The workshop comprised a diverse mix of delegates which made for an interesting discussion on risk allocation in Public Private Partnerships (PPPs), individual country experiences of PPPs as well as a lively negotiation exercise.

The workshop was the second in a series of workshops on PPP risk allocation following the success of a similar workshop held by GI Hub and Norton Rose Fulbright in Bangkok, Thailand on 18 July 2017, with the third regional workshop on PPP risk allocation to be held in Bogota, Colombia, on 9 November 2017 which will again be presented by the GI Hub in collaboration with Norton Rose Fulbright.

The African region is faced with a major challenge to support economic growth and meet basic needs, since the percentage of GDP of infrastructure needs is well above the global average given the relatively lower GDP and existing gaps in basic service provision. The GI Hub’s Global Infrastructure Outlook1 suggests that at current trends Africa will spend about US$4.3 trillion between 2016 and 2040 but there is a shortfall of US$3.3 trillion required if targets for universal access to water and electricity are to be met.

1 The GI Hub’s Global Infrastructure Outlook is available at https://outlook.gihub.org/
Infrastructure development is a key driver for progress across the African continent and a critical enabler for productivity and sustainable economic growth. Financial constraints on governments can, however, mean that realising infrastructure projects is difficult without access to alternative sources of finance. PPPs have therefore gained increasing popularity in emerging economies in Africa as a means of providing the necessary finance and expertise to address their infrastructure challenges. However, PPPs are not a panacea to an affordability problem. In order for a PPP project to be successful, a clear understanding of the risks involved is required by the various stakeholders and crucially, there must be long term and realistic risk allocation.

With this in mind, part of the Dar es Salaam GI Hub workshop was dedicated to a demonstration to the delegates of the interactive online risk allocation tool (www.ppp-risk.gihub.org) developed jointly by GI Hub and Norton Rose Fulbright to assist governments and stakeholders in developing economies in building a pipeline of viable PPP infrastructure projects. The demonstration was followed by an interactive exercise where the delegates were able to use the risk matrix to identify and allocate risk between the private sector and public sector in a light rail project. Norton Rose Fulbright also took the delegates through a number of real-life case studies which exemplified a number of these key risk allocation issues, and how they translated into successful, not-so-successful or failed projects.

**MARKET OBSERVATIONS**

With the wealth of public sector experience present at the workshop, an important and interesting segment of the workshop was a presentation by each country of their individual experiences of PPPs including key achievements in terms of setting up a legal and institutional framework for PPPs, completed and upcoming PPP projects, key challenges and regulatory reform. Below are some of the salient points arising from the presentations.

**Establishment of a legal and institutional framework for PPPs**

Each of the countries represented at the workshop had made some progress in creating an enabling environment for PPPs through the establishment of a legal and institutional framework for PPPs. However, the degree of progress and achievement varied between countries with Kenya, Uganda, Zanzibar, Tanzania, Zambia and Malawi having enacted specific PPP laws and created institutions with supervisory, advisory and implementation roles relating to PPP arrangements. Madagascar and Ethiopia were at earlier stages of this process.

**Completed and upcoming PPP projects**

It was unsurprising that the countries that had been successful in establishing a legal and institutional framework for PPPs had a greater number of completed and upcoming PPP projects. Ethiopia for instance, which does not have any PPP laws, is undertaking the first of its PPP projects. The Ethiopian government is in the process of preparing a legal and policy framework in order to expand the implementation of PPPs and it is anticipated that there will be some PPP projects in the next six months.

Kenya, which has relatively well established PPP laws and institutions, has undertaken several PPP projects in the ports, roads and energy sectors such as the construction of Lamu Port, the construction of Nyali Bridge and the Olkaria Geothermal power plant. It was also notable that amongst the countries represented at the workshop, Kenya is in the unique and enviable position of having a dedicated roads fund with ring fenced money set aside by statute for payment of concessionaires. Kenya also has a good pipeline of projects that have been earmarked as PPP projects principally in the water and sanitation sectors and in the transport and accommodation sectors.

Madagascar has relatively new PPP specific laws which were published in 2015 and the application decrees were issued in September 2017. To date, Madagascar has undertaken one PPP project which is the construction of the international airport in Antananarivo. Madagascar has nonetheless established a pipeline of projects with support from the PPIAF program with the energy and transport sectors being identified as priority sectors for PPPs.

