

PPP Country Paper

Botswana

Submitted to SADC-DFRC 3P
NETWORK Public-Private-Partnership
Working Group

LIMESSTRASSE 26, 61273 WEHRHEIM - 2013



Table of Contents

List of Figures	IV
List of Abbreviations	IV
1. Engagement Overview	6
2. Introduction	6
3. Methodology	8
4. Examination of the Term PPP.....	8
5. Application of SADC PPP Framework Road Map.....	9
5.1 PPP Policy in Botswana.....	10
5.2 PPP Institutional Responsibility in Botswana	12
5.2.1 Role of PPP Unit in Botswana	13
5.2.2 PPP Regulation, Approval and Implementation Roles in Botswana.....	14
5.3 Botswana Legal Framework.....	15
6. Recommendations	17



@ This publication includes information obtained or derived from a variety of publicly available and other sources. XS-Axis Consulting has not sought to establish the reliability of these sources or verified such information. XS-Axis Consulting does not give any representation or warranty of any kind (whether expressed or implied) as to the accuracy or completeness of the paper. The paper is for general guidance only and does not constitute investment or any other advice. Accordingly, it does not relieve any third party from conducting its own due diligence in order to verify its contents. The sole purpose of this Country Paper is to provide an overview of Public Private Partnership (PPP) Policy, Institutional Arrangement and Regulatory Framework as means of assisting the Client, Southern African Development Community-Development Finance Resource Center PPP Network (SADC3P), and its Member States to improve their Framework, and develop a common ground for aspiring potential harmonization of national PPP Policies.



List of Figures

- Chart 1: Evaluation of Botswana Definition of the Term PPP
- Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012
- Chart 3: Overview of Botswana Policy Objectives
- Chart 4: Organizational Structure PPP Unit Botswana Proposed in 2009
- Chart 5: Overview of PPP Procurement Process and involved Bodies
- Chart 6: Evaluation of current Legal Framework of Botswana concerning PPPs

List of Abbreviations

AfDB	African Development Bank
GDP	Gross Domestic Product
Mio.	Million
MFDP	Ministry of Finance and Development Planning
MoF	Ministry of Finance
NPV	Net Present Value
OECD	Organization for Economic Cooperation and Development
PEEPA	Public Enterprises Evaluation and Privatization Agency
PPADB	Public Procurement and Asset Disposal Board
PPP/s	Public Private Partnership/s
PS	Permanent Secretary
SADC	Southern African Development Community
SADC3P	Southern African Development Community- Development Finance Resource Centre PPP Network
VfM	Value for Money





KEY INDICATORS - 2012

Botswana

Population (Mio.)	2.0
GDP per capita (US\$)	9.398
PPP Level of Maturity	Medium

(Regional Strategy Paper, 2012)

1. Engagement Overview

XS-Axis Consulting, Wehrheim (The Cross Sector Advisory) has been engaged by the Client, Southern African Development Community --Development Finance Resource Centre PPP Network (SADC3P) to prepare 14 country papers taking a look at current practice of PPPs with a specific focus on PPP Policy, Institutional Arrangements, and Legal Frameworks as a follow-up of the Draft Regional Strategy paper submitted to SADC3P in November, 2012. This paper focuses on Botswana's PPP Policy, Institutional Arrangements and Legal Frameworks as a Member State in SADC providing specific recommendations for the implementation or enhancement of private sector participation in the development of public infrastructure in the country. The main objective is to serve as a strategic paper for the Government of Botswana and its Ministries in order to refine, and ultimately develop further its PPP Policy, Legal Framework, and Institutional Arrangements aimed at closing the 'infrastructure gap', and its negative impact on economic growth, job creation and social cohesion in Botswana. Moreover, the country paper shall serve the SADC3P Network to identify areas of support to be offered by the SADC3P Network towards identified Member States.

We render this report to the best of our knowledge and belief. Our results are based on the most recent verifiable information available at time of the report. Public sources were used where appropriate and fact based observations were made.

2. Introduction

Botswana, officially the Republic of Botswana has a population of 2.0 Million (Mio.) being a landlocked country with a well functioning democracy, political environment that is perhaps the most stable in Africa (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.132). Its neighbouring countries include South Africa to the South and South-West, Namibia to the West and North; Zambia and Zimbabwe to the North-East. Since 2008, Ian Khama has been President of Botswana for a term of five years. Botswana has improved its mature democracy, living standards and its macroeconomic and fiscal management. The country is one of the world's fastest growing economies in the world and has transformed itself, moving from one of the poorest countries into the ranks of upper middle-income status. Botswana indicates an economic performance with a Gross Domestic Product (GDP) growth rate of 6.1% in 2012, up from 5.1% in the previous year (World Bank 2013, web page).

Despite Botswana's impressive track record of good governance and economic growth, significant and stubborn pockets of poverty remain, especially in rural areas. Thus, the World Bank suggests the Botswana Government to support investments in sectors such as agribusiness, oil and gas, power services and water sector. African Development Bank (AfDB) estimates a medium-term forecast of 5.6% and 5.5% as far as the annual growth rate for 2013 and 2014 is concerned (AfDB, 2013, web page).

Botswana's global competitiveness ranks 79 of an overall 144 countries, therefore, remaining quite good (on the fourth rank) compared to other SADC Member States (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.132). Rankings for Botswana as far as the infrastructure quality is concerned compared to other SADC countries -- this relates to the quality of the overall infrastructure and quality of roads, railroad infrastructure, port infrastructure, air transport infrastructure, and available airline seat kilometres-- is quite good (ranking 78, the fifth best performing country) reflecting Government's success of efforts to improve the level of service provision as far as infrastructure is concerned. Middle level of competitiveness of Botswana is a reflection of its Government's and policy makers' improved commitment, and the political will as an essential driver to achieving sustainable growth in the country and prosperity for its people. In terms of the most problematic



factors affecting doing business in the country, the Global Competitiveness Report 2012-2013 provides an insight focusing on Poor work ethic in national labour for to financing and poor ethic in national labour force as the main limiting aspects hindering progress in Botswana. Also the quality of infrastructure remains a bottleneck to proper economic performance (The Global Competitiveness Report 2013–2014, 2013, World Economic Forum, p.132).

