

# Public Private Partnerships (PPPs) and Enhanced Service Delivery in Uganda: Implications from the Energy Sector

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## Abstract

This paper focuses on the use of Public Private Partnerships (PPPs) as a strategy to address deficiencies in the energy sector of Uganda in order to remedy the power generation shortage in the country. Public Private Partnerships have become popular and gained wide adoption in public sector management though with varying degrees of success especially in Africa. This paper borrows from the transactional theory to help examine the contractual structure, assets specificity, and comparative costs of buying decision making in the Public Private Partnership in the energy sector. The paper also borrows from the stakeholders' theory as it highlights the need to identify and establish the different stakeholders in the Public Private Partnerships (PPPs) in the energy sector. It highlights the common concepts and forms of Public Private Partnerships in utilities; presents two case experiences of PPP in the energy generation of Uganda and lessons learnt. A review of the two case studies suggests a number of learning points related to involvement of stakeholders, need for government monitoring of the Public Private Partnership contracts and fostering of a win-win outcome. The paper highlights that successful implementation of a PPP depends to a large extent, on the development of capacity, sound legal procedures, agreements, and contracts that clearly define the relationship between government agencies and private firms.

**Keywords:** public private partnerships, contracts, service delivery

## 1. Introduction

It has been argued that service delivery and policy making have radically been re-interpreted with the shift from "top-down" policy processes to negotiation, and effective delivery. Services should no longer rest solely with professional and managerial staff but rather the aim is to move towards co-production with users and communities (Bovaird, 2007). Outdated conceptions of service planning and delivery are being challenged and are being replaced with new thinking on how to better deliver public services. Public-private Partnerships (PPPs) are increasingly being adopted as modes of public service delivery. PPP arrangement, it is argued, provides incentives to the private service provider to achieve improved levels of efficiency and effectiveness since gains in efficiency translate into increased profits and returns and enhanced service delivery to the government (Li, 2003; Heather & Booth, 2007).

The public sector is entrusted with the delivery of public goods and services at all levels. In an increasingly turbulent environment, the public sector lately has been experiencing a bumpy journey as its tasks seem overwhelming and beyond human capacity to perform satisfactorily (Caiden, 2007; Pollitt & Bouckaert, 2000). The public sector monopolies are often associated with inefficiencies and inability to meet rapidly growing demands. As a result, the contribution of the traditional public sector is largely questioned, suggesting the need for a major overhaul. Public sector reform (PSR) in both developed and developing countries has now become a routine matter of public policy (Pal & Ireland, 2009) especially in public infrastructure development. Governments often have engaged in numerous reforms and initiatives designed to improve cost effectiveness and efficiency. This effort integrates concepts, tools and management techniques adopted from private sector management and calls for a new relationship between governments and citizens (OECD, 2005; Metcalfe, 1993; Pollitt & Bouckaert, 2000).

Wettehall (2007) contends that the idea of public-private partnership has received much attention in public sector reforms and performance management. Public Private Partnerships have become widely adopted and popular in public sector management although with varying degrees of success amidst the challenges it brings with. The 1990s saw the establishment of the PPP as the key tool of public policy across the world (Osborne, 2000) as an outcome of New Public Management (NPM). NPM has shifted the focus of management from public service to service delivery.

Since the 1980s, privatization, market mechanism, contestability in the delivery of public goods and services, deregulation, and reinvention of the role of government were the keywords of New Public Management. At the centre of NPM was a cut-back of public sector expenditure, a delegation of responsibilities to the private sector and fostering of voluntary engagement of private sector aiming at providing public goods (Mitchell-Weaver & Manning 1991). The principles of new public management encouraged the establishment of Public Private Partnership (PPP) as a new management tool.

In Uganda, respective administrative levels at both central and local governments are responsible for providing a wide and diverse range of infrastructure and public services to the community although the situation has steadily changed (Ndandiko, 2006). The move towards allowing private participation started in the 1990s. A number of contracts have been witnessed in which the private sector entities are obligated to operate, expand and modernize public facilities like the local markets, bus parks, abattoirs, recreation centers, roads and in return obtaining service user fees. Additionally Public Private Partnership contracts have been concluded for provision of essential services such as solid waste collection, street parking management, street lighting maintenance, street repairs and their general cleanliness (ibid). Uganda being a developing country, some shortcomings in PPP are common among which is the difficulty in finding competent private firms is and where the private firms exist, funds to engage them are not readily available. Other challenges include political interference, poor quality services and delays occasioned by corruption as the leaders and bureaucrats in administrative organs individually engage in fierce contests to decide which firm takes the contract to manage and operate a public facility. Also common are announcements of contract termination by an organ that is not mandated to do so Ndandiko (2006). Other peculiar shortcoming include; private firms being accused of personalizing services with no meaningful enforcement by the community, no authority for monitoring the enforcement of the contracts, ignoring training of the private sector, private firms taking on what is beyond their capacity and the red tape involved in identifying the providers.