Malawi’s principal PPP laws were passed in 2011. Malawi has completed several PPP projects including a game reserve project in the tourism sector, a project in the railway sector, and a communication fibre-optic

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2. The Law 2015-039 of December 9, 2015
3. PPP Bill of 2010 and PPP policy framework approved by Cabinet on 18 May 2011
cable financed by the World Bank. More recently, Malawi has completed the feasibility study for a toll road and is undertaking negotiations for the construction of student accommodation. In terms of upcoming PPP projects, Malawi has targeted the electricity sector as a priority sector. Malawi has a substantial energy deficit and relies mostly on hydropower. This is primarily concentrated on one river, which in the dry season is susceptible to reduced water levels and decreased production capacity. Malawi therefore has plans to procure hydropower projects through PPPs on numerous rivers across the country. Transport is another priority sector which will involve the construction of bus terminal facilities, parking facilities and toll roads through PPPs. Investment in city parks and the tourism sector through PPPs is also on Malawi’s development agenda. In addition, the water and sanitation sectors are likely to benefit from PPPs with several solid waste projects in the pipeline and a proposal to increase water supply to Lilongwe through the construction of a water treatment plant.

Tanzania has a PPP Act dating back to 2010 which has been amended several times with the latest iteration being the Private Partnership (Amendment) Act No. 18 of 2014. The PPP Regulations of 2011 have also recently been amended with the latest version being the Public Private Partnership Regulations (Amended) 2015. PPPs in Tanzania are still relatively new and, to date, Tanzania has undertaken small scale PPPs. Areas undergoing feasibility studies for potential PPPs include the construction of markets, an urban tour bus terminal and one solid waste project. The viability of rooftop solar projects to be installed in government buildings in Dodoma is also being explored as potential PPPs as well as a project with the Tanzania Airports Authority in Dar es Salaam.

The PPP Act No. 8 of 2015 is the enabling PPP act of Zanzibar. Like elsewhere in Tanzania, Zanzibar’s principal focus is on small projects which will be constructed and operated as PPPs. PPP projects in the pipeline include the construction of tankers to reserve oil and gas, five small markets to be constructed in Ujunga and Pemba, a bus terminal, student hostels and low cost housing projects. Like Malawi, Zanzibar is also seeking to attract more tourists by investing in projects in the tourism sector such as the preservation of historical buildings and a project for the construction of a marine in the Stone Town area.

The principal PPP act in Uganda is the Public Private Partnerships Act, 2015 (Act 13 of 2015). Uganda has completed several PPP projects including the Umeme electricity distribution concession, the Kalingala Infrastructure Services JV, the Kilembe mines concession, the 2006 Rift Valley Railways (RVR) freight concession, the Kampala Serena Hotel and several hydropower IPPs. In terms of upcoming PPP projects, there are several projects in the road sector which will be procured as PPPs including the Kampala-Jinja Expressway, the Kampala–Entebbe Expressway, the Kampala-Mpigi Highway, the Kampala-Bombo Expressway and the Kampala-Alberta oil region Expressway. Other projects likely to be procured as PPPs include an accommodation project for the Ministry of Defence, a hospital parking project, projects for the construction of sports facilities and office space and projects for the redevelopment of national theatres across the country.

Zambia’s legal and regulatory framework has been in place since 2008 when the Zambian government approved a policy framework for the implementation of PPPs. This was followed by the enactment of the PPP Act No.14 in 2009. It is notable that Zambia’s legal framework for PPPs permits unsolicited proposals and incorporates a procurement process for such proposals. A key achievement in Zambia has been achieving financial close of three PPP projects procured as unsolicited proposals. Completed PPP projects in Zambia include a mixed use development constructed on land belonging to the University of Zambia, an intercity bus terminal constructed under a BOO arrangement and three housing and commercial development projects constructed on land belonging to the Zambian army in Lusaka. In terms of upcoming projects likely to be procured as PPPs, there are plans for a solid waste management project in Lusaka, a project for the construction of a commercial hub similar to Sandton city in the area around the government offices in Lusaka and a project for the construction of a 400 km road that links the copperbelt to the Congo and Tanzania.

\(^6\) The Public Private Partnership Act No. 18 of 2010

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**Key challenges and regulatory reform**

There were recurrent and common themes when it came to consideration of the key challenges facing PPP infrastructure projects in the various countries represented at the workshop. Below are some of the key challenges that were common to the various countries.