The Government of Botswana belongs to those few countries in the SADC region to have recognized early on the necessity to create a solid environment aimed at encouraging and attracting private sector for infrastructure and service delivery --being aware that the country is in competition with others for similar investments. The Government announced first time in the 2002/2003 budget speech and in the National Development Plan 9 its commitment to make more use of Public Private Partnerships (PPPs) as means of procurement and financing of infrastructure projects (Ministry of Finance and Development Planning (MFDP), PPP Policy and Implementation Framework, 2009, p.1). In order to establish a strategic Framework for PPPs in Botswana, the Public Enterprises Evaluation and Privatisation Agency (PEEPA) conducted an evaluation of the environment for PPPs with the financial and technical assistance of SADC Banking Association. Recommendations included the necessity to introduce standardized approaches and process guidelines, and also a stable policy environment as well as a Legal Framework that would generally not be inhibiting, but rather enabling. Also improvements in the existing institutional structures would be required.

The Government proceeded in 2006 to develop an implementation strategy for PPP schemes including a review of international best practice. The PPP Policy and Implementation Framework, which includes Implementation Guidelines, Standardised Contract Provisions, and the Institutional structure was approved in June 2009. Benefits envisaged from a solid PPP Policy included the acceleration of infrastructure provision, and making use of private sector financial resources as well as their expertise, whilst Government would focus on providing the required regulatory oversight. This should ease implementation constraints on Government and yield sustained efficiency benefits in infrastructure service delivery. The institutional set up of the planned PPP Unit has faced delays –it is, however established in the Ministry of Finance and Planning (Republic of Botswana, 2010 Budget Speech, “Transforming Our Economy After the Crisis: 2010 and Beyond”, By Honourable O.K. Matambo, Minister of Finance and Development Planning, 2010, p.12).

In terms of actual practice and experience with PPP projects, as noted by the 2012 National Business Conference, there has been little involvement of private sector in financing and managing infrastructure projects in Botswana although there is recognition that increasing such private sector involvement will be a crucial part of the economic diversification strategy. Khama provided explanation in an interview in 2012 that while Botswana was among the first countries in the region to adopt PPPs, ..”these arrangements have taken long to be implemented due to unscrupulous behaviour by private sector...” (<http://www.mmegi.bw>, 2012). Botswana’s experience with PPPs relates to a 10 year concession for an office complex (Plot 21) which was completed on time and within budget, and a 17 year concession for the SADC headquarter, which was underwritten by MFDP. Thus, there is little experience with PPPs and there have been no PPPs in the power, water and sanitation, ICT sectors. Moreover, the experience with Plot 21 and the SADC headquarter both indicate some disappointment due to exceeded planning costs rendering these projects more expensive for public finance than expected.

Government seems nevertheless to be committed to renewing the momentum for PPPs over 2013, as notably emphasized by the National Doing Business Council. Most recently from January until October 2012, a PPP project entitled “Kgakololo” was completed to address health and development challenges (cdcp4, web page, 2013). Also the Kazungula bridge project introduced in cooperation with Zambia is expected to be commissioned in 2018 (African Development Fund,



p. 4, 2011). The PPP pipeline includes the Trans-Kalahari rail project for which a feasibility study has been completed (OECD Investment Policy Reviews, OECD, 2013, p.124).

This paper is to be considered as a follow-up strategic document to the Regional Strategy paper submitted to SADC3P in November, 2012 recognizing that PPP Frameworks do not develop in isolation, but evolve over time along a PPP maturity curve that often responds to various challenges faced while actually implementing PPPs in specific cultural, legal and procedural and institutional settings. The Regional Strategy document examined the current status of PPP frameworks across all Member States to classify SADC countries into four categories as far as their level of maturity of PPP Frameworks is concerned. It distilled Botswana to belong to those increasing number of countries in SADC that have established a PPP Policy and/or a PPP Law aimed at the promotion of their PPP schemes. The next chapter will elaborate on Botswana's specific PPP experience, its PPP Policy, Legal and Institutional Framework as a continuation of the above mentioned cross-country Regional Strategy aimed at providing an in-depth insight into the specific country strategy for Botswana.

3. Methodology

Our approach in this country specific paper is to provide an overview of Botswana's PPP Policy, Institutional Arrangements, and Legal Framework by taking into account the country-specific strategies, and drivers for resorting to PPPs considering the individual level of PPP development in the country. The ultimate idea is to draw lessons for Botswana, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document distilled Botswana in 2012 to be prone towards promoting PPPs, and establishing institutions to promote the existing Policy Framework. This paper will touch upon this evaluation and move further to analyze the current progress made in Botswana aimed at depicting those developments made since 2012 as far as the PPP Framework conditions are concerned.

Methodologically, we will first take a look at the definition of the term PPP in Botswana since experience across countries shows that lack of a proper term and definition of what a PPP typically encompasses does indeed result in poor implementation of PPP schemes. Next, we will evaluate Botswana's approach towards developing a PPP Framework based on the recommendations provided to the Minister's of Finance and the road map developed for SADC countries aimed at establishing a typical good practice PPP Framework. This includes the evaluation of Botswana's PPP Framework in terms of its PPP Policy –examining whether its Policy contains Government's formulation of its objective to use PPPs, the scope of the PPP program and the implementing principles. Then, we will consider whether Botswana's operational Framework related to the implementation of PPP processes and the institutional responsibilities underpins its national PPP scheme. In addition, we will take a look at the legislature and entities participating in the PPP program as an integral part of any good Framework approach. Ultimately, we will evaluate as to whether Botswana's PPP programs are backed up by prudent laws and regulations enabling public sector to enforce and implement PPPs and set the boundaries within the contractual context. The overall idea is to distil proper recommendations from our work for SADC3P, and the Government of Botswana as far as next steps is concerned.

