



Legal Regulation of Public–Private Partnerships and Infrastructure Development: Comparative Lessons from India and African States

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ABSTRACT

The paper will analyze the law abiding on the Public-Private Partnership and its success in the infrastructure development by comparing it to India and other African states. It directly examines the effects of a variety of regulatory methods, including codified laws and guiding frameworks on the effectiveness, transparency, and sustainability of the PPP projects in these areas. Moreover, the paper examines the impacts of these legal and regulatory environments on the attraction of the private investment, especially given the prevailing issues of corruption and political instability, and how such environments enhance the realization of the sustainable development goals. One of the main arguments is that a solid legal framework is essential to provide a favorable environment in which the private sector can play its role in the development of infrastructure, minimizing risk, and improving fairness of results across the board. This comparative study will analyze the best practices and key areas of reform of PPP legislation with the capacity to address the management of stakeholders and environmental protection in infrastructure projects. The discussion also explores the situation on the one hand (developing economies) that tends to have weak regulatory frameworks, market volatility, and poor institutional capacity compared to developed nations (stable legal framework, the use of a sophisticated financial instruments to determine PPPs). This disparity often necessitates tailored legal and regulatory approaches in developing countries to attract and secure private sector involvement in critical infrastructure projects, especially given the global infrastructure deficit estimated at US\$800 billion to US\$1 trillion annually....

1. INTRODUCTION

PPPs have become an important tool of managing the infrastructure shortage around the world, especially in developing economies where the government cannot solely cover the costs of infrastructure projects. The method enables governments to mobilize the resources of the private sector, capital, knowledge, and effectiveness in providing the much-needed services and infrastructure initiatives that would otherwise be postponed or futile as a result of budget limitations. The growing need to develop infrastructures and the shrinking budgets of the population enhanced by international economic disasters has made it an immediate need to utilize new methods of financing like PPPs. This is especially relevant to such areas as Sub-Saharan Africa where governments have serious difficulties in fulfilling the requests of citizens to develop better infrastructure in financial constraints and operational inefficiencies of the publicly -owned utilities



[1].

The superior role of infrastructure in facilitating productivity as well as economic development and good living standards highlights the need to have good legal systems that are able to induce investments, by the private sector to these spheres of interest. The present paper is a critical assessment of the Indian legal and regulatory environments of PPPs and the chosen states in Africa and the comparison of their effectiveness in facilitating sustainable infrastructure development and highlights common issues and practices of this field. It examines the importance of these structures in the successful operation of projects, such as Build, Operate and Transfer models in India, that have been booming since the 1990s as types of privatization and involvement of the private sector in infrastructure construction [2]. This type of comparative analysis will clarify the particularities of the PPP legal regulations, following the experiences of India and other African countries where one of the requirements in the development of the infrastructures is the maximum possible one, which often is hindered by various hold-up problems. Specifically, the review will concentrate on the impact of different legal and procurement laws in these countries like Zimbabwe and South Africa on managing stakeholders and project operation and highlight the role of comprehensive regulatory frameworks in attracting significant investments to the African continent by the business community.

2. Conceptual Framework of Public–Private Partnerships

Public-Private Partnerships conceptual framework is a spectrum of contractual associations among the public institutions and those in the private sector to deliver infrastructural facilities and services previously done by government sectors. These contracts are also characterized by sharing risks, responsibility and rewards with the privates in the sector who often participate in the financing, construction, and operation of assets with regard to operating or user charges [3]. This complex interaction leads to the need to have a sound legal framework that is able to help counter fiscal limitation that governments have and motivate the take up of infrastructure provision by the private sector. These structures are crucial especially in the sub-Saharan Africa, where governments badly need to come up with an efficient and lasting opportunity to involve the private sector in the infrastructure procurement. A comparative study of rules on procurement in countries such as Zimbabwe and South Africa, based on stakeholder theory explains the complexities surrounding balancing various interests in these projects, which means that strong regulatory frameworks are needed. As an example, stakeholder management is vital in removing legal and regulatory controversy in PPP projects, and the procurement regulations in South Africa have matured to be more thorough than the rules have been in the last 20 years, hence considering interests of stakeholders better than the modern frameworks. This is quite different to the newly introduced PPP procurement rules in Zimbabwe, which are reported to have failed to meet the expected PPP stakeholder management standards thus preventing proper project implementation which can be viewed as the cause of project failures [4]. The effectiveness of these structures in the fulfillment of the assurance that the private sector and consequently, the willingness to invest in infrastructural projects that are long-term depends mainly on the legal nobleness of these structures with the willingness to implement the PPPs directly influenced by them. As a case in point, the problem of insufficient infrastructures to deliver water services in South Africa which are further hindered by poor investments and maintenance highlights the need to have well laid down municipal PPPs that are however rarely used, highlights the need to have legal frameworks to tackle some underlying structural problems within the systems. These problems may also involve complicated approval procedures through many layers of government and stakeholders that may hinder the adoption and execution of municipal PPPs in time, even when they have feasible solutions to acute infrastructure shortages [5].