In the energy sector, a study by Akampurira, Root, and Shakantu (2008) noted critical challenges in the development of PPPs key of which was the significant constraint to obtain various approvals at different steps to set up power generation plants in Uganda. This was exacerbated by the bureaucratic nature of the system causing delays, and by poor coordination between government departments and pressure from environmental activities. This resulted into persistent irregular power cuts for up to 18 hours a day after the Thermal generation plants shutdown due to unpaid fees by the government. The country has faced a deficit of at least 120 Mega Watts (MW). The objective of this paper is to examine the PPPs in the electricity generation and highlight learning points for achieving the objectives of the energy generation.

## **2. Theoretical and Conceptual Framework**

This paper borrows from the transaction cost theory proposed by Coase, (1937) and the stakeholders' theory proposed by Freeman (1984). The transaction cost theory according to Coase, (1937) stipulates that organizations evaluate the relative costs of alternative governance structures such as spot market transactions, short term contracts, long-term contracts, vertical integration for managing transactions. The transactional cost theory asserts that contractual agreements are costly yet costs have to be borne in order to negotiate and write the terms of the arrangements, to monitor the performance of the contracting party, and to enforce the contracts. New forms of organizations or firms emerge as a way of economizing on transaction costs in a world of uncertainty, where contractual arrangements are too expensive.

Building on the transactional theory, Williamson (1971) enriched the transactional theory with the introduction of the concepts of bounded rationality and opportunism. The former underlines that human beings have limited cognitive competencies. If it is not possible to foresee the future contingency, all contracts turn out to be in some way incomplete. The latter is defined as self-interest with guile and is particularly important in small number bargaining situations. Where it is possible to choose among many firms, opportunism is not an important problem. If, on the other side, one contracting party has undertaken some specific investments in view of the future trade with a downstream or upstream firm, it is locked into that particular relationship: the ex-ante competitive situation shifts towards an ex-post bilateral-monopoly. The firm which doesn't own any specific asset may extract the so called quasi-rents (Klein, Crawford & Alchian, 1978).

Transaction costs are relevant when relationships are frequent, uncertain and if specific assets are involved. Consequently, the exchange relationship may be one-time, occasional or recurrent; a frequent transaction (especially in the presence of specific assets) is more likely to be internalized (Williamson, 1979), since expected damages from opportunistic behavior are higher. Similarly in the event of uncertainty, complete contracts cannot be foreseen and the firm making the specific investment is disadvantaged when future contingencies impose to re-negotiate the contract terms. This is known as the hold-up problem. Transaction cost theory individualizes two kinds of uncertainty:

environmental uncertainty, that is unpredictability of future contingencies, and behavioral uncertainty, that is the possibility of monitoring the behavior of the contracting party.

Williamson further argued that different types of asset specificity have been detected: physical capital specificity such as when some particular machinery, used to produce components specific to the buyer, cannot be converted without costs to manufacture inputs for alternative buyers; human capital specificity such as when some workers of the upstream firms obtain a specific knowledge of the technology and of the productive process of the buyer, site specificity such as when downstream plants are located close to upstream plants for lowering transportation costs or improving technical efficiency. The asset specificity may be dedicated assets such as when some non-specific investments, made in view of the relationship, lead to excess capacity after the latter has been broken, design specificity such as when inputs are specifically designed for the particular manufactures of the downstream firm, temporal specificity like when timely performance is critical, and the failure to supply a particular input on schedule can cause interruptions of the production process. However, the Transactional cost theory has been criticized for ignoring power relations (Perrow 1986), trust, and other forms of social embeddedness (Granovetter, 1985); and overlooked evolutionary considerations such as changes in the market processes necessitating make or buy decisions in outsourcing (Langlois, 1992).

The paper also builds on the stakeholders' theory by Freeman (1984) which identifies four major stakeholder groups to include main shareholders, employees, customers, and the general public. The 'stakeholders' are those groups without their support, the organization would cease to exist and it may equally mean any group or individual that can affect, or is affected by, the achievement of the organization's purpose. While building on this theory, Jones & Wicks (1999) identified and put forward three forms of stakeholders' approaches namely descriptive, normative, and instrumental stakeholder approaches. According to Jones and Wicks (1999), the descriptive approach emphasizes understanding the relationship between an organization and its stakeholders while the normative approach emphasizes that organizations should take all stakeholders into consideration, as a moral responsibility. Since the 1990s, this theory has gradually improved and has even provided a theoretical framework to identify and analyze the influence of organizational behavior. It has been extensively applied in business management, investment program analysis, program management and so on. It has even evolved into a popular analysis tool in the field of development. Ke and Wang (2009) assert that it is helpful to introduce the Stakeholder Theory to the Public Private Partnership project, and to use it as a basis to choose decision-making criteria. Specifically, it helps analyze demands of different stakeholders, ensures that profits are proportional to investments and risks. To some extent, it stimulates stakeholders to actively cooperate with each other, especially in public investment programs aimed at offering government public service, all of which should be directed by the stakeholder theory. One of the critics of stakeholders theory is that it does not make a clear distinction between enterprise and corporation but just dramatically overstates the separation of ownership and control, generalizing from corporations to all enterprises (Donaldson and Preston, 1995) without clearly providing best practices in harnessing and harmonizing the different stakeholders interest with harm to stakeholders interest and project time lines. It is therefore difficult to identify which stakeholders' interest should take precedent especially for an economic project like hydro -electricity generation, with adverse implications on 'Mother Nature,' the environment.

