for employment and allows for at least 5 % equity participation of indigenous Kenyan Company.
2. The PPP Act 2013 should be reviewed to be in line with the PPP Policy 2011 as follows
  - a. *PPP Policy section 3.4. (ii) on project Preparation and Appraisal* – Feasibility study should include consultations with the stakeholders to ensure their interests are considered
  - b. *PPP Policy section 3.14: Stakeholder Participation* - Stakeholder participation builds trust amongst the participants and leads to the creation of long-term collaborative relationships. In this respect, public entities will be required to consult the stakeholders throughout the project cycle to ensure that the PPP project addresses their needs.
  - c. *Section 3.15: Communication Strategy*: The PPP Policy acknowledges that the success of a PPP program requires widespread public support. It proposes the development and implementation of a PPP communication and awareness strategy, directed to key stakeholders including the public. Further, it proposes the development of a communication strategy for each PPP project by the unit in conjunction with the contracting authority. This should include economic and social benefits to be realized from the project, scope, content, timing of

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<sup>1</sup> <http://www.treasury.go.ke/guideline.html>

the bidding process, likely bidders and other stakeholders involved, implementing private party and financing structure (once known) as well as length and construction period.

### 3. Entry points for CSOs in the PPP process

| <b>PPP Process</b>   | <b>Entry Point for CSOs</b>   |
|--|---|
| <b>Project concept</b><br>Conceptualising, identifying, prioritizing potential projects for PPP. | This takes place during the development of the strategic plans for the national government agencies or CIDP for country government. <b>This is the first entry point for CSOs but they may face difficulties</b>  |
| <b>National Priority Lists</b>   | The PPPP Committee will develop and publicise a criteria for approval of projects for inclusion in the national priority list of projects   |
| <b>Project Proposal</b>  | <b>No entry point for CSOs</b>  |
| <b>Project Feasibility (FS)</b>  | Undertaking feasibility: (Consultation with stakeholders to ensure their interests are considered . <b>This is a key entry point to the CSO</b><br>Submission and approval of the feasibility: <b>Public should be notified of the approval</b>   |
| <b>Procurement process</b>   | <b>Request for Qualification</b><br>Contracting Authority (CA), upon approval of the PPP Committee, invites request for qualification by notice in at least 2 newspapers of national circulations and in electronic media. The notice must specify eligibility criteria of the bidders. <b>(CSO can monitor this)</b> |
|  | <b>Prequalification of bidders</b><br>The Contracting Authority constitutes a prequalification committee, to review the requests for qualification submitted by the bidders and prequalifies those that meet the set criteria.<br><b>(Public should be informed of the prequalified bidders)</b>                      |
|  | Preliminary bidders meeting - <b>No entry point</b>   |
|  | Invitation to bid - <b>No entry point</b>   |
|  | Evaluation of the Bid - <b>No entry point</b>   |
|  | Negotiation: Communication of the outcome to the public may be required - <b>No entry point</b>   |
|  | <b>Award - Communication to be public may be required</b>   |
|  | Formation of the Special Purpose vehicle - <b>(Communication may be required)</b>   |

## PLENARY DISCUSSIONS

- i. CSOs should engage with public entities involved in PPPs on how to enhance public participation in PPPs and the need for guidelines on the same.
- ii. CSOs should be vigilant in detecting and preventing corruption in PPPs.
- iii. There is need for a clear definition of relevant stakeholders and community to be engaged in PPPs project.
- iv. There is need to build the capacity of the public on PPPs by way of civic education to enable them participate effectively.
- v. CSOs can act as neutral arbitrator in case of conflicts between the community, public entity and private sector regarding PPPs project disputes.
- vi. CSOs should demand the PPP unit to give timely information on PPP projects status
- vii. There is need for a County Government PPPs Policy.
- viii. There is need for a wider scope of actors in conceptualizing PPP projects.

- ix. CSOs should interact with the PPP projects disclosure web portal and confirm whether the portal has adequate information, what information is missing and cross check whether county projects are contained in the CIDP.
- x. CSOs should harmonize their engagements on PPPs.
- xi. There is need to conduct a survey on the socioeconomic impact before and after PPP projects.