3. Legal and Regulatory Landscape of PPPs in India

The Indian legal and regulatory context of the Public- Private Partnerships has exhibited a tremendous transformation, informed by the ambitious development of infrastructures in the country as well as exposure to different PPP models. This transformation is especially important in light of the fact that any delays and cost overruns in Indian state projects at infrastructure level, are often due to legal and contractual wrangling aggravated by a usually complicated legal framework [6]. Concise and articulate policy and legal framework is thus pertinent in attracting and maintaining the involvement of the private sector in the Indian infrastructure projects, as it is the case in developing nations in the world. The main goal of the framework is to ensure that the environment is conducive to investment through the reduction of risks and predictability to the private investors so as to implement massive infrastructure projects in different sectors [7]. To a great extent, such an environment can be characterized by extensive rules provided by authorities instead of one general law on PPP, which is not surprising since India is characterized by a common law system. Although no particular high-level laws have been enacted so far, India has adopted a variety of transport PPPs, proving that the quality and the content of the legal system is what matters most instead of the particular statutory form [8]. This will provide a flexible regulatory, which will enable the Indian government to improvise and perfect its PPP models in line with new challenges and changes in the market dynamics. Nonetheless, the drawback of this decentralized regulating method is also evident since the lack of a central law of PPP may result in unequal regulation and different interpretations in different states and industries, which will discourage some private investors. The absence of specific central legislation implies that the PPPs are governed by a set of guidelines and manuals that are introduced to control strong procurement procedures and transparency. Particularly, the General Financial Rules of 2017, the Delegation of Financial Powers Rules of 1978, and the Manual of Procurement of Goods of 2017, together with Central Vigilance Commission Guidelines, are the cornerstone in regards to procurement in Indian

PPPs. Such documents make available comprehensive operational framework, including pre-qualification requirement up to integrity agreement between procurers and probable bidders to enhance transparency and minimize the risks of corruption. A network of rules that is so intricate and yet comprehensive still needs constant harmonization attempts to accommodate the industry-related peculiarities and reduce the number of uncertainties among the people in the private sector. Moreover, the legal environment in which the Indian PPPs operate can be characterized by relying on various institutional vehicles, such as Viability Gap Funding which is meant to make certain projects otherwise commercially unfavorable to the causing investor due to the high costs of capital or the lack of certainty in the revenue streams [9].

4. Legal and Regulatory Landscape of PPPs in African States

The regime of regulating the African states of Public-Private Partnerships is abundant in choices that run through detailed legislations, subsistence on the overall procurement regulations or even absence of proper PPP laws, all of which play tremendous roles in the development of the projects and investor confidence [8]. A large number of African countries are reforming their legal systems to promote governance, transparency and competitive procurement procedures as a solution to overcome historical restrictions limiting the involvement of investors in PPPs. These reforms generally are ready with the support of the lessons that were observed in the foreign country, which aims to remove risks through the establishment of systematic allocation designs, suitable contractual systems that can enable the attraction of private capitals and creating a sustainable infrastructure development. The shifting of these frames on the African contextates is normally a renewal of older concessionary theories, and development of new versions of the contracts with the current economic policies in the world, and the necessity of adjusting to the local circumstances. Indicatively, in most African developing member states, certain legal frameworks have been availed on PPPs which allow this type of procurement in nearly all sectors of infrastructure but widespread regulatory deficiencies are still typical, such as the absence of lender security rights and underdeveloped government support facilities. Such topography is also intricate in the sense that there is inconsistency in the clarity and stability of regulation among different jurisdictions and this may impede cooperation and innovation within multinational structure where effective communication with the regulatory bodies as well as participation to make the best out of a legal uncertainty is deliberated [10]. Also, although some African countries have adopted particular PPP legislation to ensure the inclusion of private investments in infrastructure, there exists a very large infrastructural financing gap on the continent, underscoring the difficulty of continuing legal frameworks in actual project delivery. In fact, regardless of the fact that about thirty African countries have adopted the PPP laws, more than twenty of these laws have been adopted in the past nine years, there are still much legal problems to address, such as enforcement of the contracts, interests of the privately owned sectors, and complications involving the red tapes in the process of getting a permit and consent. These issues highlight the importance of not only the enactment of laws, but also ensuring that enactment through proper implementation and alignment with the current legal systems creates an assessment that is actually favorable to the involvement of the private sector. Additionally, there is the introduction of the OHADA law and bilateral investment treaties with some countries especially the France which have greatly improved the legal environment of PPP in most African countries, as well as reformed investment codes. This mosaic system of rules is aimed at minimizing risks and establishing investor confidence with a more predictable and stable regulatory system, which infrastructure projects are more exposed to long-term commitment [11].