Conceptually, there are many definitions of Public Private Partnership (PPP) and many scholars have tried to study PPP with no universal definition as the concept is still contested (Maskin & Tirole, 2008) and this paper recognizes a range of definitions of PPP, one of which is the Regan (2005) who defines Public Private Partnership as the arrangements for the procurement of goods and services utilizing, franchising and similar arrangements with the private sector; the private sector is contracted to provide public goods and services on behalf of government. Similarly, Grout (2003) and Ahadzi (2004) opined that fundamentally, the private entity becomes the long-term provider of services while government becomes the purchaser of the services. PPP schemes are built on the expertise of each partner that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards (CCPPP, 2004).

Similarly, Van and Koppenjan (2001) define PPP as cooperation of some sort of durability between public and private actors in which they jointly develop products and services and share risks, costs, and resources which are connected with these products' through an institutional lens. This definition has several features. First, it underlines cooperation of some durability, where collaboration cannot only take place in short-term contracts. This collaborative feature is supported by Broadbent and Leughlin (2003) and Bovaird (2004). Second, it emphasizes risk-sharing as a vital component. Both parties in a partnership together have to bear parts of the risks involved. Third, they jointly produce something (a product or a service) and, perhaps implicitly, both stand to gain from mutual effort.

Wettehall (2007) on his part observed that some sort of contract is present in all the types of Public Private Partnership mix and contracts have been divided broadly into three classes – spot, classical and relational contracts

and it is likely that only the relational contracts will produce genuine partnerships. Maskin and Tirole (2008) urged that based on the definition of a Public Private Partnership (PPP) used in the literature, all PPPs share one essential characteristic: a contractual basis. Compared with more traditional forms of cooperation, a PPP involves three important features. First, the ownership pattern of a PPP is quite different from that of general firm alliances as one side is a publicly owned organization, such as the government or a non-profit organization, while the other side is a privately owned organization, such as an enterprise. Owing to the many different interests and motivations of different types of organizations, the two types operate with different goals. Second, the outputs from this kind of cooperation are always public, or at least quasi-public, goods, or services. This kind of cooperation differs significantly from traditional cooperation, in which the outputs are private goods. Third, consistent with their basis in long-term contracts, PPPs usually remain in effect between specific partners for long periods of time. Public Private Partnerships are closely connected to firm alliances which is a form of inter-organizational cooperation involving multiple enterprises (Anand & Khanna, 2000; Colombo, 2003).

Adopting a different perspective, Weihe (2006) advances a number of PPP research approaches thus policy, local economic development, infrastructure, governance, development, and notes that most official PPP web sites deal only with the infrastructure approach. To Weihe (2006), the approach is concerned predominantly with financial and legal issues and it is the governance approach that emphasizes “softer” notions of PPP where cooperation/collaboration and processes are the central focus of analysis. However, the main criticisms of PPPs stem from fears of privatization and a belief by some that the government is effectively mortgaging the future and that the long-term cost of paying the private sector to run these schemes is more than it would cost the public sector to build them itself (Wettehall, 2007). In complement Davies and Hentschke (2006) argued, for example, that governments do not have sufficient financial and commercial expertise to match the involved corporate enterprises in bigger projects, they are often consortiums associating merchant banks with experienced construction companies in ensuring that the public sector is treated fairly in the very complex contract negotiations needed to get a project under way; when risks are taken into account, it often emerges that the public sector bears most of them, and has to bail out the private “partner” when costs escalate or less-than-expected revenues are earned; the big private “partners” have huge political clout so that processes designed to monitor their performance are compromised; though the facilities are notionally still “public”, more traditional forms of accountability no longer operate.

### **3. Process and Common Forms of Public Private Partnerships in Utilities**

To begin with, Service contracts involves the private sector providing a bundle of specific services to a public utility, but the public sector retains overall operational responsibility is a common form of PPP in the utilities. Common forms of service contracts include management support. The private operator supplies the public authority with human and technical resources for a fee. It provides technical know-how on all operational and financial aspects of project management remaining within the jurisdiction of the public authority. The second common form is the operation and management (O&M) where the private operator is in charge of daily maintenance of the facilities. The private operator is paid for its services by the public authority according to specific and qualified performance criteria. Unlike management support, the private operator may in some cases take on the responsibility for operating the facilities (Akintoye et al., 2003; Evans 2003; Bing Li et al., 2005 Blondal 2005; Wettehall, 2007).

A third form of PPP in the utility sector is delegated management contracts where the public sector retains overall ownership of the assets, but delegates the responsibility for their operation to a private operator for a definite period. This may take the form of affermage or lease agreement where the private operator manages the services for a period and is responsible for maintaining and renewing the facilities according the terms of the contract. In this capacity, it takes charge of all personnel and existing assets but is not responsible for financing new facilities. The public authority remains responsible for all new investment and compliance to existing norms. The private operator invoices the end-users directly.