4. Examination of the Term PPP

The PPP Policy and Implementation Framework dated June 2009 defines in Chapter 3 clearly the term PPP. It involves “.. a contractual arrangement between a government institution and a private party whereby the private sector party provides public infrastructure and/or infrastructure related services and where the provision of such infrastructure and/or



infrastructure related services is:

- based on measurable output (end result) specifications;
- governed by a payment mechanism that provides payment only on delivery of services at required standards;
- accompanied by a transfer of financial and operational risks with consequential financial effects; and
- demonstrates Value for Money (VfM) to Government” (Ministry of Finance and Development Planning, Public-Private Partnership Policy and Implementation Framework, 2009, p.3).

Based on the above definition, the Government of Botswana understands PPPs to embody risk transfer and include regulation by some sort of payment to private partner. On top, output specification is an integral part of the understanding of the term (See the next chart). However, the term does not explicitly address the length of the arrangement and also does not include bundling explicitly as a requirement for arranging a PPP.

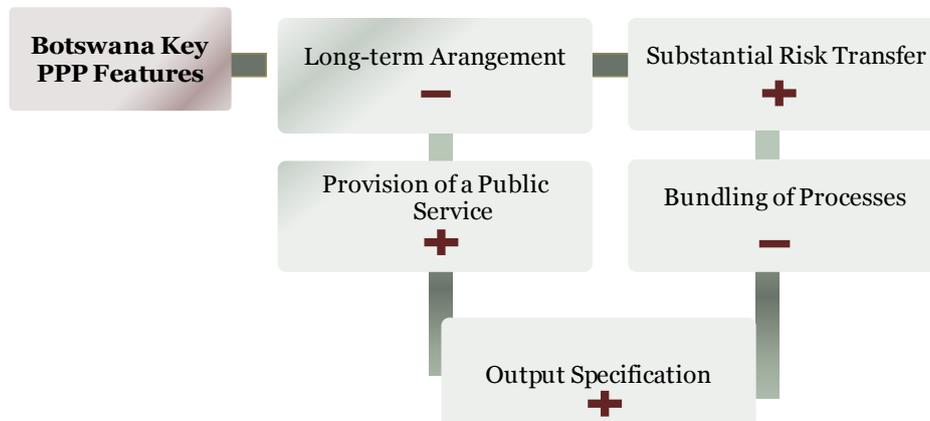


Chart 1: Evaluation of Botswana Definition of the Term PPP

The definition of PPPs as adopted in the PPP Policy document refers also to scope of PPPs which is laid out to be rather broad. Thus, not only immovable infrastructure, but also movable assets (such as vehicle fleets) or services (such as social grant administration) fall potentially within the scope of PPP. OECD analysis of Botswana’s PPP Framework confirms that this broad approach towards scope of PPPs may reduce the clarity of the document for procurement entities wishing to take the PPP route, especially given that the structure and upstream preparation of PPP contracts are very different for physical infrastructure as compared to services or movable assets (OECD Investment Policy Review, 2013, p.127).

5. Application of SADC PPP Framework Road Map

The experience to date across comparators and SADC countries indicates that there is no unique formula for developing a sound PPP Framework. More specifically, the development of a common Framework for SADC needs to take into account the economic and political context of countries, their historically grown institutional and legal structures as well as the actual experiences with PPPs so far, with some countries having made considerable strides and others having made very little progress, and some none at all. Nevertheless, if PPPs are to work and render the expected results, we suggested in the Regional Strategy Paper dated 2012 the following PPP Framework bearing a number of key features related to Policy, Institutional



Arrangements and Legal Framework (see next chart).

Thus, successful PPP schemes are characterized by clear policy statements, competent and enabled institutions that can appropriately identify, procure and manage PPPs, and efficient oversight procedures as well as proper Legal Frameworks. Nevertheless, it must be borne in mind that firm political commitment, stakeholder dialogue and a number of other factors such as a sound and strong PPP pipeline are important contributing factors for the promotion of PPPs in a larger context. It is also important to be aware of the contribution of sector reforms and their role in developing and supporting PPP schemes. In a number of countries sector institutions, for instance, power sector regulators have had an important role as far as the promotion of IPPs and investment in the power sector are concerned. It is in this context that Member States with a low level of PPP maturity should acknowledge the relevance of sector institutions in terms of their contribution towards developing PPPs over time and across various sectors --which are however best supported by setting up efficient and proper frameworks at the national level. In this section, we examine these various elements of a PPP Framework to see how far Botswana has proceeded in terms of its PPP Policy implementation and practice as well as looking into its Institutional Structures and Legal Framework more in-depth as well as the political commitment of the Government and its approach towards stakeholder integration into the PPP process.