5. Comparative Analysis of Legal Regulation

The comparative analysis of the law and regulatory experiences of Public-Private Partnership in the context of India versus certain African countries as a continent has demonstrated the fact that their strategies are nevertheless rooted on various historical, economical and institutional grounds but they reach the same objectives of developing infrastructure and growing economies. Despite the similarity in the need of the regions to grasp the significance of the input of the form of private investment capital and experience into the national pools of development efforts, the manner in which they proceed to integrate the use of PPPs into the national development strategy can be very different particularly in the maturity of legislature and institutional capacity. The Indian experience, even though lacking any one clear PPP law, has created a highly dispersed, yet broad, regulatory ecosystem that includes a large assortment of guidelines and state-specific acts and regulations that have facilitated a significant number of projects, particularly in transportation and energy. Meanwhile, other African states are at earlier phases of the development of committed PPP laws, some more well developed, and institutional, with various uncertainties, and many have failed to deal with corruption, the ineffectiveness of their regulations, and do not have a feasibility study that has facilitated the failure of the projects. An example is in Nigeria where despite the government pushing PPPs in housing since the year 2002, there are a lot of challenges particularly in housing low-income earners hence the implementation bottlenecks remain despite the awareness of the legislation [12]. This places a great stress on the need to not only enact enabling laws but also develop on the good institutional frameworks and layered system of governance, which can assist in effective implementation and sustainability of the PPP in initiatives at the sectoral level. Moreover, even though India enjoys a relatively stable legal framework and has tried and tested financial instruments, most African countries are facing market unpredictability and the lack of institutionalization as well as difficulties of executing contracts, declining financial institutions regardless of the inputs of the multilateral institutions. The gap between Indian and African legal and institutional maturity, therefore, provides a promising area of comparative research, especially in determining lessons that may be transferred about how to design legislation, distribute risk, and



devise a dispute resolution mechanism that may strengthen the PPP structures of the developing economies. In particular, the assessment of land acquisition strategies that India successfully uses and reinforces might have been an insightful addition to the research on how African states can improve the outcomes of their infrastructure projects. Moreover, an in-depth exploration of the Indian long-term investment in financing greenfield projects which are normally low-funded might provide transferable lessons to countries in Africa where the same is being the case. On top of this, the standardization of the terms of the contracts in order to minimize risks of incomplete contracts as was witnessed by the Indians experience in South Africa can also serve as a good example to other African nations to enhance contractual certainty and assure project viability [8].

6. Conclusion

The existence of formal-regulatory issues and the existence of robust institutional set-ups in two cases is representative of the importance of ex-post checking in order to make sure that there is continual advancement in terms of PPP arrangement. A systemic review of this kind would also allow drawing to light systemic inefficiencies such as the inadequacy of the instruments of financial means available, the ineffectiveness of the effect of the processes embodied in the PPP process by the institutions of the society which tend to be restricting the optimum performance in both the Indian and the African economy. Moreover, the experience of South Africa underscores the importance of regularly evaluating its PPP regulatory environment to identify functionality and suitability, and provide arrangements on expediency in smaller PPP projects and ex-post evaluation as a requirement. Such a continuous review process that Brazil often faces with the application of policy directives aimed at resolving ratings of particular issues when implementing PPP, is essential to it adapting to changes in market dynamics and meeting unanticipated challenges. In addition, the focus on sound governance systems such as a separation of government and the judicial system and institutions to assist in the PPPs of water sectors bring the South Africa system to be compatible with international standards although it tries to emulate water sector PPPs growth after any legislative reforms had been made in Brazil. This comparison of Brazil and South Africa suggests the importance of an effective legal and regulatory framework in conjunction with high institutional capacity and transparency in achieving successful PPP implementation especially in the water sector. Nevertheless, one major impediment to the adoption of climate-resilient infrastructure in such areas is financial constraints. Dealing with these constraints require a discussion of new funding tools, including green bonds, social impact bonds, carbon taxes, or cap-and-trade funding in addition to essential policy changes in order to develop and implement effective legal and regulatory systems. To provide an example, South Africa has an estimated funding difference of 333 billion over ten years to fund infrastructure on water, and this demonstrates the necessity of various serious approaches towards funding to ensure that there are sufficient water resources and infrastructural funding. Furthermore, due to the fact that different countries have different resources at their disposal; the adoption and execution of PPP arrangements have to be country specific to these funding differences to effectively fight these disparities.

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