The fourth form of PPP in the utilities is the construction support which is the most widely used form of PPP contracts, where the private operator is involved in the design and construction phases of new infrastructure and carries at least some of the risks associated therewith. Some of the main forms of construction support include; Build Design Operate (BDO), under which the public authorities entrust the private operator for a fixed period of time with design, construction and operation of new facilities which remain the property of the public authorities. The private operator assumes the risks linked to design and management of the facility. It is paid a fee by the public authorities and commits to an overall cost for the facility’s construction and operation. Build Operate Transfer (BOT) is the second form of construction support where the private operator designs, finances and builds infrastructure. While formal ownership of the assets is assigned to the government, the private sector operates the project long enough to service any debt incurred and to earn a suitable return. The third of construction support is the Build Own Operate (BOO) which is in contrast to the BOT case, the private investor retains ownership and control of the project

(Akintoye et al., 2003; Bing Li et al., 2005; Blondal 2005; Wettshall, 2007).

Stakeholders need to be aware of the advantages and disadvantages to weigh the options of using any form of PPP. BDO has a key disadvantages of DCMF are the difficulty with long term relationships and the threat of possible future political changes which may not agree with prior commitments (Akintoye et al., 2003; Bing Li et al., 2005) while Kumaraswamy (2001) noted that the most important advantages of BOT include; utilization of private sector's investment instead of public sector's, transferring all the risk to private sector, transferring technical knowledge, yet political resistance in using private sector is less than other methods because project will owned by the government. On the other hand, BOT tend to be very complicated from the viewpoint of technical and financial issues and need high level experts and consultants, increasing expenditures of users in operation time.

Based on the Ministry of Finance Planning and Economic Development of Uganda framework (2007), it cab be observed in figure 1 below that that the procurement of a PPP contractual relationship goes through a number of stages. It is worth noting that successful implementation of PPP depends, to a large extent, on the development of sound legal procedures, agreements, and contracts that clearly define the relationship between government agencies and private firms. Without well thought-out professional legal frameworks and contracts, disputes are likely to occur and projects can be delayed and/or terminated (Institute for Public-Private Partnerships (IP3), 2000b). These legal frameworks and contracts function to reduce opportunistic tendencies (Luo, 2008) and to align the interest of the partners. To this effect, it has been observed that while many governments in developing countries have already signed their first demonstration of Public Private Partnership contracts, most have not yet designed the legal and regulatory framework for monitoring the performance of private contractors and for ensuring contractual compliance (Klijn & Teisman, 2003). The PFI procurement method is just like any other procurement method which is built on a well structured procedure.