SADC Framework Roadmap

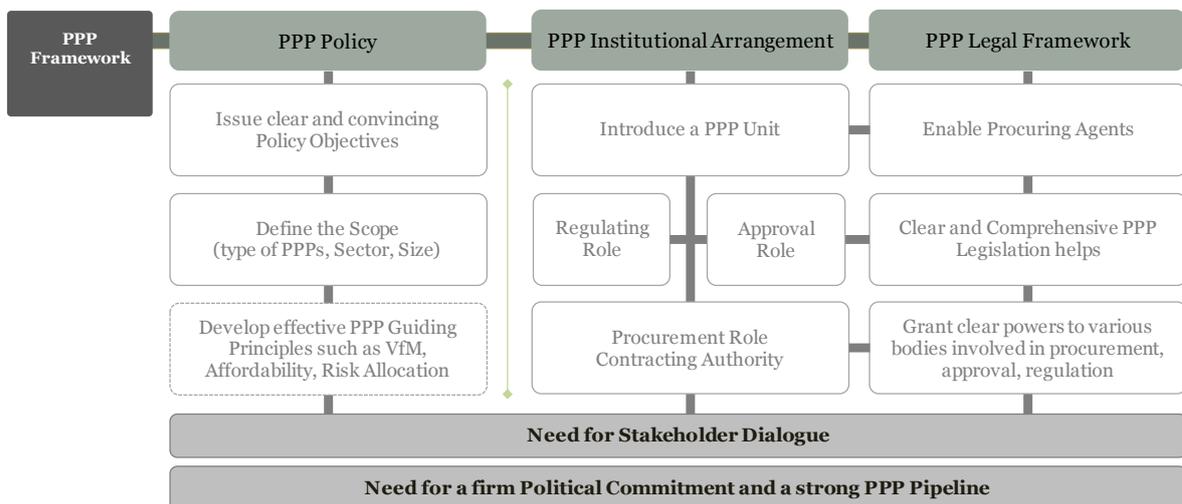


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

5.1 PPP Policy in Botswana

The Government of Botswana took early on initial steps to address the challenges ahead in terms of delivery of public services in infrastructure by developing a comprehensive PPP Policy and Implementation Framework document in June 2009. PPPs in Botswana are considered as a substitute in terms of financing investments in provision of economic assets such as roads, railways, social assets and government accommodation (Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, Chapter 3.3, p.3). Moreover, private provision of services seems to offer strategic and operational choices to the Government of Botswana and is considered as a strategic contribution towards economic growth attracting foreign direct investments, and increasing competition in provision of public services. On top, private sector involvement in provision is considered to allow for more efficient delivery of services and development as well as strengthening of financial capital markets in Botswana. The Policy objectives are illustrated in the next chart --those associated with the introduction of the PPP Policy and Implementation Framework (Ministry of Finance and Development Planning,



PPP Policy and Implementation Framework, 2009, Chapter 3.9, p. 4).

The Botswana Policy Framework document addresses clearly the benefits to be derived from the application of PPP schemes. These include not only spreading of costs of infrastructure over its useful life, but also the use of private sector skills to have timely projects and improved service delivery (Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, Chapter 3.11, p.5). In this context, the Government realizes the encouragement of foreign direct investment via an increased participation of private sector as well as obtaining more budget certainty as some advantages of PPPs. Nevertheless, the challenges associated with implementation of PPPs are also well understood and laid out explicitly in the Policy document. These include not only the level of complexity of PPP projects, but also the lengthy and costly process of procurement. In addition, there is recognition that PPP implementation as well as management necessitates proper skills and capacity on behalf of Government. Most importantly, the Government establishes the need to address the issue of “perception of loss of control by public sector”, and the concerns of higher financing costs associated with private finance.

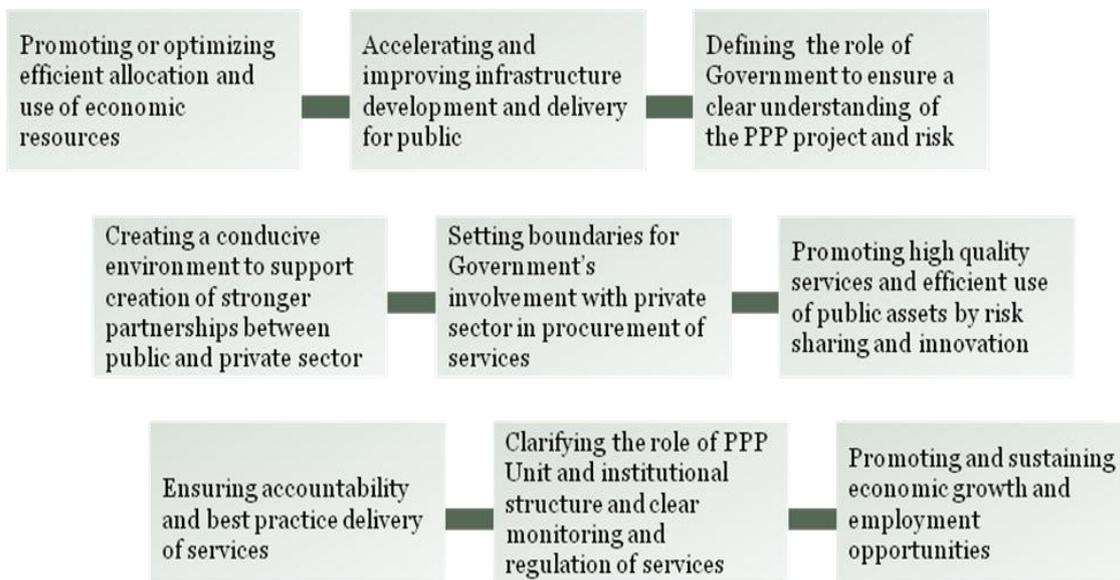


Chart 3: Overview of Botswana Policy Objectives

In addition, the Botswana Framework addresses the scope of PPPs to include those sectors that are internationally applied such as IT, housing, accommodation, defence, airports, health, ports, prison, and heavy and light rail, roads, and education, water as well as waste services. In this context, the Government determines those factors that in the end determine whether an infrastructure project is rendered and procured as a PPP or not. These include the size of the project, risk profile, user’s requirement, market capacity, complexity of the project. Overall, the Government deems PPPs to be suitable only if the following prerequisites apply to the project of choice:

- sufficiently large to justify transaction costs;
- Not overly complex, and a fair risk profile;
- Feasible to implement in terms of private sector capacity;
- Amenable to citizen participation; and
- Visible in meeting end users needs and being non-controversial in terms of where Government has traditionally provided services (Ministry of Finance and Development



Planning PPP Policy and Implementation Framework, 2009, Chapter 3.15, p.6).