1. **Clear legal framework**
   A clear legal framework is necessary for creating an enabling environment for PPPs. Lack of a clear legal framework and delays in effecting amendments were cited as an issue in certain countries.

2. **Lack of capacity**
   Several representatives cited capacity issues as being a major challenge. For example, capacity was raised as an issue at the stages of carrying out feasibility studies and negotiating concession agreements with several countries enlisting international advisors to assist in those areas and turning to international organisations (such as the African Legal Support Facility, the PPIAF and the World Bank) for assistance with in county capacity building and establishing guidelines, tools and training of the public sector.

3. **Financing PPP projects**
   The preparation of feasibility studies can be prohibitively expensive. External funding from donors has therefore been invaluable in unblocking this bottleneck. Malawi has obtained funding from the African Legal Support Facility, which can also fund technical and financial advisory work as well as legal advice. PPP projects in Zanzibar have also largely been underpinned by external funding from the World Bank. Nonetheless, DFI support can present its own challenges sometimes increasing the requirements and expenses associated with PPP projects which would not otherwise be relevant. The absence of a dedicated PPP fund was also cited as a key challenge. The PPP Unit of Zambia, for example, is seeking to amend their PPP Act to incorporate a feasibility and appraisal fund.

4. **Public perception**
   PPPs have suffered negative public perception in a number of countries as people consider PPPs to be a form of privatisation which can have negative associations due to bad experiences with privatised assets. Individual non-performing PPP projects can also have a substantial negative influence on public perception of PPPs in general. For example things like termination of concessions due to private partner non-performance and project failure due to overestimation of demand have also tainted public perception of PPPs in several jurisdictions. These perceptions can remain even when the investing environment changes in a jurisdiction and that jurisdiction has actively accommodated for the lessons learned.

A good example of an approach taken on this topic was given by the Malawi PPP Commission which has taken proactive steps to develop a strategy to increase public awareness and information on PPPs. This includes going to different city assemblies and taking interested stakeholders through PPP projects, using international advisors to increase awareness with the public and the Cabinet, targeted TV programmes to increase awareness of PPPs, organising press briefings on specific PPP projects and increasing awareness through newsletters and the website of the PPP Commission.

5. **Low government awareness and understanding of PPPs**
   Poor understanding of PPPs or a sense of reluctance to relinquish ownership at government level has limited the number of projects procured through PPPs. One misconception at government level is that the private sector takes all the risk in demand risk projects such as toll roads. Increasing government and public awareness to understand that the government also has a stake in toll road projects has proven to be difficult.

6. **Protracted processes**
   PPP projects are undeniably complex with numerous stakeholders meaning that PPPs can suffer from long timescales and protracted processes. These long timescales have in certain instances led to loss of patience at government level and gradual disinterest. The need to obtain excessive approvals can serve to delay PPP projects even further. Several countries are looking to address this issue through reform to allow some streamlining of the process.
7. Viability gap funding

The financial viability of several projects has proven to be problematic. An example is student accommodation PPPs where students are unable to afford the fees. Similarly, low traffic volumes in toll road projects have remained problematic. In these cases, government or international financial institution support by way of viability gap funding is often therefore necessary to support their PPP projects.

8. Land acquisition and rights

Land acquisition and rights are problematic in several countries in the region, similar to many regions around the world. Government inability to acquire land creates difficulties in terms of convincing international investors to invest in PPP projects. The Ugandan PPP Unit, for example, is currently undertaking stakeholder consultation with an aim to amend the Ugandan constitution to provide more clarity around this land acquisition process.

9. Standardisation of project documents

The lack of standardised concession agreements was noted as a concern in some countries where the procurement documents are different across projects. Standardisation of project documents could go a long way in achieving consistency across PPP projects and encouraging private sector investment.

NEGOTIATION EXERCISE

The representatives were presented with the background for a toll road project in a fictitious country and were split into three groups representing the sponsors/lenders of the prospective concessionaire, the EPC contractor and the government. Each group had specific concerns and risks which needed to be addressed and mitigated through negotiations with the other stakeholders of the project. The outcome of the negotiation exercise was interesting with various groups coming up with practical and different solutions to specific risks. The exercise also gave government representatives a good opportunity to appreciate the project’s risks as viewed by the private sector, as well as the interplay between those risks dropped down to the EPC supply chain and those retained by the concessionaire.