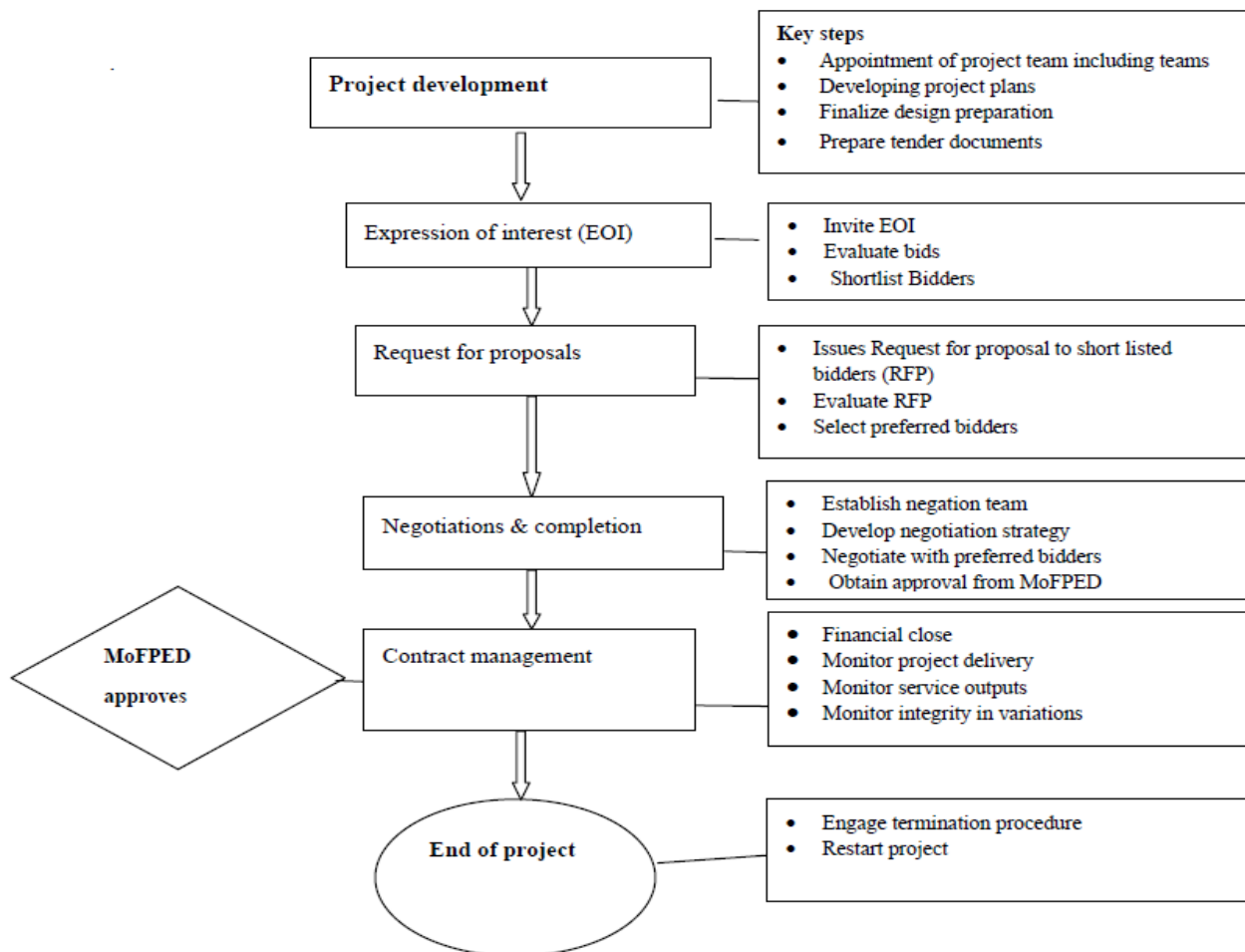


Figure 1. PPP delivery phase

Source: Adopted from the MoFPED policy document (2007).



BOOT has the advantages of strong financial incentives for the BOOT operator, transferring construction and long-term operating risks onto the BOOT provider, risk mitigation through the involvement of multiple participants, increase the project certainty and early interest recovering through involving a BOOT operator, encouraging maximum innovation allowing to have the most efficient designs, high accountability for the asset design, construction and service delivery due to recover the expenditures and, enhancing BOOT operators and project s management knowledge through experience, However, BOOT has the disadvantage of higher cost for the end user due to the BOOT provider accountability of 100 percent financing and on-going maintenance, negative reaction of community to private sector involvement, time consuming and resource hungry management and monitoring of the operating contract with the BOOT operators, requirement of a rigorous selection process in selecting a BOOT partner (Evans 2003; Li et al., 2005; Marcus, 2002). The Ministry of Finance Planning and Economic Development (MoFPED) while recognizing the O&M, BDO, BOT and BOO developed a generic conceptual model for the Public Private Partnership project delivery which is shown below to guide the study.

Klijn and Teisman (2003) posit that the inability to develop partnerships lies in a combination of three factors: complexity of actor composition, institutional factors, and the strategic choices of public and private actors. Therefore, in PPP, it is inevitable for one partner to avoid the other partner's opportunistic behavior. For this reason, a formal contract that clearly specifies the required degree of cooperation and inter-organizational integration is necessary (Reuer & Arin 2007). Because such a partnership seeks to encourage multiple parties to take a significant, long-term interest in the relationship, one way to promote this long-term interest is to make full use of a written agreement or contract (Michael & Rachelle, 2006). Imperative to note that critical gaps in partnership agreements arise as a result failure to define clear conditions related to the quality of services to be delivered to the beneficiaries.

#### **4. Methodology**

This paper is theoretical based on the review of previous literature to develop policy and management implications in the PPP management to help achieve the goals of PPP in Uganda's electricity generation sub sector. The arguments, case studies and conclusions are, however, drawn from secondary sources of information through an extensive review of scholarly literature relating to the management of PPP in both developed and developing countries. Use was also made of various documents such as Newspaper publications, Office of the Auditor General's audited reports, electricity generation and distribution contracts and reports in the country. Effort was undertaken to obtain literature from databases such as Emerald, World Bank, UNDP websites, and also used Google search engine to help access any valuable information on Public Private Partnerships in the energy sector. Two case studies were used to help develop an in-depth analysis of the PPPs in the energy sector of Uganda. The paper is as such based on key themes of background, theoretical, conceptual, case studies, policy and management implications, conclusions and recommendations of the study.

#### **5. Case Studies of PPPs in the Electricity Generation Sub Sector of Uganda**

The energy sector of Uganda depends on the Hydro-power whose installed capacity stood at 317MW, supplying only 5% of the population and unable to meet peak demand of 380MW by 2002 (MoEMD, 2002), despite the fact that the country had an identified potential of 2500MW of hydro-power capacity on untapped sites (World Bank, 2005). With demand for energy estimated to grow at 4-5MW per month and an economy growing at an average rate of 6.3% per annum over the last 10 years; additional power generation is critical (Engorait, 2004). In response, the government of Uganda attempted to encourage and incentivize private sector participation in the development of hydro-power generation facilities (Electricity Act, 1999; Engorait, 2004). Key to this was the unbundling of the state owned Uganda Electricity Board (UEB), creation of an independent regulator and providing a legal framework allowing private sector participation (Electricity Act, 1999; Mugyenzi, 2001; Engorait, 2004). The government of Uganda in a bid to improve electricity generation arranged for various PPPs, notably the Bujagali Hydro-power Project and the independent power generators reviewed in the following sub sections as case studies.