Botswana does not define explicitly the full spectrum of options or types of PPPs that may be applied in the country. There is no clarification and reference to ranges and spectrum of contractual types that are envisioned in terms of practical implementation of PPPs. Thus, officials either have flexibility to come up with bundling of those functions they deem needed to structure or they may have rather a lack of understanding of what is really meant with PPPs.

Finally, the Policy Framework introduces those principles that are considered as important for PPPs to accord to. First of all, PPPs are not supposed to be used for purchase of assets, but rather services which need to be expressed in terms of output rather than input specification. Risk allocation needs to be conducted towards the party best suitable to manage them. Private party compensation is based on performance standards and penalties to be imposed. Next, PPPs must render VfM based upon affordability to the public institution and transfer of significant risk to the private party (Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, Chapter 3.19, p.7). On top, the procurement and implementation process shall be transparent and accountable and standardized procedures must be used to minimize transaction costs and time.

It is important to highlight that the Government is quite cautious in applying PPPs due to negative experiences made. In this context, Khama, the President notes: "...when something is done by Government, people see Pulas before their eyes and even try to rip us off when these are taxpayer monies" (<http://www.mmegi.bw>, 2012). He was responding to charges that Government was slow in implementation of PPPs. Thus, major rationale of Botswana Government is to apply prudence in terms of adoption of PPPs realizing that some PPP projects may indeed not take off due to increased private sector costs in financing. Overall, he raises awareness that "it is unreasonable to fund a project at 200 percent more than it would have cost if we had funded it directly. We have said we are not merely going to go into PPPs when something is 300 percent more expensive," Khama said (<http://www.mmegi.bw>, 2012).

Botswana's 2009 PPP Policy and Implementation Framework contains also a Guidance Note on Citizen Participation which recommends that bidders for PPP projects are required to associate with citizen-owned companies in bidding consortia and to use local labour and supplies wherever possible. OECD deems it problematic that the Policy encourages involvement of citizen companies in PPPs requiring thus the establishment of a dedicated fund to grant citizen companies the necessary access to finance (OECD Investment Policy Review, OECD, 2013, p.40). This path, they consider contradicts the essential rationale of PPP projects and therefore, may have heavy fiscal implications for the public sector. While such objectives of citizen empowerment may be fully legitimate, the latter should according to OECD not be emphasised at the cost of quality procurement and value-for-money. They recommend to work on long-term capacity development for SMEs so as to render them more competitive (independently of financial support from Government) in public procurement tenders.

5.2 PPP Institutional Responsibility in Botswana

Institutionally, the Government defines the responsibilities of various Ministries and Institutions in the PPP Policy Framework in Chapter 5. Accordingly, Government Sponsoring Institutions have the prime responsibility for identification of potential PPPs conducting a cost-benefit analysis. The PPP Unit acts as a coordination and assistance and also approval body to oversee and help throughout the process of conducting economic analysis and pre-feasibility analysis of PPPs. The Ministry of Finance and Development Planning (MFDP) provides also its approval to the first economic-benefit analysis.



The Sector Ministries and Institutions in charge of implementing the PPP need to manage the contract. The Public Procurement and Asset Disposal Board (PPADB) and the PPP Unit provide their approval combined to any exemptions from the PPP Policy in terms of guidelines, regulations underpinning the Policy. There is also a PPP Project Committee involved throughout the procurement process next to the PPP Unit. The Project Committee has a review role and a recommendation role to the Unit. In terms of institutional hierarchy, the PPP Unit has approval roles partially, but it is primarily the PPADB that decides on major issues related to the project throughout the tender process.

5.2.1 Role of PPP Unit in Botswana

The PPP Unit has been introduced after declining revenues forcing the Government to rethink funding of public projects. President Khama announced the Unit's establishment during the official opening of the BOCCIM National Business Conference in 2012. Khama reinforced that the latest developments around PPPs would be incorporated into the mid-term review of the National Development Plan 10. He stated that a highly experienced officer at Permanent Secretary (PS) level had already been appointed to the new Unit (<http://www.mmegi.bw>, 2012). KPMG, however, notes that the position of PPP Unit's head was still vacant as of 2013, but there was to be a re-advertisement of the position in this year (KPMG Draft Country Report, 2013). An illustration of the proposed organizational structure as of 2009 of the PPP Unit may be depicted from the next chart.

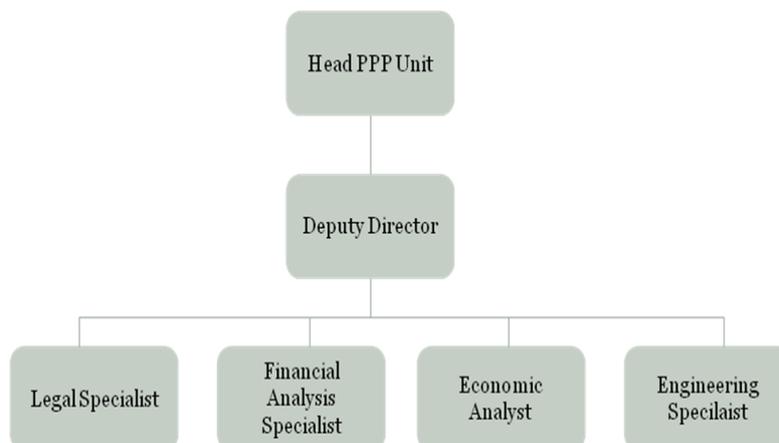


Chart 4: Organizational Structure PPP Unit Botswana Proposed in 2009

Based on the budget speech 2010, the mandate of the Unit is to include coordination and policy guidance, technical support to line ministries, capacity building, promotion of investment in PPPs and harmonising the roles of other players such as PEEPA in order to avoid duplication of roles. The functions as stated in the PPP Policy Framework in 2009 shall be as follows:

- Overall co-ordination and monitoring of the PPP Policy and projects;
- Technical assistance to Sponsoring Institutions;
- Assisting in selection of suitable PPP Projects;
- Approval of PPP feasibility studies and bid evaluation reports, and
- Advocacy for PPPs and capacity building (PPP Policy and Implementation Framework, 2009, Chapter 4.14, p.10).