##### *5.1 Bujagali Hydro-power Project, Uganda*

According to Electricity Regulatory Authority (ERA 2008), the Bujagali Project is a private power generation project targeted to generate 250 MW run-of-the-river hydro-electric power after completions on the Victoria-Nile on Dumbbell Island, Jinja, Uganda. The project achieved its financial closing in December 2007, and was expected to be commissioned in 2011. Bujagali is the first Independent Power Project (IPP) in Uganda, and the largest mobilization of private financing for a power project in Africa and was named "Africa Power Deal of the Year 2007" by Project Finance magazine. Bujagali is a good example of how various international financial institutions can work together with private sector project sponsors to address their financing and risk mitigation concerns, and meet the client country's economic objectives (Ministry of Energy and Mineral Development Annual Report, 2010).

The rationale of the project was to address the severe shortage of electricity in Uganda that is purportedly has contributed to a decline in GDP growth to around 5% in 2005/06 (Ministry of Energy and Mineral Development Annual Report, 2010). Bujagali as such was conceived as an essential part of Uganda's energy-sector strategy to provide a sustainable and affordable source of electricity. The government of Uganda lacked the necessary technical expertise and financing to complete the project on its own calling for private sector participation to fill the gap. By the time of its conception and implementation, the Bujagali project was a PPP between the private sector project sponsors represented by Bujagali Energy Ltd (BEL), the government of Uganda, including the Ministry of Energy and Mineral Development (MEMD) and Uganda Electricity Transmission Company Limited (UETCL), multilateral and bilateral development financial institutions, and commercial lenders, including Absa Capital (South Africa) and Standard Chartered Bank (UK). BEL, a special-purpose company (SPC), is incorporated in Uganda, and is privately owned by Industrial Promotion Services (Kenya) Ltd (IPS (K)), the industrial development arm of the Aga Khan Fund for Economic Development (AKFED) and SG Bujagali Holdings Ltd (Mauritius), an affiliate of US-based Sithe Global Power LLC. The hydro power project sponsors were selected through international competitive bidding procedures. Consequently, the project was developed, financed, constructed, and maintained by BEL on a BOOT basis. BEL also manages the construction of the Interconnection Project on behalf of UECTL, which would own and operate the project (Ministry of Energy and Mineral Development Annual Report, 2010).

The Interconnection Project involved the construction of about 100 kilometers of high voltage electrical transmission line to interconnect the power generation facility (the Bujagali project) to the national electric grid. Structured as IPP, BEL would sell the electricity to UETCL, Uganda's national transmission company, under a 30-year power purchase agreement (PPA). Financing for the project is structured as an integrated package for both the power plant and transmission components. The total cost for the integrated projects, about \$800 million, being mobilized on a limited recourse basis, through equity and debt in the ratio of 22:78. The government of Uganda provided an in-kind equity contribution of \$20 million. The equity financing is shared by the sponsors, IPS (K) and SG Bujagali Holdings Ltd, on a pro rata basis although with a complex structure. The debt is being financed by loans from the group of lenders, the World Bank group providing a far more substantial amount of \$360 million (\$130 million loan from IFC, \$115 million partial-risk guarantee from International Development Association to commercial lenders, and \$115 investment guarantee from Multilateral Investment Guarantee (MIGA) to cover the equity position of SG Bujagali Holding Ltd. (Ministry of Energy and Mineral Development Annual Report, 2010).

The contractual structure of the Bujagali project is consistent with industry practice for limited-recourse project finance transactions. The project implementation agreement, also called the concession agreement, signed between the government of Uganda and BEL on December 13, 2005, defines the terms of the concession the government grants to BEL to design, finance, own, operate, and maintain the project. Under the 30-year PPA, BEL agrees to sell exclusively to UETCL all the production and specifies UETCL's payment obligations. In addition to the implantation agreement and PPA, BEL signed a fixed price; date certain, turnkey engineering, procurement, and construction (EPC) contract with Salini Costruttori SpA (Italy), and Alstom Power Hydraulique (France), and an operation and maintenance (O&M) agreement with affiliates of Sithe Global. The EPC contract required the power plant to be commissioned within 44 months. The EPC contractors were selected through competitive bidding, in accordance with the EIB procurement rules. The O&M agreement reflects BEL's commitments under the PPA own, operate, and maintain the project. Under the 30-year PPA, BEL agrees to sell exclusively to UETCL all the production, and UETCL agrees to purchase the contracted capacity (250 MW), with the government guaranteeing the UETCL's payment obligations (Ministry of Energy and Mineral Development Annual Report, 2010).

The contractual structure ensured that the project-related risks, including completion and operation, were borne by the project sponsors and commercial lenders. However, these risks were mitigated by contracts and various insurance arrangements. The risks related to supply/input (hydrology risk), market, political, and natural forces were borne by the government of Uganda under the government guarantee and implementation agreements. The participation of the IFC and the guarantees provided by the World Bank group (IDA and MIGA) are critical in mitigating the completion risk, and to provide Uganda with access to long-maturity commercial loans in favorable terms.

However, according to the Ministry of Energy and Mineral Development Annual Report, (2010), BEL noted that part of the requirements of the project resettlement and compensation program, Project Affected Persons (PAPs) were required to deposit their land titles with UETCL in order for the project to curve out and transfer land occupied by the line. Out of the 656 titles expected to be processed from land owners 225 belonged to public land and 431 for private individuals. Of the 431 only 268 titles had been received leaving a total of 163 titles. It is not clear how management intends to recover those titles especially after most of the land owners have already been paid or compensated. Furthermore, of the 268 titles received only 49 titles had been processed, two years after the process of

compensation began. There is a risk that PAPs may refuse to transfer the land yet funds have been paid to them which may lead to loss of funds.

The Ministry of Energy report (2010), further reported that BEL switched on one turbine to contribute 50MW to the national grid, in March 2012, under controversial circumstances with other stakeholder doubting if there was any power supplied to the grid by the BEL given the persistent power rationing. The power crisis still rages on as the project has not been fully commissioned to relieve the country of the acute power shortage in contravention of contractual terms of 44 Months.

### *5.2 Independent Power Generations by Temporary Power Plants*

The independent power generators (IPG) represent a number of temporary power plants installed to meet the power shortage. These include a 50MW thermal plant at Lugogo, a 100MW thermal plant at Kiira power station in Jinja, and another 50MW thermal plant installed at Mutundwe by 2007 after the World Bank's approval. An additional 50MW were installed in Namanve. UETCL also purchases power from mining companies Kilembe Mines and Kasese Cobalt Company. In the mid 2006 Uganda or donors were supporting various kinds of private sector schemes for power generation in Uganda. The IPG experienced increasing challenges in the operation of the contract. For example, in July 2006 the Inspector General of Government, (IGG) canceled the contract for impropriety to the deal because it was full of irregularities and illegalities. The IGG investigations had concluded that the procurement of the 50MW, meant to relieve the country of its biting power shortage, had been conducted in a manner that disregarded the law and set down procedures and that ERA failed to provide guidelines for a fair, open and competitive process (Ministry of Energy and Mineral Development Annual Report, 2008).

One advantage of a strong public sector policy according to Hall (2007) should be to reduce the opportunity for this kind of corruption. It also needs to be associated with a consistent public demand for total transparency of all documents associated with procurement contracts or privatization, for public scrutiny and debate, and for firm disciplinary policies on officials and politicians implicated. However, these PPPs are marred with clear evidence of corruption associated especially with procurement processes of all kinds, including the contracts with IPPS. There is also evidence of corruption associated with employees at various levels but transparency and effective disciplinary measures are again important.

The OAG (2010) report on Aggreko noted unplanned outages on the side of UMEME, due to forced outages as a result of faults. Also an analysis of dispatches showed that in the months March 2009 to May 2009 the requests by UETCL were far below the declared power by Aggreko. As a result the amount declared and paid for by Aggreko is higher than demand by UETCL consumed. These situations may lead to payment of unconsumed capacity. Management was advised that they should monitor the effectiveness of the UMEME system and also ensure that power requests are as per contractual capacity to prevent payments for unconsumed capacity. Management stated that the PPA is a take or pay in as far as capacity is concerned and that the IPP is only penalized when contracted capacity is not availed. They also stated that faults on the distribution system are outside their control. Management also stated that the less than capacity requests from UETCL between March and May 2009 were because total generation exceeded projected demand for the day (as a result of a planned shutdown) and this is done following a melt-order dispatch affecting all IPPS sequentially. There is need to review the consumption and capacity levels and to streamline the operations of UMEME so as not to pay for unconsumed capacity.

Similarly, the OAG (2010) report noted that the noise levels at the various stakeholder residences were above the maximum permissible noise for the general environment as prescribed in the NEMA act. Management was asked to investigate and advise Aggreko to implement reduced noise levels. Management in response stated that environmental issues were taken care of by the implementation agreement signed between the IPP (Aggreko) and Government (MEMD) and these issues raised are being discussed currently. Management however added that as mitigating measures; Aggreko installed a gabion wall which reduced the noise levels on the southern end of the plant perimeter fence. Secondly, a proposal was made to Aggreko to pay affected residents a two-year rent accommodation elsewhere from the plant for the remaining contract period but to date the country was still awaiting the outcome of this intervention.

## **6. Policy and Management Implications**

A review of the two case studies above suggests a number of policy and management implications necessary to achieve the objectives of PPP in Electricity generation and related utilities sectors. One of the fundamental policy and management implications in the electricity Public Private Partnerships (PPPs) derived from the two case studies is that government needs to regulate and monitor PPPs to ensure compliance with agreed performance targets as



most PPP infrastructure services are natural monopolies, whether in public or private hands. Effort should be undertaken by the government as the principal to ensure citizens have access to PPP processes and contracts to hold them accountable through accessing of information. The second policy and management implication is the involvement of independent transaction advisers to reduce corruption by paying them a set amount to shield them from no incentive to manipulate the process in the concessions or leases. This is because the public feels corruption puts the energy sector PPPs in a precarious condition which has been a huge and persistent problem affecting public procurement in Uganda. Electricity services PPPs offer far greater latitude for manipulations by foreign or local firms or government officials that are hard for the public and anti-corruption systems to spot. Thus any successful Public Private Partnership in energy generations should adopt the principle of zero tolerance to corruption which could be enhanced through transparency and demand for accountability from the different stakeholders including the general public.