OECD criticizes that although a fledgling PPP Unit has been established under the Ministry of Finance, it mainly consists of existing MFDP staff combining this role with other functions, and



as of March 2013 the Unit counted only two part-time officers. OECD urges the need to empower the Unit to accelerate the transition towards successful PPPs in the country (OECD Investment Policy Review, OECD, 2013, p.124).

MFDP attributes the faltering roll-out of the PPP Unit to delays and unforeseen complications in attempting to hire external consultants for this task. Yet rather than expecting external consultants to take this next step, it may be necessary and desirable for Botswana to develop the Framework for PPPs in-house in terms of capacity to embark upon proper PPP guidelines and manuals or even to develop further a PPP Law or an Act specifically designed for procurement of PPPs. OECD reaffirms that increasing the capacity of the PPP Unit would increase ownership, understanding and buy-in in the process. Increased efforts on behalf of MFDP to recruit staff – even on a temporary basis – from relevant institutions such as PPADB may be very helpful in accelerating the development of the appropriate regulatory Framework for PPPs, and could also give stronger momentum to the PPP Unit.

5.2.2 PPP Regulation, Approval and Implementation Roles in Botswana

Sector ministries are given primary accountability for service delivery, including identifying and initiating, as well as procuring and managing PPP projects. MFDP is to play an advocacy and capacity-building role, and PPADB is the responsible body to ensure that the PPP procurement process is fair and transparent, as well as within the existing budget allocation. PPADB is also granted power to act as the ultimate approval body concerning contract award.

In terms of PPP process, there are specific guidelines on different phases of PPP implementation in the PPP Framework. The process starts with project initiation which may be conducted either by the PPP Unit or an institution. Then, a with feasibility study (including cost benefit analysis to assess how well the project addresses the National Development Plans' development requirements) is to be conducted and the process continues with the actual project procurement, contract management, and performance monitoring (Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, p.21).

The next chart illustrates those numerous bodies involved throughout the PPP process. It also provides an overview of the approval bodies (the illustration is derived from page 21 of the PPP Policy Framework). It is interesting that there is some inconsistency concerning who the approval body shall really be. For instance, although the Framework document notes that PPADB and the sponsoring institutions shall be the approval bodies for PPPs prior to advertising the request for qualification documents (page 27 of PPP Framework), the graphic illustration in the document on page 21 indicates a different approval process for that specific stage of the tender procedure.

Both the PPP project committee and the PPP Unit must be consulted prior to publication of the tender. The PPP project Committee evaluates the Request for Qualification (RfQ) documents, whereas the PPADB and the PPP Unit both need to be consulted to provide their consent (Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, Annex 3, p.28). The chart provides a different approval mechanism also at this stage. The bid evaluation process includes a report to the PPP Committee by advisers who in turn then reviews and evaluates the report and prepares it for presentation to the PPP Unit for its approval. It must be mentioned that the PPADB is the ultimate approval body after having received a report from the PPP Unit to provide the go ahead for negotiations. Also financial close can only be reached upon approval by PPADB. Overall, we suggest bringing some clarification and



precision concerning the PPP approval process to better streamline the overall process.

Next and beyond the above approval roles of the PPP Unit within the MFDP, it provides for overall coordination and monitoring, technical assistance in the selection of projects, and approval for PPP feasibility studies. Unfortunately, however, progress in establishing this Unit has been halting and the Unit is not yet fully operational or sufficiently capacitated.

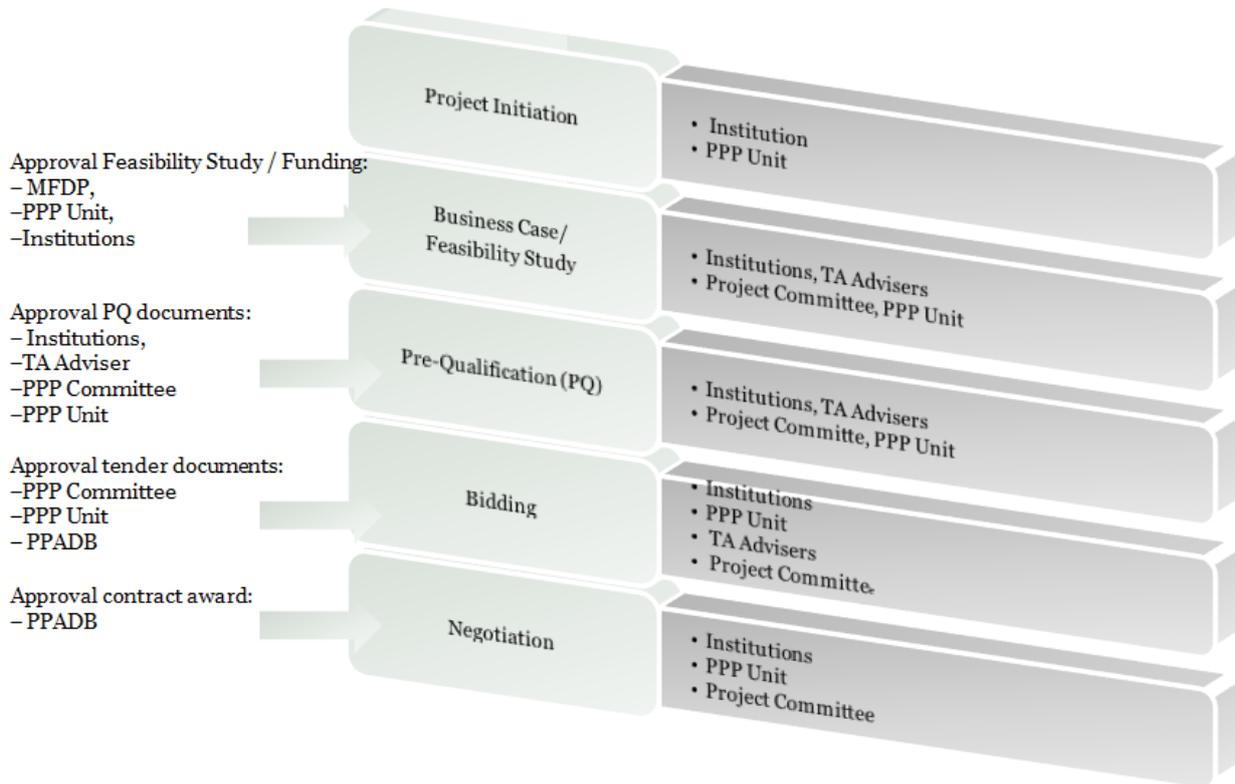


Chart 5: Overview of PPP Procurement Process and involved Bodies,

Source: Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, Annexure 3

Finally, unsolicited proposals may be submitted and are not excluded in Botswana, on the condition that the procurement process remains transparent and competitive, and that the unsolicited bidder demonstrate substantial technical or financial innovation or meet an unidentified need. This is an important feature that is often omitted in PPP recommendations, and which nonetheless poses itself as a real question for public officers faced with PPP project identification and selection.

5.3 Botswana Legal Framework

The regulatory and legal framework governing procurement in Botswana is embodied in the PPAD Act. The Government announced already in 2009 to support the roll-out of PPPs thus envisaging the establishment and adoption of specific regulations to govern PPP Procurement within the overall legislative framework (Ministry of Finance and Development Planning, PPP Policy and Implementation Framework, 2009, Chapter 4, p.8). On top, the PPP Framework envisioned the amendment of existing District Council regulations to provide for proper budgeting guidelines for PPPs and empower town councils to procure infrastructure and related services (Ministry of Finance and Development Planning, PPP Policy and Implementation



Framework, 2009, Chapter 4, p.8).

In 2012, the National Economic Diversification Council (NEDC) made clear its decision of fast-tracking PPP implementation in the country. As of 2012, Botswana still has no PPP Act or regulations, and the existing PPAD Act makes no explicit reference to the specific modalities of PPP projects. A dedicated legal framework and institutional structure thus will be of value to attract private sector to bid for PPP contracts. The absence of a PPP Act and regulations and the very limited capacity of Botswana’s PPP Unit currently risk weakening Botswana’s credibility vis-à-vis potential private partners for promotion of infrastructure PPPs.

OECD analysis provides support for this argument noting that the PPAD Act and Regulations need an amendment in order to better reflect Botswana’s 2009 PPP Policy; indeed the Act, the Regulations, and the 2008 Operating Manual were developed prior to 2009 and make no specific mention of modalities for PPP contracting (OECD Investment Policy Review, OECD, 2013, p.127). OECD emphasizes that PPP legislations and regulations are best fully in line with rules for traditional procurement processes to enable public authorities to make rational and informed choices between using PPPs or traditional infrastructure procurements (OECD Investment Policy Review, OECD, 2013, p.127).

In this context, OECD recommends the creation of a Regulatory Framework for PPP development beyond the existing PPAD Act, which makes no provisions specific to PPP contracting. Building on the basis of the 2009 PPP Policy and Implementation Framework, a PPP Act and Regulations could be developed by procurement experts and budget officials in-house, rather than relying on external consultants (which has purportedly led to delays). OECD suggests nurturing Government capacity and reinforcing Botswana’s fledgling PPP Unit. Staff may be recruited – even on a temporary basis – from relevant institutions outside of MFDP (such as PPADB).

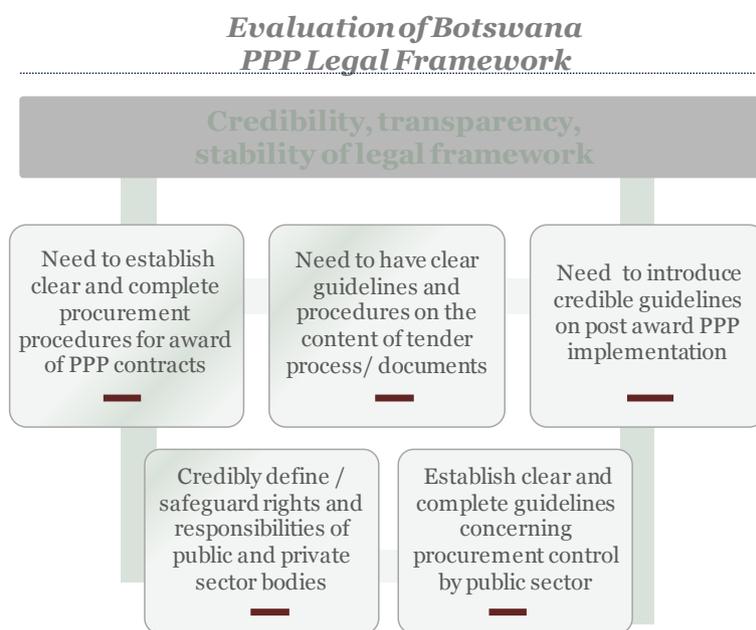


Chart 6: Evaluation of current Legal Framework of Botswana concerning PPPs

It must be highlighted that there is no explicit recommendation towards the need to enact a Legal Framework via a PPP Act or a law as international “best practice” as discussed in the Regional Strategy Paper dated 2012. Nevertheless, our suggestion reaffirmed the necessity to introduce



clear laws and regime, in terms of the procurement process and to have clear as well as credible guidelines on the content of tender process as illustrated in the next chart. Botswana to date only has some general principles laid out in the PPP Policy Framework document which by no means is sufficient for public sector agents or private sector bidders to gain clarity and security concerning the tender process for such complex and long-lasting procurements as PPPs. Thus, adopting a dedicated law may indeed convey to investors a positive signal on public commitment to facilitating private participation in infrastructure.