A related policy and management implications in the energy sector Public Private Partnership (PPP) is the element of risk where it was anticipated that in using PPP in the electricity management, the government would prefer a PPP where business would bear all the costs and risks associated with less than anticipated demand, regulation and currency fluctuation, for a negligible price and profit. Crafting successful PPP necessitates bridging these extremes fairly to mitigate the risks in the partnerships. Capacity development is an ardent need at national, provincial and municipal level by: sharing expertise amongst government departments; creating a PPP Unit in the Ministry of Finance, other relevant ministries monitor PPPs; establishing PPP Facilitation Units in Development Finance Institutions (DFIs); and developing good transaction skills, legal, financial, and negotiation industry specific skills. PPP mechanisms must include setting electricity PPP procurement specifications, open public bidding and hearings for many government contracts, and the final selection of contractors; and involving independent agencies such as Transparency International to oversee the bidding process and private bidders to an integrity pact.

The other policy and management implication is that issue of goal compatibility reflected by an appreciation that both the public and private sector share a common goal of reducing risk and increasing certainty; capacity of the partners to execute their roles; the credibility and transparency of the procurement process; and greater education and sensitization of the stakeholders. Furthermore, the good governance aspects of partnership, as principles guiding the operation of the partnership and/or as its explicit objective, add a layer of complexity to partnership design and operation beyond the metrics of efficiency, effectiveness, and synergy. Acting on these principles mean that inclusion, equity, transparency, accountability and ethical behaviors become integral to partnership functions. Moreover, since PPP functioning requires commitment and trust, where the operating environment discourages or undermines these core elements, there is need for the government of Uganda to put in place systems, processes and procedures guided by enabling laws, alongside proper enforcement and monitoring if the desired outcomes of energy and other sectors' PPPs are to be achieved in public entities of Uganda.

Managerial attention in Public Private Partnerships (PPPs) should rest firmly on assessing fairness and contractual control. This point takes place on two levels. At an organizational level, identifying how to share benefits and control projects efficiently is important and requires consideration by the organization as a whole before proceeding with the PPP. At the level of the individual manager, the issue is one of determining if it is possible to work closely with partners from the opposing side. Effective Public Private Partnerships take time to establish and then yield results. For PPP to be successfully initiated and implemented, the presence of a conducive and enabling legal and regulatory framework is a critical prerequisite. Disputes are likely to occur and service delivery delayed and/or impaired. The existence of a functioning legal and regulatory framework reduces opportunistic tendencies, aligns the interest of partners and also provides confidence to the private partners as it acts as a buffer against political interference from government bodies.

## **7. Conclusions**

The examination of Public Private Partnerships highlights the complex nature of contractual governance under such partnerships. It appears that a largely transactional approach does not prevent the development of trusting and cooperative relations. Consequently, mutual satisfaction with the quality of the contractual relationship can be attributed to factors such as the long-term nature of the PPP agreement, the constructive use of the contract as a channel for cooperatively dealing with problems that arise during performance, and a broad displacement of the contract with regard to monitoring and sanctioning poor performance.

The electricity Public Private Partnerships (PPPs) require that the government as the principal stakeholder needs to develop its capacity to plan, negotiate, implement and monitor successful PPP projects. The use of smaller contractual experiences such as the temporary power generators would help build capacity before venturing in

multi-billion PPP in the energy sector of Uganda. This is because the two case studies equally highlighted the lack of capacity to conduct successful PPPs in the electricity generation in the Energy sector of Uganda.

Formal contracts need to be introduced in order to decrease the probability of opportunistic behavior among partners in the PPP yet as uncertainty and asset specificity, together with repeat trading, become more significant features of the exchange during public-private cooperation, transaction cost analysis predicts the emergence of relational contracting (Noble & Jones, 2006; Stephen et al., 2006). In contrast to formal contracts, informal contracts are defined as unwritten agreements between partners that cannot be enforced by formal authority and power but rather depend on the partners' desire to create and maintain a positive reputation for integrity and fairness (Aryee et al., 2002; Luo, 2008), as well as build trust (Arino et al., 2001). Based on this definition, informal contracts can be an effective way of encouraging mutual interest without written legal obligation or enforcement by a third party. Larson (1992) concluded that firms discounted the use of written contracts and paid more attention to the development of informal or implicit social contracts, which can usually allow for effective control of interaction and synergy effects in a partnership.

Carrying out a thorough feasibility study that compares public sector provision with private sector provision and that takes into account affordability, value for money and risk transfer; considers the rate of return on equity acceptable to both parties, uses accurate information in its calculations and avoids unnecessarily high design specifications; considers all the financing options before involving all the necessary stakeholders; identifies all the risks of a particular project, allocates particular parties and devises risk mitigation strategies; and requirements to process (World Bank, 2005). Similarly, attitude emerges as the primary factor in determining the success of the partnership. It is evident that a propensity to being open to new ideas and ways of working needs to exist on both sides of the partnership. Furthermore, perceptions of fairness become a critical foundation for ongoing collaborations between public and private partners, which often face many unexpected contingencies and uncertainties in such partnerships. This implies that partners should treat procedural justice as an encompassing system.

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