A binding Legal Framework for PPPs may assist in providing adequate investor security and set guiding principles for sound risk-sharing and contracting. Such laws also regulate elements specific to the success of PPP contracts, and provide procurement entities with guidance concerning the novel risks and considerations that PPP projects entail. This includes, important provisions for adequate upstream preparation of PPP projects – without which the benefits of PPP projects may well lie out of reach. Should Botswana move ahead in developing dedicated PPP legislation to accompany the 2009 Policy, it must of course be consistent with pre-existing and broader-spectrum legislations on investment and procurement.

6. Recommendations

Being in competition with neighbouring countries like South Africa, and Zambia for attraction of private capital, the Botswana Government has recognized the need to establish a credible and clear PPP Framework for promotion of PPPs in the country. However, to date the Government shows little experience with implementation of these kinds of projects. The construction of offices of the Ombudsman and Land Tribunal were the first PPPs of its kind in the country. The construction of the SADC headquarters is the only other PPP project worth mentioning. Despite Government's lack of experience, there seems to be political commitment to enhancing efficiency in the delivery of public infrastructure and services using private sector innovation, managerial and technical skills and expertise (IP3, web page, 2013).

Institutionally, there has been a delay in establishing the PPP Unit due to financial constraints. KPMG notes that the post of Head of PPP Unit has not been created and has been re-advertised because the candidates that were initially short listed could not meet the requirements (KPMG, Country Report, Draft, 2013). The Head of the Unit was expected to be appointed during the second quarter of 2013. OECD expects the country's PPP Unit, which currently counts only two part-time staff-members, to be reinforced so as to accelerate the transition towards successful PPP contracting in infrastructure sub-sectors (OECD Investment Policy Review, OECD, 2013, p.127).

Based on information from the Unit, there is some indication of serious capacity constraints for the implementation bodies in terms of public procurement. Despite capacity-building workshops held multiple times a year for sector bidding committees, PPADB emphasizes that procurement Unit staff are often ill-equipped to manage procurement processes and purchase choices (OECD Investment Policy Review, OECD, 2013, p.126). The resolutions suggested by the private sector in the context of NBC 2012 likewise call for enhancing the capacity of both the Government and the private sector to take the initiative on PPPs, by securing a PPP strategy and project advisors within the private sector umbrella group (BOCCIM); establishing a joint technical project selection committee within Government; creating bond issuance options for infrastructure PPPs; and accelerating the operationalization of the PPP Unit. Given the complexity and scope of PPP projects, we recommend reinforcing Government capacity and capacitating the PPP Unit, as well as providing clearer guidance for procurement entities including at local level, is crucial.

Based on the above, the ability of PPP projects in Botswana to be prepared and completed is significantly constrained –due to limited PPP knowledge, skills, and experience within the public



sector as well as in the private sector. To both improve the PPP Framework as well as to prepare and complete PPP transactions, Botswana requires a single focal-point to coordinate a systematic PPP training and capacity-building initiative. The PPP Unit should play the role of coordinating PPP training and capacity-building for a range of stakeholders in Botswana, including the PPP Committee, Government, the private sector, as well as for donors and other organizations. PPP training in Botswana should be focused to support the preparation and completion of specific PPP projects, and to increase general awareness of PPP concepts.

Botswana's ambitions to become a regional transportation and logistics hub and to attract more private participation in infrastructure development will also crucially hinge upon the state of the playing field between public and private sector in the market. The President has already recognized publicly that PPP models are unavoidable looking at the decline in both local and the global economy, thus.. "Our own funds will not be sufficient for our projects and we have decided to put in place as an option, PPPs, as we go forward from the mid-term review," the President said." However, the President highlighted also the negative experiences made so far concerning private sector's vision on PPPs and also their approach towards PPPs. The promotion and implementation of the PPP Framework will need an active participation from local private sector in Botswana in order to be sustainable. In addition to bidding on PPP tenders and providing equity and debt to local PPP investments, local private firms should be invited to work with the Government to structure the rules of the game for the country's PPP Framework.

Concrete SADC3P Recommendations:

- Assist towards promotion and awareness raising in private sector via PPP Forum or a Public Private Sector Dialogue
- Support the Government to organize a stakeholder dialogue with private sector on its ideas on developing further the PPP Framework
- Assist in preparing PPP Guidelines and Standard Operating Procedures
- Support to revise the PPP Policy concerning the approval processes

While some larger PPP investment projects will require international investors, lenders, and contractors, numerous medium-sized projects may be implemented by local developers and lenders. As part of our recommendation, we suggest establishing a PPP Forum as means of involving once a year the proper stakeholders into the process of dialogue concerning PPP schemes, procedures and other issues to be established and instituted in Botswana aimed at strengthening the overall implementation of PPPs. The PPP Unit may oversee the progress and completion of this PPP Forum activity which may be monitored by PPP Committee under the existing arrangement.

Finally, we recommend –in the context of implementing the PPP Policy, to introduce some level of regulations as a possible presage to a potential PPP Legal Framework. In order to implement the regulations and catalyze PPP immediately, it will be necessary to prepare PPP Guidelines and Standard Operating Procedures, which will be followed by all stakeholders and enforced by the PPP Unit which shall be established next year.



Bibliography

AfDB, 2013, web page

cdcp4, web page, 2013

<http://www.mmegi.bw>, 2012

IP3, web page, 2013

KPMG Draft Country Report, 2013

Ministry of Finance and Development Planning (MFDP), PPP Policy and Implementation Framework, 2009,

OECD Investment Policy Review, OECD

Republic of Botswana, 2010 Budget Speech, “Transforming Our Economy After the Crisis: 2010 and Beyond”, Honourable O.K. Matambo, Minister of Finance and Development Planning, 2010

World Economic Forum, the Global Competitiveness Report 2013–2014, 2013

World Bank 2013, web page

